

9-7-2012

Campbell v. Kvamme Clerk's Record v. 1 Dckt. 39650

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IN THE SUPREME COURT OF THE STATE OF IDAHO

V. LEO CAMPBELL and KATHLEEN)
CAMPBELL,)
)
Plaintiffs/Appellants/)
Cross-Respondents,)
)
vs.)
)
JAMES C. KVAMME and DEBRA)
KVAMME,)
)
Defendants/Respondents/)
Cross-Appellants.)
_____)

Case No. CV-2010-3879

Docket No. 39650

VOLUME I of IV

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the
Seventh Judicial District of the State of Idaho,
in and for the County of Bonneville

HONORABLE JON J. SHINDURLING, District Judge.

Attorney for Appellant/Cross-Respondent

Attorney for Respondent/Cross-Appellant

Kipp Manwaring
PO Box 50271
Idaho Falls, ID83405

Justin R. Seamons
414 Shoup Avenue
Idaho Falls, ID 83402

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6/30/2010	SMIS	SOLIS	Summons Issued	Jon J. Shindurling
	NCOC	SOLIS	New Case Filed-Other Claims	Jon J. Shindurling
	NOAP	SOLIS	Plaintiff: Campbell, V Leo Notice Of Appearance Charles C. Just	Jon J. Shindurling
	NOAP	SOLIS	Plaintiff: Campbell, Kathleen Notice Of Appearance Charles C. Just	Jon J. Shindurling
		SOLIS	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Campbell, V Leo (plaintiff) Receipt number: 0030813 Dated: 7/1/2010 Amount: \$88.00 (Check) For: Campbell, Kathleen (plaintiff) and Campbell, V Leo (plaintiff)	Jon J. Shindurling
	COMP	SOLIS	Complaint Filed	Jon J. Shindurling
7/7/2010	ACKN	KBAIRD	Acknowledgement Of Service 7/7/10	Jon J. Shindurling
7/27/2010	NOAP	DOOLITTL	Defendant: Kvamme, James C Notice Of Appearance Justin R. Seamons	Jon J. Shindurling
		DOOLITTL	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Seamons, Justin R. (attorney for Kvamme, James C) Receipt number: 0035529 Dated: 7/28/2010 Amount: \$58.00 (Check) For: Kvamme, Debra (defendant) and Kvamme, James C (defendant)	Jon J. Shindurling
	NOAP	DOOLITTL	Defendant: Kvamme, Debra Notice Of Appearance Justin R. Seamons	Jon J. Shindurling
	ANSW	DOOLITTL	Answer, Counterclaim, and Demand for Trial by Jury	Jon J. Shindurling
8/13/2010	HRSC	GWALTERS	Hearing Scheduled (Status Conference 10/12/2010 09:00 AM) set PTC/trial dates	Jon J. Shindurling
		GWALTERS	Notice of Hearing - S/C set 10/12/10 at 9 AM	Jon J. Shindurling
8/17/2010		LYKE	Reply to Counterclaim	Jon J. Shindurling
	NTOS	LYKE	Notice Of Service - Plaintiffs' Discovery Requests	Jon J. Shindurling
8/17/2010	NTOS	DOOLITTL	Notice Of Service (Interrogatories # 1-18 and Requests for Production # 1-27)	Jon J. Shindurling
8/20/2010	NTOS	DOOLITTL	Notice Of Service (Answers to Requests for Admission)	Jon J. Shindurling
8/30/2010	NOTC	DOOLITTL	Notice of Compliance - Plaintiff's Response (Plaintiff's Response to Defendants' Interrogatories and Requests for Production)	Jon J. Shindurling
9/12/2010	HRVC	GWALTERS	Hearing result for Status Conference held on 10/12/2010 09:00 AM: Hearing Vacated set PTC/trial dates	Jon J. Shindurling
	HRSC	GWALTERS	Hearing Scheduled (Pretrial Conference 04/11/2011 10:00 AM)	Jon J. Shindurling
	HRSC	GWALTERS	Hearing Scheduled (Jury Trial 04/25/2011 01:30 PM)	Jon J. Shindurling
	NTOS	DOOLITTL	Notice Of Service	Jon J. Shindurling

V Leo Campbell, Kathleen Campbell vs. James C Kvamme, Debra Kvamme

Date	Code	User		Judge
10/12/2010	NTOS	DOOLITTL	Notice Of Service (Answers to Interrogatories 1-20, Requests for Production 1-19)	Jon J. Shindurling
10/13/2010		GWALTERS	Notice of Hearings - PTC set 4/11/11 at 10 AM: JT set 4/25/11 at 1:30 PM	Jon J. Shindurling
	ORDR	GWALTERS	Order Refer Case to Mediation	Jon J. Shindurling
	ORPT	GWALTERS	Order Setting Pretrial Conference/trial	Jon J. Shindurling
	MINE	GWALTERS	Minute Entry re Stat conf held 10/11/10 at 9:10 AM	Jon J. Shindurling
11/15/2010	HRSC	GWALTERS	Hearing Scheduled (Motion 12/06/2010 11:30 AM) Mtn for Protect Ord - Manwaring to ntc	Jon J. Shindurling
	MOTN	SOLIS	Motion For Protective Order	Jon J. Shindurling
	AFFD	SOLIS	Affidavit Of Counsel	Jon J. Shindurling
	NOTH	SOLIS	Notice Of Hearing 12/06/2010 @ 11:30AM RE: Motion For Protective Order	Jon J. Shindurling
11/19/2010	NOTC	DOOLITTL	Notice of Examination of V. Leo Campbell	Jon J. Shindurling
		DOOLITTL	Subpoena Ad Testificandum and Duces Tecum to V. Leo Campbell	Jon J. Shindurling
11/24/2010	NOTC	DOOLITTL	Notice of Compliance - Plaintiffs' Supplemental Response	Jon J. Shindurling
11/30/2010	NOTC	DOOLITTL	Notice of Intent to Cross-Examine V. Leo Campbell, Kathleen Campbell, and Eric W. Pertulla	Jon J. Shindurling
		DOOLITTL	Objection to Affidavit of Counsel	Jon J. Shindurling
12/1/2010	HRSC	GWALTERS	Hearing Scheduled (Motion 12/02/2010 10:30 AM) Mtn for Protect Ord - Manwaring to ntc	Jon J. Shindurling
	HRVC	GWALTERS	Hearing result for Motion held on 12/06/2010 11:30 AM: Hearing Vacated Mtn for Protect Ord - Manwaring to ntc	Jon J. Shindurling
	MOTN	SOLIS	Motion To Shorten Time	Jon J. Shindurling
	NOTH	SOLIS	Amended Notice OF Hearing - Motion for Protective Order - 12/02/2010 @10:30AM	Jon J. Shindurling
	NOTH	SOLIS	Notice Of Hearing - Mtion To Shorten Time 12/02/2010 @10:30AM	Jon J. Shindurling
2/2/2010	MINE	GWALTERS	Minute Entry Hearing type: Motion Hearing date: 12/2/2010 Time: 10:37 am Courtroom: Court reporter: Nancy Marlow Minutes Clerk: Grace Walters Tape Number: Kipp Manwaring Justin Seamons	Jon J. Shindurling
	NOAP	GWALTERS	Plaintiff: Campbell, V Leo Notice Of Appearance Kipp L. Manwaring	Jon J. Shindurling

V Leo Campbell, Kathleen Campbell vs. James C Kvamme, Debra Kvamme

Date	Code	User		Judge
12/2/2010	DCHH	GWALTERS	Hearing result for Motion held on 12/02/2010 10:30 AM: District Court Hearing Held Court Reporter: Nancy Marlow Number of Transcript Pages for this hearing estimated: under 50 Mtn for Protect Ord - Manwaring to ntc	Jon J. Shindurling
12/6/2010	ORDR	GWALTERS	Order Granting Mtn to Shorten Time	Jon J. Shindurling
12/15/2010	NOTC	ANDERSEN	Notice of Compliance - Plaintiffs' Second Supplemental Response	Jon J. Shindurling
12/30/2010	NOTC	DOOLITTL	Notice of Continued Examination of V. Leo Campbell 1-26-11 @ 9:00 a.m.	Jon J. Shindurling
1/7/2011	NOTC	SOLIS	Second Notice Of Continued Examination Of V. Leo Campbell	Jon J. Shindurling
1/10/2011	HRSC	GWALTERS	Hearing Scheduled (Motion 01/24/2011 11:30 AM) Mtn for mediator - Seamons to ntc	Jon J. Shindurling
	HRVC	GWALTERS	Hearing result for Motion held on 01/24/2011 11:30 AM: Hearing Vacated Mtn for mediator - Seamons to ntc	Jon J. Shindurling
1/14/2011	NTOS	DOOLITTL	Notice Of Service (Interrogatory (No. 19) and Request for Production (No. 28)	Jon J. Shindurling
1/25/2011	NOTC	DOOLITTL	Notice of Compliance - Plaintiffs' Response to Additional Interrogatory and Request for Production)	Jon J. Shindurling
1/27/2011		SOLIS	Disclosure Of Expert Witnesses	Jon J. Shindurling
	NTOS	SOLIS	Notice Of Service Supplemental Answer To Interrogatory #4 & Supplemental Response To Request For Production #4	Jon J. Shindurling
1/15/2011	NTOS	DOOLITTL	Notice Of Service (Supplemental Response to Request for Production #4 Dated February 14, 2011)	Jon J. Shindurling
1/16/2011	NOTC	LYKE	Third Notice of Continued Examination of V. Leo Campbell	Jon J. Shindurling
1/18/2011	NTOS	DOOLITTL	Notice Of Service - Plaintiffs' Supplemental Discovery Requests	Jon J. Shindurling
1/22/2011	NTOS	DOOLITTL	Notice Of Service (Answer to Interrogatory # 21 and Response to Request for Production #20)	Jon J. Shindurling
1/7/2011	MOTN	SOLIS	Motion To Continue	Jon J. Shindurling
1/11/2011	MINE	GWALTERS	Minute Entry Hearing type: Pretrial Conference Hearing date: 4/11/2011 Time: 9:59 am Courtroom: Court reporter: Nancy Marlow Minutes Clerk: Grace Walters Tape Number: Kipp Manwaring Justin Seamons	Jon J. Shindurling

V Leo Campbell, Kathleen Campbell vs. James C Kvamme, Debra Kvamme

Date	Code	User	Judge
4/11/2011	DCHH	GWALTERS	Hearing result for Pretrial Conference held on 04/11/2011 10:00 AM: District Court Hearing Held Court Reporter: Nancy Marlow Number of Transcript Pages for this hearing estimated: under 50
	HRVC	GWALTERS	Hearing result for Jury Trial held on 04/25/2011 01:30 PM: Hearing Vacated
	HRSC	GWALTERS	Hearing Scheduled (Pretrial Conference 02/27/2012 10:00 AM)
	HRSC	GWALTERS	Hearing Scheduled (Jury Trial 03/05/2012 01:30 PM)
		GWALTERS	Notice of Hearings - PTC reset 2/27/12 at 10 AM: JT reset 3/5/12 at 1:30 PM
5/17/2011	MOTN	SOLIS	The Plaintiffs' Motion For Partial Summary Judgment
	MEMO	SOLIS	Memorandum In Support Of The Plaintiffs' Motion For Partial Summary Judgment
	AFFD	SOLIS	Affidavit Of Margy Spradling
	AFFD	SOLIS	Affidavit Of Jo Le Campbell
	AFFD	SOLIS	Affidavit Of Blake Mueller
	AFFD	SOLIS	Affidavit Of Mark Hansen
	AFFD	SOLIS	Affidavit Of Counsel
5/18/2011	HRSC	GWALTERS	Hearing Scheduled (Motion 07/05/2011 11:00 AM) Mtn for S/J - Just Law to ntc
5/20/2011	NOTH	LYKE	Notice Of Hearing Re: Plaintiff's Motion for Summary Judgment (07/05/11@11:00AM)
3/7/2011	MOTN	SBARRERA	Motion For Summary Judgment
	NOTH	SBARRERA	Notice Of Hearing RE: Motion For Summary Judgment (07/05/2011 11:00AM)
	AFFD	SBARRERA	Affidavit Of James C. Kvamme
		SBARRERA	Exhibits In Supopt Of Affidavit Of James C. Kvamme
	AFFD	SBARRERA	Affidavit Of Kim H. Leavitt
		SBARRERA	Exhibits In Support Of Affidavit Of Kim H. Leavitt
	AFFD	SBARRERA	Affidavit Of Mark Hansen
	AFFD	SBARRERA	Affidavit Of Blake Mueller
	NOTC	SBARRERA	Notice Of Submission Of Deposition Of V. Leo Campbell
/17/2011	HRSC	GWALTERS	Hearing Scheduled (Motion 06/28/2011 11:00 AM) Mtn to ext time - Manwaring to ntc
	MOTN	SOLIS	Motion For Extension Of Time
	MOTN	SOLIS	Motion To Shorten Time
	NOTH	SOLIS	Notice Of Hearing 06/28/2011 @11:00AM RE:Motion For Extension Of Time

V Leo Campbell, Kathleen Campbell vs. James C Kvamme, Debra Kvamme

Date	Code	User		Judge
6/17/2011	NOTH	SOLIS	Notice Of Hearing 06/28/2011 @ 11:00 AM RE: Motion To shorten Time	Jon J. Shindurling
6/21/2011		ANDERSEN	Objection to Record of Survey	Jon J. Shindurling
	AFFD	ANDERSEN	Affidavit of Arnold Gene Killian in Opposition to Plaintiffs' Motion for Summary Judgment	Jon J. Shindurling
	AFFD	ANDERSEN	Affidavit of Revar Harris in Opposition to Plaintiffs' Motion for Summary Judgment	Jon J. Shindurling
	AFFD	ANDERSEN	Affidavit of Mary Jane Harris in Opposition to Plaintiffs' Motion for Summary Judgment	Jon J. Shindurling
		ANDERSEN	Objection to Plaintiffs' Motion for Summary Judgment	Jon J. Shindurling
		ANDERSEN	Objection to Affidavit of Jo Le Campbell and Motion to Strike	Jon J. Shindurling
		ANDERSEN	Objection to Affidavit of Margy Spradling and Motion to Strike	Jon J. Shindurling
		ANDERSEN	Objection to Deposition of V. Leo Campbell and Motion to Strike	Jon J. Shindurling
6/22/2011	ORDR	GWALTERS	Order Granting Mtn to Shorten Time.	Jon J. Shindurling
6/28/2011	MINE	GWALTERS	Minute Entry Hearing type: Motion Hearing date: 6/28/2011 Time: 10:57 am Courtroom: Court reporter: Nancy Marlow Minutes Clerk: Grace Walters Tape Number: Kipp Manwaring Justin Seamons	Jon J. Shindurling
	DCHH	GWALTERS	Hearing result for Motion scheduled on 06/28/2011 11:00 AM: District Court Hearing Held Court Reporter: Nancy Marlow Number of Transcript Pages for this hearing estimated: under 50 Mtn to ext time - Manwaring to ntc	Jon J. Shindurling
	HRSC	GWALTERS	Hearing Scheduled (Motion 09/12/2011 11:00 AM) Mtn & crss-mtn for S/J	Jon J. Shindurling
	HRVC	GWALTERS	Hearing result for Motion scheduled on 07/05/2011 11:00 AM: Hearing Vacated Mtn for S/J - Just Law to ntc	Jon J. Shindurling
		GWALTERS	Notice of Hearing - Mtns for S/J RESET to 9/12/11 at 11 AM	Jon J. Shindurling
	NOTH	DOOLITTL	Amended Notice Of Hearing 9-12-11 @ 11:00 a.m.	Jon J. Shindurling
7/30/2011	ORDR	GWALTERS	Order Granting Mtn to Ext Time: Ps' mtn to ext time to respond to Ds' mtn for S/J is GRANTED.	Jon J. Shindurling
11/13/2011	NOTC	LYKE	Notice of Deposition Duces Tecum - Kim Leavitt	Jon J. Shindurling
11/19/2011	NOTC	ANDERSEN	Amended Notice of Deposition Duces Tecum - Kim Leavitt	Jon J. Shindurling

V Leo Campbell, Kathleen Campbell vs. James C Kvamme, Debra Kvamme

Date	Code	User		Judge
8/26/2011	RESP	LYKE	Response in Opposition to the Plaintiffs' Motion for Summary Judgment	Jon J. Shindurling
	AFFD	LYKE	Affidavit of Counsel	Jon J. Shindurling
	MOTN	LYKE	Motion to Strike	Jon J. Shindurling
	NOTH	LYKE	Notice Of Hearing Re: Motion to Strike (9/12/11@11:00AM)	Jon J. Shindurling
9/6/2011	MEMO	DOOLITTL	Reply Memorandum (Motion for Summary Judgment)	Jon J. Shindurling
	AFFD	DOOLITTL	Reply Affidavit of Kim H. Leavitt	Jon J. Shindurling
9/12/2011	MINE	GWALTERS	Minute Entry Hearing type: Motion Hearing date: 9/12/2011 Time: 11:01 am Courtroom: Court reporter: court recorder Minutes Clerk: Grace Walters Tape Number: Kipp Manwaring Justin Seamons	Jon J. Shindurling
	DCHH	GWALTERS	Hearing result for Motion scheduled on 09/12/2011 11:00 AM: District Court Hearing Held Court Reporter: court recorder Number of Transcript Pages for this hearing estimated: under 150 Mtn & crss-mtn for S/J	Jon J. Shindurling
	MINE	GWALTERS	Minute Entry Hearing type: Motion Hearing date: 9/12/2011 Time: 11:42 am Courtroom: Court reporter: Nancy Marlow Minutes Clerk: Grace Walters Tape Number:	Jon J. Shindurling
10/22/2011		DOOLITTL	Objection to Argument of the honorable Jon J. Shindurling that the Original Survey in this Case Was Not Accurate	Jon J. Shindurling
	AFFD	DOOLITTL	Affidavit of James C. Kvamme RE: Argument of the Honorable Jon J. Shindurling that the Fence in this Case is a "Convenience" Fence	Jon J. Shindurling
		DOOLITTL	Objection to Argument of the Honorable Jon J. Shindurling that the Fence in this Case is a "Convenience" Fence	Jon J. Shindurling
	AFFD	DOOLITTL	Affidavit of Kim H. Leavitt RE: Argument of the Honorable Jon J. Shindurling that the Original Survey in this Case was not Accurate	Jon J. Shindurling
	NOTC	DOOLITTL	Notice of Augmentation	Jon J. Shindurling
		DOOLITTL	Objection and Notice of Augmentation	Jon J. Shindurling
11/23/2011	MEMO	DOOLITTL	Augmented Memorandum of Additional Points and Authorities in Support of The Campbells' Motion for Summary Judgment	Jon J. Shindurling

V Leo Campbell, Kathleen Campbell vs. James C Kvamme, Debra Kvamme

Date	Code	User	Judge
9/23/2011	AFFD	DOOLITTL	Augmented Affidavit of Counsel in Support of the Campbells' Motion for Summary Judgment Jon J. Shindurling
9/29/2011		LYKE	Objection to "Augmented Affidavit of Counsel" - That is, Augmented Affidavit of Kipp L. Manwaring Jon J. Shindurling
		LYKE	Objection to Augmented Memorandum of Additional Points and Authorities Jon J. Shindurling
	AFFD	LYKE	Affidavit of Kim H. Leavitt In Opposition to Augmented Memorandum and Augmented Affidavit of Kipp L. Manwaring Jon J. Shindurling
10/28/2011	ORDR	GWALTERS	Opinion & Order on Ps' Mtn for Partial S/J and Ds' Mtn for S/J: Ps' mtn for partial S/J is DENIED. Ds' mtn for S/J is GRANTED. Title to the property as described in this opinion shall be quieted in Ds' name. Counsel for Ds shall prepare an order consistent with this opinion. Jon J. Shindurling
11/1/2011		LYKE	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Justin Seamons Receipt number: 0050373 Dated: 11/2/2011 Amount: \$1.00 (Cash) Jon J. Shindurling
11/3/2011	JDMT	GWALTERS	Judgment & Decree of Quiet Title Jon J. Shindurling
	HRVC	GWALTERS	Hearing result for Jury Trial scheduled on 03/05/2012 01:30 PM: Hearing Vacated Jon J. Shindurling
	HRVC	GWALTERS	Hearing result for Pretrial Conference scheduled on 02/27/2012 10:00 AM: Hearing Vacated Jon J. Shindurling
	CDIS	GWALTERS	Civil Disposition entered for: Kvamme, Debra, Defendant; Kvamme, James C, Defendant; Campbell, Kathleen, Plaintiff; Campbell, V Leo, Plaintiff. Filing date: 11/3/2011 Jon J. Shindurling
	STATUS	GWALTERS	Case Status Changed: Closed Jon J. Shindurling
11/4/2011	MEMO	LYKE	Memorandum of Costs Jon J. Shindurling
	AFFD	LYKE	Affidavit in Support of Memorandum of Costs Jon J. Shindurling
11/15/2011	HRSC	GWALTERS	Hearing Scheduled (Motion 11/29/2011 02:00 PM) Mtn for reconsideration - Manwaring to ntc Jon J. Shindurling
	STATUS	GWALTERS	Case Status Changed: Closed pending clerk action Jon J. Shindurling
		DOOLITTL	Objection to the Defendants' Motion and Memorandum for costs Jon J. Shindurling
	MOTN	DOOLITTL	Motion for Reconsideration Jon J. Shindurling
	AFFD	DOOLITTL	Affidavit of Kevin L. Thompson Jon J. Shindurling
	NOTH	DOOLITTL	Notice Of Hearing - Motion for Reconsideration 11-29-11 @ 2:00 p.m. Jon J. Shindurling
	NOTC	DOOLITTL	Notice of Reservation of Right to File a Supplemental Memorandum of Costs and Affidavit in Support Jon J. Shindurling

V Leo Campbell, Kathleen Campbell vs. James C Kvamme, Debra Kvamme

Date	Code	User	Judge	
11/15/2011	NOTH	DOOLITTL	Notice Of Hearing 11-29-11 @ 2:00 p.m. (Motion to COmpel Deposition of V. Leo Campbell)	Jon J. Shindurling
	MOTN	DOOLITTL	Motion for Reconsideration	Jon J. Shindurling
	NOTH	DOOLITTL	Notice Of Hearing 11-29-11 @ 2:00 p.m. (Motion for Reconsideration)	Jon J. Shindurling
	MOTN	DOOLITTL	Motion to Compel (Deposition of V. Leo Campbell)	Jon J. Shindurling
	NOTH	DOOLITTL	Notice Of Hearing 11-29-11 @ 2:00 p.m. (Motion to Compel Deposition of Kathleen Campbell)	Jon J. Shindurling
	MOTN	DOOLITTL	Motion to Compel (Deposition of Kathleen Campbell)	Jon J. Shindurling
	NOTH	DOOLITTL	Notice Of Hearing 11-29-11 @ 2:00 p.m. (Motion to Extend Discovery Deadline to Depose Kevin L. Thompson)	Jon J. Shindurling
	NOTC	DOOLITTL	Notice of Reservation of Right to Depose Kevin L. Thompson and to File a Motion for Reconsideration, and Motion to Extend Discovery Deadline to Depose Kevin L. Thompson)	Jon J. Shindurling
	NOTH	DOOLITTL	Notice Of Hearing 11-29-11 @ 2:00 p.m. Motion to Repair or Replace Fence)	Jon J. Shindurling
	MOTN	DOOLITTL	Motion to Repair or Replace Fence	Jon J. Shindurling
1/22/2011		SBARRERA	Response In Opposition To The Kvammes' Motion To Repair Or Replace Fence	Jon J. Shindurling
	AFFD	SBARRERA	Affidavit Of Counsel In Support Of Response In Opposition To Motions To Compel	Jon J. Shindurling
	MEMO	SBARRERA	Memorandum In Opposition To Motion For Reconsideration, Objection To Affidavit Of Kevin L. Thompson And Motion To Strike, And Motion For Costs And Attorney's Fees	Jon J. Shindurling
1/25/2011	NTOS	SOLIS	Notice Of Service - Interrogatory #20 and Request For Production #29	Jon J. Shindurling
1/29/2011	MINE	GWALTERS	Minute Entry Hearing type: Motion Hearing date: 11/29/2011 Time: 2:01 pm Courtroom: Court reporter: Nancy Marlow Minutes Clerk: Grace Walters Tape Number: Kipp Manwaring Justin Seamons	Jon J. Shindurling
	DCHH	GWALTERS	Hearing result for Motion scheduled on 11/29/2011 02:00 PM: District Court Hearing Held Court Reporter: Nancy Marlow Number of Transcript Pages for this hearing estimated: under 50 Mtn for reconsideration - Manwarring to ntc	Jon J. Shindurling

V Leo Campbell, Kathleen Campbell vs. James C Kvamme, Debra Kvamme

Date	Code	User		Judge
11/30/2011	NOTC	DOOLITTL	Notice of Compliance - Plaintiffs' 3rd Supplemental Response to Defendants' Interrogatories	Jon J. Shindurling
12/6/2011		DOOLITTL	Disclosure of Expert Witnesses	Jon J. Shindurling
12/21/2011	ORDR	GWALTERS	Opinion & Order on Ps' Mtn for Reconsideration: Ps' mtn for reconsideration is DENIED.	Jon J. Shindurling
12/22/2011	MISC	HEATON	Supplemental Affidavit in Support of Memorandum od Costs (D)	Jon J. Shindurling
1/4/2012	HRSC	GWALTERS	Hearing Scheduled (Motion 01/23/2012 10:15 AM)	Jon J. Shindurling
		SBARRERA	Response In Opposition To The Defendants' Amended Motion For Costs And Fees	Jon J. Shindurling
	NOTH	LYKE	Notice Of Hearing Re: Objection to Defendants' Motion and Memorandum for Costs (01/23/12@10:15AM)	Jon J. Shindurling
1/23/2012	MINE	GWALTERS	Minute Entry Hearing type: Motion Hearing date: 1/23/2012 Time: 10:11 am Courtroom: Court reporter: Nancy Marlow Minutes Clerk: Grace Walters Tape Number: Justin Seamons Kipp Manwaring	Jon J. Shindurling
	DCHH	GWALTERS	Hearing result for Motion scheduled on 01/23/2012 10:15 AM: District Court Hearing Held Court Reporter: Nancy Marlow Number of Transcript Pages for this hearing estimated: under 50	Jon J. Shindurling
1/27/2012	ORDR	GWALTERS	Opinion & Order on Attorney's Fees and Costs: Defs are awarded costs in amt of \$1,487.71. All other costs/fees are DENIED. Counsel for Def shall prepare a final form of judgment. (see doc for specifics).	Jon J. Shindurling
1/30/2012	JDMT	GWALTERS	Judgment: Defs shall have judgment against the Ps for \$1,487.71 for costs as matter of right.	Jon J. Shindurling
	STATUS	GWALTERS	Case Status Changed: Closed	Jon J. Shindurling
	CDIS	GWALTERS	Civil Disposition entered for: Kvamme, Debra, Defendant; Kvamme, James C, Defendant; Campbell, Kathleen, Plaintiff; Campbell, V Leo, Plaintiff. Filing date: 1/30/2012	Jon J. Shindurling
		SBARRERA	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Just Law, Inc. Receipt number: 0005161 Dated: 2/2/2012 Amount: \$101.00 (Check) For: Campbell, Kathleen (plaintiff) and Campbell, V Leo (plaintiff)	Jon J. Shindurling
	APSC	SBARRERA	Notice Of Appeal To The Supreme Court	Jon J. Shindurling

V Leo Campbell, Kathleen Campbell vs. James C Kvamme, Debra Kvamme

Date	Code	User		Judge
2/2/2012	BNDC	LMESSICK	Bond Posted - Cash (Receipt 5217 Dated 2/2/2012 for 100.00)	Jon J. Shindurling
	STATUS	LMESSICK	Case Status Changed: Closed pending clerk action	Jon J. Shindurling
	CERTAP	LMESSICK	Clerk's Certificate of Appeal	Jon J. Shindurling
2/10/2012	BNDC	SOLIS	Bond Posted - Cash (Receipt 6843 Dated 2/10/2012 for 2023.29)	Jon J. Shindurling
	NOTC	SOLIS	Notice Of Posting Cash Deposit	Jon J. Shindurling
	MOTN	SOLIS	Plaintiff's - Motion For Stay	Jon J. Shindurling
	HRSC	GWALTERS	Hearing Scheduled (Motion 03/06/2012 09:30 AM) Mtn for stay - Manwarring to ntc	Jon J. Shindurling
2/15/2012	NOTC	SOLIS	Notice Of Cross-Appeal	Jon J. Shindurling
		SOLIS	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Seamons, Justin R. (attorney for Kvamme, Debra) Receipt number: 0008098 Dated: 2/16/2012 Amount: \$101.00 (Check) For: Kvamme, Debra (defendant) and Kvamme, James C (defendant)	Jon J. Shindurling
2/16/2012	HRVC	GWALTERS	Hearing result for Motion scheduled on 03/06/2012 09:30 AM: Hearing Vacated Mtn for stay - Manwarring to ntc	Jon J. Shindurling
	STIP	LYKE	Stipulation to Stay Execution of Judgment	Jon J. Shindurling
2/28/2012	ORDR	GWALTERS	Order Granting Stay of Execution pending outcome of Ps' appeal.	Jon J. Shindurling
3/1/2012		LMESSICK	(SC) Order Conditionally Dismissing Appeal	Jon J. Shindurling
		LMESSICK	(SC) Clerk's Certificate Filed	Jon J. Shindurling
3/2/2012	NOTC	CEARLY	Amended Notice Of Appeal	Jon J. Shindurling
3/5/2012		LMESSICK	(SC) Notice of Cross Appeal Filed	Jon J. Shindurling
3/29/2012		LMESSICK	(SC) Order to Reinstate Appellate Proceedings	Jon J. Shindurling
6/26/2012	LODG	LMESSICK	Lodged: Appellate Transcript	Jon J. Shindurling
7/12/2012	BNDC	LMESSICK	Bond Posted - Cash (Receipt 33775 Dated 7/12/2012 for 274.35)	Jon J. Shindurling
7/13/2012		LMESSICK	Amended Notice of Balance Due	Jon J. Shindurling
7/17/2012		LMESSICK	2nd Amended Notice of Balance Due on Clerk's Record	Jon J. Shindurling
7/19/2012	BNDC	LMESSICK	Bond Posted - Cash (Receipt 35181 Dated 7/19/2012 for 11.00)	Jon J. Shindurling
7/24/2012	BNDC	LMESSICK	Bond Posted - Cash (Receipt 35823 Dated 7/24/2012 for 690.75)	Jon J. Shindurling

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CHARLES C. JUST, ESQ. – ISB 1779
KIPP L. MANWARING, ESQ. – ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
Idaho Falls, Idaho 83405
Telephone: (208) 523-9106
Facsimile: (208) 523-9146

Attorneys for the Campbells

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE**

V. LEO CAMPBELL and KATHLEEN
CAMPBELL, husband and wife;

Plaintiffs,

vs.

JAMES C. KVAMME and DEBRA
KVAMME, husband and wife; and JOHN
DOES I-X;

Defendants.

Case No. CV-10-3879

COMPLAINT

Filing Category: A

Filing Fee: \$88.00

The Plaintiffs, for a cause of action against the Defendants, complain and allege as follows:

1. The Plaintiffs, V. Leo Campbell and Kathleen Campbell, (“Campbells”) are husband and wife and residents of Bonneville County, Idaho, and are the owners of record of that certain real property identified in Exhibit A attached and incorporated here by reference (“Subject Property”).

2. The Defendants, James Craig Kvamme and Debra Kvamme, (“Kvammes”) are husband wife and residents of Bonneville County, Idaho, and are the owners of record of that certain real property identified in Exhibit B attached and incorporated here by reference.

3. The Defendants, John Does I through X, are persons or entities whose true identities are presently unknown who may claim an interest in the Subject Property.

4. By Warranty Deed recorded May 28, 1981 as Instrument No. 607254 and Deed of Gift recorded October 4, 1989 as Instrument No. 774870 in the Recorder's Office for Bonneville County, Idaho, the Campbells obtained title to the Subject Property.

COUNT 1 – QUIET TITLE

5. On its northern boundary the Subject Property abuts the Kvammes' real property identified in Exhibit B and the purpose of this action is to quiet title to the Subject Property in the name of the Campbells against any and all persons with adverse claims, interests, encumbrances, easements, liens, or rights.

6. Any other person or entity claiming or asserting an interest in the Subject Property has an interest or claim subordinate to the title, rights, possession, and control of the Campbells.

7. The Defendants' collective claims, interests, rights, or encumbrances, if any, constitute a cloud on the Campbells title to Subject Property.

8. The Campbells' title is paramount to the Defendants' claimed, potential, or asserted interests.

9. The Campbells are entitled to judgment quieting in their name title to the Subject Property described in Exhibit A free of any interests of the Defendants.

COUNT 2 – EJECTMENT

10. All prior allegations are restated.

11. The Kvammes have asserted rights of possession and use to the Subject Property in derogation of the Campbells' title and right to possession.

12. The Kvammes have no title, interest, or right to possession of the subject real property.

13. The Campbells have not agreed to any tenancy with the Kvammes and consider the Kvammes' continued possession and use a trespass.

14. The Campbells are entitled to a writ of ejectment removing the Kvammes, and any and all persons claiming possession or occupancy under them, together with all personal property from the Campbells' real property.

COUNT 3 – TRESPASS

15. All prior allegations are restated.

16. The Kvammes or their agents have entered upon the Campbells' real property through the operation and maintenance of a well and pump situated on the Subject Property and by irrigation lines placed upon the Subject Property.

17. The Campbells did not give permission or authority to the Kvammes or their agents or any others with them to enter upon the Campbells' real property.

18. The actions of the Kvammes constitute trespass.

19. As a result of the trespass, the Campbells have been damaged in an amount to be determined at trial.

ATTORNEY FEES

The Campbells have retained the services of Just Law Office to prosecute this action and in accordance with I.C. §§ 12-120, 12-121 and applicable provisions of the Idaho Rules of Civil Procedure, the Campbells are entitled to an award of all court costs and reasonable attorney fees they have incurred and will incur.

WHEREFORE, the Campbells request relief as follows:

1. Judgment quieting title to the Subject Property described in Exhibit A in the name of the Campbells and declaring the Defendants have no title to or interests in the Subject Property.

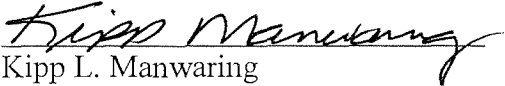
2. Judgment granting a Writ of Ejectment and directing the Sheriff of Bonneville County to use such force as reasonably necessary to physically remove the Defendants, and any person claiming possession or occupancy under them, together with all personal property from the Campbells' real property.

3. Judgment granting a Writ of Restitution and directing the Sheriff of Bonneville County to place the Campbells in full possession and occupancy of their real property.

4. An Order decreeing that any personal property left on the subject property by the Defendants, or any persons claiming an occupancy or use right derivatively through the Defendants, is deemed to be abandoned and valueless, and authorizing the Campbells to take possession of such property or discard or destroy it as the Campbells shall see fit.

5. An award of all court costs and reasonable attorney fees.
6. For such further and other relief as the court deems just and equitable.

Dated this 30 day of June, 2010.


Kipp L. Manwaring
Attorney for the Campbells

THOMPSON ENGINEERING INC. CONSULTING ENGINEERS

215 Farnsworth Way, P.O. Box 55
Rigby, Idaho 83442
745-8771

JOB NAME ----- Leo Campbell
JOB NO. ----- 2009-101
DATE ----- October 5, 2009
PARCEL NO. ----- 1

LAND DESCRIPTION

A Parcel of Land Situated in Bonneville County, State of Idaho, Township 3 North, Range 38 East of the Boise Meridian, Section 17, More Particularly Described as Follows: Beginning at the Northeast Corner of Section 17, Township 3 North, Range 38 East, B.M.

Thence $S00^{\circ}10'27''W$ along the East line of Section 17 for a Distance of 1325.26 feet to the Northeast Corner of the South Half ($S\frac{1}{2}$) of the Northeast Quarter ($NE\frac{1}{4}$), said point also being the True Point of Beginning.

Thence $S00^{\circ}10'27''W$ (*Record = South*) along the East line of Section 17 for a Distance of 438.65 feet;

Thence $N89^{\circ}50'35''W$ for a Distance of 2644.37 feet to the West line of the South Half ($S\frac{1}{2}$) of the Northeast Quarter ($NE\frac{1}{4}$);

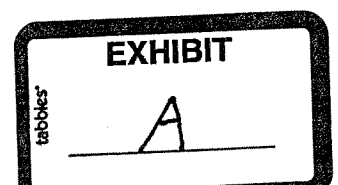
Thence $N00^{\circ}26'12''E$ (*Record = $N00^{\circ}15'30''E$*) for a Distance of 428.00 feet to the Northwest Corner of said South Half ($S\frac{1}{2}$);

Thence $N89^{\circ}55'34''E$ (*Record = $N89^{\circ}45'00''E$*) along the North line of said South half ($S\frac{1}{2}$) for a Distance of 2642.43 (*Record = 2642.37'*) feet to the True Point of Beginning, Containing 26.30 Acres More or Less.

Subject to: Easements and Right-of-Ways for highways, roads, ditches, canals, power poles, and transmission lines as they exist.

Kevin L. Thompson, PLS
Thompson Engineering, Inc.

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THOMPSON ENGINEERING INC. CONSULTING ENGINEERS

215 Farnsworth Way, P.O. Box 55
Rigby, Idaho 83442
745-8771

JOB NAME ----- Leo Campbell
JOB NO. ----- 2009-101
DATE ----- October 5, 2009
PARCEL NO. ----- 2

LAND DESCRIPTION

A Parcel of Land Situated in Bonneville County, State of Idaho, Township 3 North, Range 38 East of the Boise Meridian, Section 17, More Particularly Described as Follows: Beginning at the Northeast Corner of Section 17, Township 3 North, Range 38 East, B.M.

Thence S00°10'27"W along the East line of Section 17 for a Distance of 1763.91 feet to the True Point of Beginning.

Thence S00°10'27"W (*Record = South*) along the East line of Section 17 for a Distance of 423.00 feet;

Thence N89°51'13"W for a Distance of 2646.30 feet to the West line of the South Half (S ½) of the Northeast Quarter (NE ¼);

Thence N00°26'12"E (*Record = N00°15'30"E*) along said West line for a Distance of 423.50 feet;

Thence S89°50'35"E for a Distance of 2644.37 feet to the True Point of Beginning,
Containing 25.70 Acres More or Less.

Subject to: Easements and Right-of-Ways for highways, roads, ditches, canals, power poles, and transmission lines as they exist.

Kevin L. Thompson, PLS
Thompson Engineering, Inc.

THOMPSON ENGINEERING INC. CONSULTING ENGINEERS

215 Farnsworth Way, P.O. Box 55
Rigby, Idaho 83442
745-8771

JOB NAME ----- Leo Campbell
JOB NO. ----- 2009-101
DATE ----- October 5, 2009
PARCEL NO. ----- 3

LAND DESCRIPTION

A Parcel of Land Situated in Bonneville County, State of Idaho, Township 3 North, Range 38 East of the Boise Meridian, Section 17, More Particularly Described as Follows: Beginning at the Northeast Corner of Section 17, Township 3 North, Range 38 East, B.M.

Thence S00°10'27"W along the East line of Section 17 for a Distance of 2186.91 feet to the True Point of Beginning.

Thence S00°10'27"W (*Record = South*) along the East line of Section 17 for a Distance of 203.00 feet;

Thence N89°40'48"W (*Record = N89°51'15"W*) for a Distance of 455.42 feet;

Thence S00°26'27"E (*Record = S00°36'54"E*) for a Distance of 236.97 feet;

Thence S89°50'58"E (*Record = N89°58'35"E*) for a Distance of 452.88 feet to the East line of Section 17;

Thence S00°10'27"W (*Record = South*) along the East line of Section 17 for a Distance of 25.00 feet to the East Quarter Corner of Section 17;

Thence N89°50'49"W (*Record = S89°58'35"W*) for a Distance of 2648.43 (*Record = 2648.28'*) feet to the Southwest Corner of the South Half (S ½) of the Northeast Quarter (NE ¼) of Section 17;

Thence N00°26'12"E (*Record = N00°15'30"E*) along the West line of said South Half (S ½) for a Distance of 463.31 feet;

Thence S89°51'13"E for a Distance of 2646.30 feet to the True Point of Beginning, Containing 25.70 Acres More or Less.

Subject to: Easements and Right-of-Ways for highways, roads, ditches, canals, power poles, and transmission lines as they exist.

Kevin L. Thompson, PLS
Thompson Engineering, Inc.

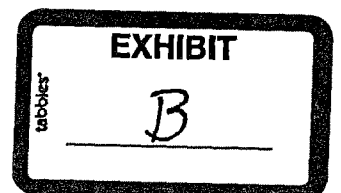
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The North Half of the Northeast Quarter, Section 17, Township 3 North, Range 38 East, of the Boise Meridian. LESS AND EXCEPTING THE FOLLOWING TWO TRACTS:

Beginning at the Northeast corner of Section 17, Township 3 North, Range 38 East of the Boise Meridian; running thence West along the Section line 164.92 feet; thence S. $00^{\circ}58'40''$ W. 260.56 feet; thence S. $88^{\circ}45'53''$ E. 167.20 feet to the East line of said Section 17; thence N. $00^{\circ}28'42''$ E. along said East line 264.13 feet to the point of beginning.

Also less: Beginning at a point that is West along the Section line 164.92 feet from the Northeast corner of Section 17, Township 3 North, Range 38 East of the Boise Meridian; running thence West along the Section line 195.64 feet; thence S. $09^{\circ}40'58''$ E. 261.06 feet; thence S. $88^{\circ}45'53''$ E. 147.32 feet; thence N. $00^{\circ}58'40''$ E. 260.56 feet to the point of beginning.

018



Justin R. Seamons
414 Shoup Avenue
Idaho Falls, ID 83402
Telephone Number: (208) 542-0600
Facsimile Number: (208) 529-4166
Idaho State Bar Number: 3903

BONNEVILLE COUNTY
IDAHO

10 JUL 27 PM 1:29

Attorney for Defendant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

V. LEO CAMPBELL and KATHLEEN)
CAMPBELL,)
)
Plaintiffs,)
)
vs.)
)
JAMES C. KVAMME and DEBRA)
KVAMME,)
)
Defendants.)
_____)

Case No. CV 10-3879

**ANSWER, COUNTERCLAIM, AND
DEMAND FOR TRIAL BY JURY**

James C. Kvamme and Debra Kvamme hereby answer the Plaintiffs' complaint,
dated June 30, 2010.

I.

DEFENSES

1. The Defendants deny each and every allegation in the complaint that they do not specifically and expressly admit herein, including, without limitation, any and all foundational allegations, non sequiturs, reverse, negative, or implicit allegations, or other assumptions.

2. The complaint "fails to state a claim upon which relief can be granted."

3. The Defendants hereby reserve the right to hereafter amend their answer in order to include any and all other defenses to the complaint.

II.

ANSWER

1. With respect to the allegations in Paragraph 1 of the complaint, the Defendants admit that the Plaintiffs are “husband and wife and residents of Bonneville County, Idaho.” The Defendants are “without knowledge or information sufficient to form a belief as to the truth” of the remaining allegations. See I.R.C.P. 8(b).

2. The Defendants admit the allegations in Paragraph 2 of the complaint.

3. The Defendants are “without knowledge or information sufficient to form a belief as to the truth” of the allegations in Paragraph 3 of the complaint. See I.R.C.P. 8(b).

4. The Defendants are “without knowledge or information sufficient to form a belief as to the truth” of the allegations in Paragraph 4 of the complaint. See I.R.C.P. 8(b).

5. With respect to the allegations in Paragraph 5 of the complaint, the Defendants admit that a parcel of real property, [o]n its northern boundary, . . . abuts the Kvamme’s real property identified in Exhibit B and [that] the purpose of this action is to quiet title to the [real property] in the name of the Campbells against any and all persons with adverse claims, interests, encumbrances, easements, liens, or rights.” The Defendants are “without knowledge or information sufficient to form a belief as to the truth” of the allegation that the foregoing real property is the “Subject Property.” See I.R.C.P. 8(b). The Defendants deny that the Plaintiffs have the right to “quiet title” in the

foregoing real property and/or the "Subject Property" that lies north of the fence between their respective parcels of real property—that is, the foregoing real property and/or "Subject Property" and the real property on EXHIBIT B.

6. With respect to the allegations in Paragraph 6 of the complaint, the Defendants deny that their "interest or claim" in the foregoing real property and/or "Subject Property" that lies north of the fence between their respective parcels of real property is "subordinate to the title, rights, possession, and control of the Campbells." The Defendants are "without knowledge or information sufficient to form a belief as to the truth" of the remaining allegations. See I.R.C.P. 8(b).

7. The Defendants deny the allegations in Paragraph 7 of the complaint.

8. The Defendants deny the allegations in Paragraph 8 of the complaint.

9. The Defendants deny the allegations in Paragraph 9 of the complaint.

10. The Defendants hereby incorporate their answers to Paragraphs 1 through 9, above.

11. With respect to the allegations in Paragraph 11 of the complaint, the Defendants admit that they have the "right of possession and use" of the foregoing real property and/or "Subject Property" that lies north of the fence between their respective parcels of real property. The Defendants deny the remaining allegations in Paragraph 11 of the complaint, including, without limitation, that the Plaintiffs have "title and right to possession" thereof.

12. The Defendants deny the allegations in Paragraph 12 of the complaint.

13. With respect to the allegations in Paragraph 13 of the complaint, the Defendants admit that the Plaintiffs "have not agreed to any tenancy with the

Kvammes”; however, the Defendants do not need a “tenancy.” Again, the Defendants have the “right of possession and use” of the real property that lies north of the fence between their respective parcels of real property. The Defendants are “without knowledge or information sufficient to form a belief as to the truth” of the remaining allegations.

14. The Defendants deny the allegations in Paragraph 14 of the complaint.

15. The Defendants hereby incorporate their answers to Paragraphs 1 through 14, above.

16. The Defendants deny the allegations in Paragraph 16 of the complaint. In this regard, please note that the location of the “well and pump” and “irrigation lines” is north of the fence between their respective parcels of real property.

17. With respect to the allegations in Paragraph 17 of the complaint, the Defendants admit that the Plaintiffs “did not give permission or authority to the Kvammes or their agents or any others with them to enter upon the Campbell’s real property”; however, the Defendants did not need the Plaintiffs’ “permission or authority.” Again, the location of the “well and pump” and “irrigation lines” is north of the fence between their respective parcels of real property.

18. The Defendants deny the allegations in Paragraph 18 of the complaint.

19. The Defendants deny the allegations in Paragraph 19 of the complaint.

20. With respect to the allegations in the paragraph, entitled “ATTORNEY FEES,” the Defendants admit that the Plaintiffs have “retained the services of Just Law Office to prosecute this action.” The Defendants deny the remaining allegations in the foregoing paragraph.

REQUEST FOR RELIEF

The Defendants respectfully request the following relief against the complaint:

1. Dismissal of the complaint with prejudice.
2. Costs and attorney's fees in accordance with I.R.C.P. 54, Idaho Code Section 12-120, Idaho Code Section 12-121, Idaho Code Section 12-123, and I.R.C.P. 11.
3. Any other relief, legal or equitable, to which the Defendants have any right or entitlement.

III.

AFFIRMATIVE DEFENSES

1. The complaint is subject to the doctrine of "estoppel," including, without limitation, quasi-estoppel. See I.R.C.P. 8(c).
2. The complaint is subject to the doctrine of "laches." See I.R.C.P. 8(c).
3. The complaint is subject to the doctrine of "release." See I.R.C.P. 8(c).
4. The complaint is subject to the doctrine of "waiver." See I.R.C.P. 8(c).
5. The complaint is subject to the "statute of limitations," including, without limitation, Idaho Code Section 5-203 to 5-213, Idaho Code Section 5-217, Idaho Code Section 5-218, and Idaho Code Section 5-224. See I.R.C.P. 8(c).
6. The complaint is subject to the doctrine of unclean hands. See I.R.C.P. 8(c) ("any other matter constituting an avoidance or affirmative defense").
7. The complaint does not comply with the provisions of Idaho Code Section 6-415. In this regard, the Defendants hereby reserve the right to remove any and all improvements in accordance with Idaho Code Section 45-414.

8. The Defendant hereby reserves the right to hereafter amend his answer in order to include any and all other affirmative defenses to the complaint.

IV.

COMPULSORY COUNTERCLAIMS

The Defendants hereby allege the following compulsory counterclaims against the Plaintiffs:

1. James C. Kvamme and Debra Kvamme are residents of Bonneville County, Idaho.

2. V. Leo Campbell and Kathleen Campbell are residents of Bonneville County, Idaho.

3. The Defendants are the owners of record of the real property on EXHIBIT B, duly attached to the COMPLAINT herein, dated June 30, 2010.

4. The Plaintiffs claim an "estate or interest" in the real property that lies north of the fence between their respective parcels of real property.

5. The Plaintiffs' claim is "adverse" to the Defendants' estate or interest therein.

6. Thus, the court has the power to determine the parties' claims to the real property that lies north of the fence between their respective parcels of real property. See Idaho Code Section 6-401.

7. In addition, the court has the power to "declare the rights, status, and other legal relations" of the parties to the real property that lies north of the fence between their respective parcels of real property. See Idaho Code Section 10-1201 and Idaho Code Section 10-1202.

8. The Defendants have the right to “set forth two or more statements of a claim . . . alternatively or hypothetically.” See I.R.C.P. 8(e)(2) and Idaho Code Section 5-335.

9. The Defendants respectfully “set forth” or allege the following claims against the Plaintiffs:

a. The Defendants are entitled to a decree, quieting title to them to the real property that lies north of the fence between their respective parcels of real property. See Idaho Code Section 6-401 *et seq.*

b. The Defendants made improvements to the real property that lies north of the fence between their respective parcels of real property—to wit, the Defendants installed an irrigation system, including, without limitation, a mainline, pump, and pivot, constructed an access for ingress and egress to operate and maintain the irrigation system, and put panels in the fence for the irrigation system. Thus, the “value of such improvements must be allowed as a set-off” against any damages for the Plaintiffs herein; in the alternative, the Defendants have the right to “remove” the improvements. See Idaho Code Section 6-404 and Idaho Code Section 6-414.

c. The Plaintiffs are liable to the Defendants for the value of the foregoing improvements, based on the doctrine of breach of contract, including, without limitation, express contract and contract implied in fact, the doctrine of *quasi* contract, including, without limitation, constructive contract and contract in law, the doctrine of unjust enrichment, the

doctrine of *quantum meruit*, and/or the doctrine of estoppel, including, without limitation, quasi-estoppel; in the alternative, the Plaintiffs are liable to the Defendants for the cost of removing the foregoing improvements, based on the doctrine of breach of contract, including, without limitation, express contract and contract implied in fact, the doctrine of *quasi* contract, including, without limitation, constructive contract and contract in law, the doctrine of unjust enrichment, the doctrine of *quantum meruit*, and/or the doctrine of estoppel, including, without limitation, quasi-estoppel.

d. The Defendants have the right to examine and survey the real property that lies north of the fence between their respective parcels of real property in accordance with Idaho Code Section 6-405.

e. The Defendants are entitled to a declaratory judgment, determining that they own the real property that lies north of the fence between their respective parcels of real property. See Idaho Code Section 10-1201 et seq.

f. The Defendants are the owners of the real property that lies north of the fence between their respective parcels of real property, based on the doctrine of boundary by agreement or acquiescence.

g. The Defendants are the owners of the real property that lies north of the fence between their respective parcels of real property, based on the doctrine of quasi-estoppel.

h. The Defendants are the owners of the real property that lies north of the fence between their respective parcels of real property, based on the doctrine of adverse possession.

10. The Defendants have retained the services of Justin R. Seamons, attorney at law, to represent them in this case.

11. The Defendants have the right to recover the costs and attorney's fees that they incur in this case from the Plaintiffs in accordance with I.R.C.P. 54, Idaho Code Section 12-120, Idaho Code Section 12-121, Idaho Code Section 12-123, I.R.C.P. 11, Idaho Code Section 6-402, and/or Idaho Code Section 10-1210.

REQUEST FOR RELIEF

The Defendants respectfully request the following relief against the Plaintiffs:

1. A decree, quieting title to them to the real property that lies north of the fence between their respective parcels of real property.

2. The "value" of the improvements in this case—to wit, the value of the irrigation system, including, without limitation, the mainline, pump, and pivot, the access for ingress and egress to operate and maintain the irrigation system, and the panels in the fence for the irrigation system—as a "set-off" against damages for the Plaintiff herein; in the alternative, the right to "remove" the improvements.

3. The value of the foregoing improvements; in the alternative, the cost of removing the foregoing improvements.

4. The right to examine and survey the real property that lies north of the fence between their respective parcels of real property.

5. A declaratory judgment, determining that they own the real property that lies north of the fence between their respective parcels of real property.

6. A determination or decree that the Defendants own the real property that lies north of the fence between their respective parcels of real property, based on the doctrine of boundary by agreement or acquiescence.

7. A determination or decree that the Defendants own the real property that lies north of the fence between their respective parcels of real property, based on the doctrine of quasi-estoppel.

8. A determination or decree that the Defendants own the real property that lies north of the fence between their respective parcels of real property, based on the doctrine of adverse possession.

9. Costs and attorney's fees; in this regard, the Defendants are "seeking attorney fees and the dollar amount thereof in case judgment is entered by default" is \$5,000.00. See I.R.C.P. 54(e)(4).

10. Any other relief, legal or equitable, to which the Defendants have any right or entitlement.

V.

PERMISSIVE COUNTERCLAIMS

The Defendants hereby reserve the right to hereafter amend their answer in order to include any and all permissive counterclaims against the Plaintiffs in accordance with I.R.C.P. 13(b).

VI.

THIRD-PARTY CLAIMS

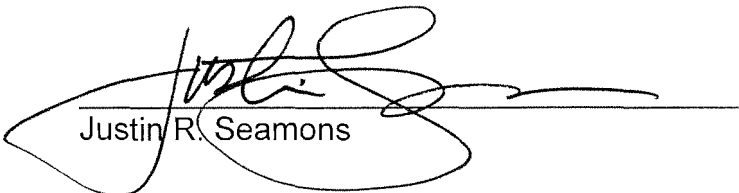
The Defendants hereby reserve the right to hereafter amend their answer in order to include any and all third-party claims in accordance with I.R.C.P. 14(a).

VII.

DEMAND FOR TRIAL BY JURY

The Defendants hereby demand a trial by jury of any and all "issues triable of right by a jury." The Defendants do not stipulate or otherwise agree to a "jury consisting of any other number of persons less than 12." See I.R.C.P. 38(b).

Dated July 27, 2010.

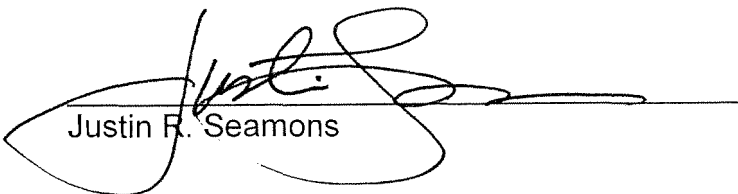


Justin R. Seamons

CERTIFICATE OF SERVICE

I served a copy of the foregoing ANSWER, COUNTERCLAIM, AND DEMAND FOR TRIAL BY JURY on the following person on July 27, 2010:

Kipp L. Manwaring
COURT MAIL



Justin R. Seamons

CHARLES C. JUST, ESQ. – ISB 1779
KIPP L. MANWARING, ESQ. – ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
Idaho Falls, Idaho 83405
Telephone: (208) 523-9106
Facsimile: (208) 523-9146

2010 AUG 17 PM 2:35
CLERK
JUDICIAL DIVISION
BONNEVILLE COUNTY
IDAHO

Attorneys for the Campbells

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE**

V. LEO CAMPBELL and KATHLEEN
CAMPBELL, husband and wife;

Plaintiffs,

vs.

JAMES C. KVAMME and DEBRA
KVAMME, husband and wife; and JOHN
DOES I-X;

Defendants.

Case No. CV-20410-3879

REPLY TO COUNTERCLAIM

The Campbells reply to the Kvammes' counterclaim as follows:

1. All allegations not specifically admitted are deemed denied.
2. Paragraphs 1, 2, 3, 4, 6, and 7 are admitted.
3. Paragraphs 5, 9.a., 9.c., 9.d., 9.e., 9.f., 9.g., 9.h., and 11 are denied.
4. That portion of paragraph 9.b. alleging the Kvammes have installed a pump on the Campbells' real property is admitted and in accordance with I.C. §§ 6-403 and 405, the Campbells agree the Kvammes may remove all improvements but must provide sufficient surety to protect the Campbells from any damage caused by removal together with restoration of the Campbells' property to its condition prior to installation of the improvements, including

restoration of a lateral ditch and headgate. All costs for such removal and restoration are the obligation of the Kvammes. All other allegations in paragraph 9.b. are denied.

5. Paragraphs 8 and 10 require no responsive pleading.

6. In accordance with I.C. §§ 12-120 and 121, the Campbells are entitled to an award of their court costs and reasonable attorney fees.

AFFIRMATIVE DEFENSES

1. Waiver.

2. Estoppel and quasi-estoppel.

3. The Kvammes have failed to allege 20 years of adverse use in accordance with state statutes.

4. The Kvammes knowingly installed improvements on the Campbells' land and are not entitled to any damages or set-off for those improvements.

5. A survey has been completed of the property.

6. The Kvammes have not paid any taxes on any portion of the Campbells' real property.

7. The Campbells have never agreed to treat the fence between their property and the Kvammes' property as the boundary.

8. The Campbells have never entered into any contract, express or implied, with the Kvammes.

9. Lack of consideration to sustain any contract, express or implied, or quasi-contract.

10. Lack of part performance to sustain any contract, express or implied, or quasi-contract.

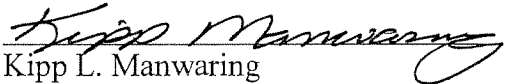
11. The Campbells have never received nor retained any benefit or value of any improvements made upon their property by the Kvammes.

12. The Campbells have no obligation to pay the Kvammes for removing any improvements from the Campbells' property.

Wherefore the Campbells request relief as follows:

1. Dismissal of the Kvammes' counterclaim and the Kvammes take nothing.
2. An award of the Campbells court costs and reasonable attorney fees.
3. For such further and other relief as the court deems just and equitable.

Dated this 16 day of August, 2010.


Kipp L. Manwaring
Attorney for the Campbells

CERTIFICATE OF MAILING

I **HEREBY CERTIFY** that on the 16th day of August, 2010, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

Justin R. Seamons
Attorney at Law
414 Shoup Avenue
Idaho Falls, Idaho 83402

- Hand Delivered
- U.S. Mail, Postage Prepaid
- Facsimile
- Other _____



Leslie Northrup
Paralegal

BONNEVILLE COUNTY
IDAHO

2010 SEP -7 AM 8:02

Justin R. Seamons
414 Shoup Avenue
Idaho Falls, ID 83402
Telephone Number: (208) 542-0600
Facsimile Number: (208) 529-4166
Idaho State Bar Number: 3903

Attorney for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

V. LEO CAMPBELL and KATHLEEN)
CAMPBELL,)
)
Plaintiffs,)
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vs.)
)
JAMES C. KVAMME and DEBRA)
KVAMME,)
)
Defendants.)
_____)

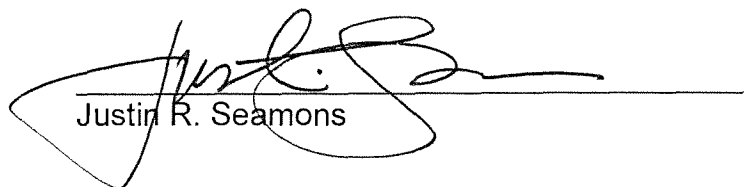
Case No. CV 10-3879

NOTICE OF SERVICE

The Defendants served the following documents on the Plaintiffs on
September 6, 2010:

1. INTERROGATORIES (Nos. 1 through 18)
2. REQUESTS FOR PRODUCTION (Nos. 1 through 27)

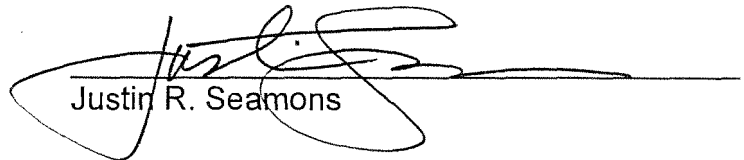
Dated September 6, 2010.


Justin R. Seamons

CERTIFICATE OF SERVICE

I served a copy of the foregoing NOTICE OF SERVICE on the following person
on September 6, 2010:

Kipp L. Manwaring
P.O. Box 50271
Idaho Falls, ID 83405-0271



Justin R. Seamons

2010 SEP 30 PM 2:37

CHARLES C. JUST, ESQ. – ISB 1779
KIPP L. MANWARING, ESQ. – ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
Idaho Falls, Idaho 83405
Telephone: (208) 523-9106
Facsimile: (208) 523-9146

Attorneys for the Campbells

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE**

V. LEO CAMPBELL and KATHLEEN
CAMPBELL, husband and wife;

Plaintiffs,

vs.

JAMES C. KVAMME and DEBRA
KVAMME, husband and wife; and JOHN
DOES I-X;

Defendants.

Case No. CV-20410-3879

**NOTICE OF COMPLIANCE –
Plaintiffs’ Response**

NOTICE IS HEREBY GIVEN that on this 30th day of September, 2010, I certify that I served a true and correct copy of **Plaintiffs’ Response to Defendants’ Interrogatories and Requests for Production**, pursuant to Rules 33, 34 and 36 of the Idaho Rules of Civil Procedure, upon the following individuals by the method indicated below:

Justin R. Seamons
Attorney at Law
414 Shoup Avenue
Idaho Falls, Idaho 83402

- Hand Delivered
- U.S. Mail, Postage Prepaid
- Facsimile
- Other _____



Leslie Northrup.
Paralegal

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

V LEO CAMPBELL, et al,)
)
 Plaintiffs,)
 vs.)
)
 JAMES C KVAMME, et al,)
)
 Defendants.)
 _____)

Case No. CV-2010-3879

**ORDER REFERRING CASE
TO MEDIATION**

10 OCT 13 P 4:43

7TH JUDICIAL DISTRICT COURT
BONNEVILLE COUNTY, IDAHO

The Court, being duly advised, concludes that this case is appropriate for referral to mediation under I.R.C.P. 16(k).

Therefore, this case is hereby referred to mediation pursuant to I.R.C.P. 16(k). The parties are hereby ordered to confer and select a mediator. If a mediator is not selected within a reasonable amount of time, the parties are to notify the Court and the Court will appoint the mediator.

The final mediation session must be completed by March 25, 2011, unless this time period is extended by court order.

All named parties or their agents with full authority to settle, together with the attorneys responsible for handling the trial in this cause, are directed to be present during the entire mediation process pursuant to I.R.C.P. 16(k)(10), unless otherwise excused by the mediator upon a showing of good cause or by order of this Court.

The costs of mediation are to be divided and borne equally by the parties.

Within seven (7) days following the last mediation session, the mediator is directed to advise Court only whether the case has, in whole or in part, been settled.

Counsel and parties are directed to proceed in a good faith effort to attempt to resolve this case.

All discovery and other proceedings are not stayed pending mediation as provided herein.

IT IS SO ORDERED this 12th day of October 2010.



JON J. SHINDURLING
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 13 day of October 2010, I did send a true and correct copy of the foregoing document upon the parties listed below my mailing, with the correct postage thereon; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be hand-delivered.

Kipp Manwaring
PO Box 50271
Idaho Falls, ID 83405

Justin Seamons
Courthouse Box

RONALD LONGMORE
Clerk of the District Court

By: Maec Waeten
Deputy Clerk

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

7TH JUDICIAL DISTRICT COURT
BONNEVILLE COUNTY, IDAHO

10 OCT 13 P 4:43

V LEO CAMPBELL, et al,)
)
 Plaintiffs,)
)
 -vs.-)
)
 JAMES C. KVAMME, et al,)
)
 Defendants.)
 _____)

Case No. CV-2010-3879
**ORDER SETTING PRE-TRIAL
CONFERENCE AND JURY TRIAL**

Pursuant to Rule 16 of the Idaho Rules of Civil Procedure, the following pre-trial schedule shall govern all proceedings in this case:

I. IT IS HEREBY ORDERED:

1. Formal pre-trial conference pursuant to Rule 16, I.R.C.P., will be held on April 11, 2011, at 10:00 a.m., at which time witness lists, exhibit lists and any proposed jury instructions must be filed.
2. Jury Trial shall commence at 1:30 p.m., on April 25, 2011.
No later than ninety (90) days before the date set for trial, counsel shall disclose the names, addresses, and telephone numbers of expert witnesses that may be called to testify at trial.
4. All discovery shall be completed seventy (70) days prior to trial.¹
5. All Motions for Summary Judgment must be filed sixty (60) days prior to trial in conformance with Rule 56(a), I.R.C.P.
6. All Motions for Summary Judgment must be heard at least twenty-eight (28) days prior to trial.

¹ Discovery requests must be served so that timely responses will be due prior to the discovery cutoff date.

II. IT IS FURTHER ORDERED that each attorney shall, no later than fourteen (14) days before trial:

1. Submit a list of names to the court of persons who may be called to testify.
2. Submit a descriptive list of all exhibits proposed to be offered into evidence to the court indicating which exhibits counsel have agreed will be received in evidence without objection and those to which objections will be made, including the basis upon which each objection will be made.
3. Submit a brief to the court citing legal authorities upon which the party relies as to each issue of law to be litigated.
4. If this is a jury trial, counsel shall submit proposed jury instructions to all parties to the action and the court. All requested instructions submitted to the court shall be in duplicate form as set out in Idaho Rule of Civil Procedure 51(a)(1).
5. Submit that counsel have in good faith tried to settle this action.
6. State whether liability is disputed.

III. IT IS FURTHER ORDERED that each attorney shall no later than seven (7) days before trial:

1. Submit any objections to the jury instructions requested by an opponent specifying the instruction and the grounds for the objection.
2. Deposit with the clerk of the court all exhibits to be introduced, except those for impeachment. The clerk shall mark plaintiff's exhibits in numerical sequence as requested by plaintiff and shall mark all defendant's exhibits in alphabetical sequence as requested by defendant.
3. A duplicate set of all exhibits to be introduced, except those for impeachment, shall be placed in binders, indexed, and deposited with the clerk of the court.


IV. IT IS FURTHER ORDERED that:

1. Any exhibits or witnesses discovered after the last required disclosure shall immediately be disclosed to the court and opposing counsel by filing and service stating the date upon which the same was discovered.
2. No exhibits shall be admitted into evidence at trial other than those disclosed,

listed and submitted to the clerk of the court in accordance with this order, except when offered for impeachment purposes or unless they were discovered after the last required disclosure.

3. This order shall control the course of this action unless modified for good cause shown to prevent manifest injustice.
4. The court may impose appropriate sanctions for violation of this order.

DATED this 12th day of October 2011.



JON J. SHINDURLING
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 13 day of October 2010, I did send a true and correct copy of the aforementioned Order upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

Kipp Manwaring
PO Box 50271
Idaho Falls, ID 83405

Justin Seamons
Courthouse Box

RONALD LONGMORE
Clerk of the District Court

By: *Tracey Walter*
Deputy Clerk

BONNEVILLE COUNTY
IDAHO

10 NOV 15 PM 4:08

CHARLES C. JUST, ESQ. – ISB 1779
KIPP L. MANWARING, ESQ. – ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
Idaho Falls, Idaho 83405
Telephone: (208) 523-9106
Facsimile: (208) 523-9146

Attorneys for the Campbells

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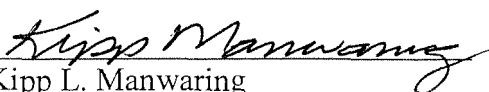
2010
Case No. CV-20410-3879

**MOTION FOR PROTECTIVE
ORDER**

In accordance with I.R.C.P. 31(d) and 30(d)(2), the Plaintiffs move the court for its order limiting the Defendants' depositions of the Plaintiff to ½ day. This motion is based upon the affidavit of counsel and the pleadings of record.

Oral argument is requested.

Dated this 15 day of November, 2010.



Kipp L. Manwaring
Attorney for the Campbells

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 15th day of November, 2010, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

Justin R. Seamons
Attorney at Law
414 Shoup Avenue
Idaho Falls, Idaho 83402

Hand Delivered
 U.S. Mail, Postage Prepaid
 Facsimile
 Other _____



Leslie Northrup
Paralegal

BONNEVILLE COUNTY
IDAHO
10 NOV 15 PM 4:08

CHARLES C. JUST, ESQ. — ISB 1779
KIPP L. MANWARING, ESQ. — ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
Idaho Falls, Idaho 83405
Telephone: (208) 523-9106
Facsimile: (208) 523-9146

Attorneys for the Campbells

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE**

V. LEO CAMPBELL and KATHLEEN
CAMPBELL, husband and wife;

Plaintiffs,

vs.

JAMES C. KVAMME and DEBRA
KVAMME, husband and wife; and JOHN
DOES I-X;

Defendants.

Case No. CV-²⁰¹⁰~~2010~~-3879

AFFIDAVIT OF COUNSEL

STATE OF IDAHO)
 : ss
County of Bonneville)

KIPP L. MANWARING, being first duly sworn under oath, deposes and states as follows:

1. I am a licensed attorney in the state of Idaho and represent the Plaintiffs in the above action.

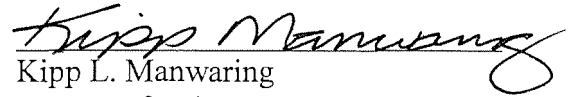
2. Attached as Exhibit A and incorporated here by reference is a true and correct copy of a letter dated November 10, 2010 from Dr. Eric Perttula concerning the Campbells' medical condition relevant to their ability to participate in depositions.

3. The Kvammes have expressed their intent to require the Campbells to sit for 2 consecutive days of depositions. Attached as Exhibit B and incorporated here by reference is a true and correct copy of a letter dated November 1, 2010 from the Kvammes' counsel to me.

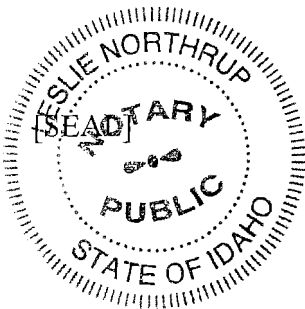
4. Attached as Exhibit C and incorporated here by reference is a true and correct copy of a reply letter dated November 15, 2010 from me to counsel for the Kvammes.

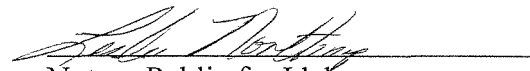
5. In my opinion, the issues framed by the pleadings do not justify requiring the Campbells to sit for 2 consecutive days for depositions. I believe the depositions should be limited to a reasonable time frame as noted by the Campbells' doctor.

Dated this 15 day of November, 2010.


Kipp L. Manwaring
Attorney for the Campbells

SUBSCRIBED AND SWORN TO before me this 15th day of November, 2010.





Notary Public for Idaho
Residing at: Moore, Idaho
My commission expires: 09/29/2015

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 15th day of November, 2010, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

Justin R. Seamons
Attorney at Law
414 Shoup Avenue
Idaho Falls, Idaho 83402

Hand Delivered
 U.S. Mail, Postage Prepaid
 Facsimile
 Other _____



Leslie Northrup
Paralegal

Eric W. Perttula M.D.

2001 S. Woodruff Avenue. Suite 5, Idaho Falls, ID 83404 (208) 528-8777

November 10, 2010

To Whom It May Concern:

I understand that my patients V. Leo and Kathy Campbell are involved in a legal matter that may require their involvement in a 2 day deposition.

It is my medical opinion that a 2 day deposition would be detrimental to their health. Both Leo and Kathy would be able to participate in a ½ day deposition at best but certainly not a 2 day deposition.

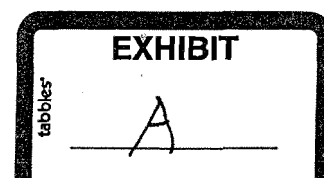
If I can be of further assistance please don't hesitate to contact me.

Sincerely,



Eric W. Perttula, MD

049



CHARLES C. JUST, ESQ. – ISB 1779
KIPP L. MANWARING, ESQ. – ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
Idaho Falls, Idaho 83405
Telephone: (208) 523-9106
Facsimile: (208) 523-9146

BONNEVILLE COUNTY MAIL
2010 NOV 24 AM 10:46

Attorneys for the Campbells

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE**

V. LEO CAMPBELL and KATHLEEN
CAMPBELL, husband and wife;

Plaintiffs,

vs.

JAMES C. KVAMME and DEBRA
KVAMME, husband and wife; and JOHN
DOES I-X;

Defendants.


Case No. CV-20~~10~~10-3879

**NOTICE OF COMPLIANCE –
Plaintiffs’ Supplemental Response**

NOTICE IS HEREBY GIVEN that on this 23rd day of November, 2010, I certify that I served a true and correct copy of **Plaintiffs’ Supplemental Response to Defendants’ Interrogatories**, pursuant to Rules 33, 34 and 36 of the Idaho Rules of Civil Procedure, upon the following individuals by the method indicated below:

Justin R. Seamons
Attorney at Law
414 Shoup Avenue
Idaho Falls, Idaho 83402

- Hand Delivered
- U.S. Mail, Postage Prepaid
- Facsimile
- Other _____



Leslie Northrup.
Paralegal

Justin R. Seamons
414 Shoup Avenue
Idaho Falls, ID 83402
Telephone Number: (208) 542-0600
Facsimile Number: (208) 529-4166
Idaho State Bar Number: 3903

BONNEVILLE COUNTY
IDAHO

2010 NOV 30 AM 8:33

Attorney for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

V. LEO CAMPBELL and KATHLEEN)
CAMPBELL,)
)
Plaintiffs,)
)
vs.)
)
JAMES C. KVAMME and DEBRA)
KVAMME,)
)
Defendants.)
_____)

Case No. CV 10-3879

**OBJECTION TO AFFIDAVIT OF
COUNSEL**

The Plaintiffs recently filed a MOTION FOR PROTECTIVE ORDER, dated November 15, 2010. In support thereof, Kipp L. Manwaring filed an AFFIDAVIT OF COUNSEL. Mr. Manwaring is an attorney; in fact, he is the attorney of record for the Plaintiffs.

I.

The affidavit includes an attachment—namely, a purported letter from Eric W. Pertulla. The affidavit and attachment constitute hearsay and are ***not*** admissible. See I.R.E. 801 and I.R.E. 802.

II.

In addition, Mr. Manwaring is not "competent to testify to the matters stated therein," the affidavit is not based on "personal knowledge," and it does not "set forth such facts as would be admissible in evidence." See I.R.C.P. 56(e).

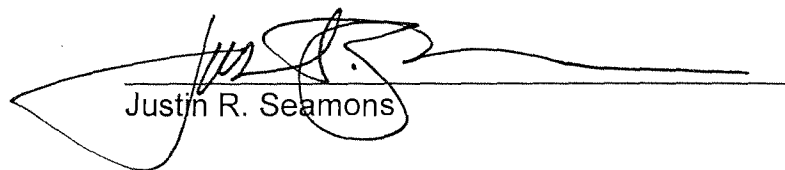
III.

In addition, the affidavit and attachment do not "set forth" or otherwise disclose the "data and other information considered by the witness in forming the opinions," they do not state the "basis and reasons therefor," and they do not state the "qualifications of the witness." See I.R.C.P. 26(b)(4)(A).

IV.

Thus, the Defendants hereby object to the AFFIDAVIT OF COUNSEL and respectfully request the court to strike it. See I.R.E. 103(a)(1).

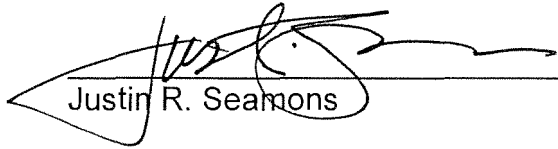
Dated November 29, 2010.


Justin R. Seamons

CERTIFICATE OF SERVICE

I served a copy of the foregoing OBJECTION TO AFFIDAVIT OF COUNSEL on the following person on November 29, 2010:

Kipp L. Manwaring
P.O. Box 50271
Idaho Falls, ID 83405-0271


Justin R. Seamons

BOYD COUNTY
CLERK
NOV 30 AM 8:33

Justin R. Seamons
414 Shoup Avenue
Idaho Falls, ID 83402
Telephone Number: (208) 542-0600
Facsimile Number: (208) 529-4166
Idaho State Bar Number: 3903

Attorney for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

V. LEO CAMPBELL and KATHLEEN)
CAMPBELL,)
)
Plaintiffs,)
)
vs.)
)
JAMES C. KVAMME and DEBRA)
KVAMME,)
)
Defendants.)
_____)

Case No. CV 10-3879

**NOTICE OF INTENT TO CROSS-
EXAMINE V. LEO CAMPBELL,
KATHLEEN CAMPBELL, AND
ERIC W. PERTULLA**

INTRODUCTION

The Plaintiffs recently filed a MOTION FOR PROTECTIVE ORDER, dated November 15, 2010. In support thereof, Kipp L. Manwaring filed an AFFIDAVIT OF COUNSEL. The affidavit includes an attachment—namely, a purported letter from Eric W. Pertulla.

NOTICE

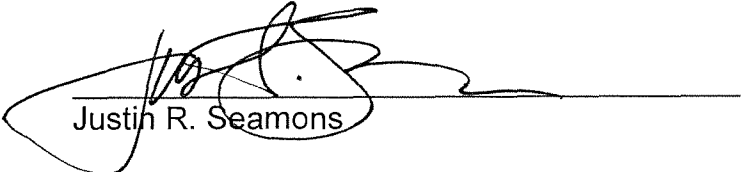
The Defendants hereby elect to cross-examine V. Leo Campbell, Kathleen Campbell, and Eric W. Pertulla at the hearing of the MOTION FOR PROTECTIVE ORDER—that is, at 11:30 a.m. on December 6, 2010. The Defendants will

cross-examine V. Leo Campbell, Kathleen Campbell, and Eric W. Pertulla in accordance with I.R.C.P. 26(c). See also I.R.C.P. 6(c)(2). In this regard, please note the following:

a. Any party may elect to produce testimony and evidence at the hearing, or to cross-examine the adverse party and/or the adverse party's affiants, by giving notice to the court and the adverse party at least 24 hours before the hearing, and such notice shall designate the person(s) sought to be cross-examined. The party against whom relief is sought shall be given written notice of the requirements of this subsection when served with the order to show cause.

b. If a party timely gives notice of the intent to cross-examine, the adverse party shall have the person(s) designated in the notice present at the hearing, unless otherwise ordered by the court. If the adverse party or such party's affiants are not excused by the court and fail to appear as requested in such notice, the court may impose sanctions as it deems appropriate, including awarding attorney fees to the requesting party.

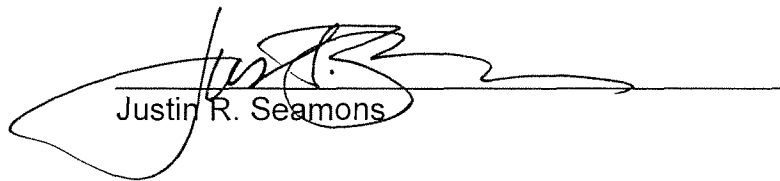
Dated November 29, 2010.


Justin R. Seamons

CERTIFICATE OF SERVICE

I served a copy of the foregoing NOTICE OF INTENT TO CROSS-EXAMINE
V. LEO CAMPBELL, KATHLEEN CAMPBELL, AND ERIC W. PERTULLA on the
following person on November 29, 2010:

Kipp L. Manwaring
P.O. Box 50271
Idaho Falls, ID 83405-0271


Justin R. Seamons

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

V LEO CAMPBELL, et al,)	
)	
Plaintiffs,)	Case No. CV-2010-3879
)	
-vs.-)	MINUTE ENTRY
)	
JAMES C. KVAMME, et al,)	
)	
Defendants:)	
_____)	

On December 2, 2010, at 10:35 AM, a Motion for Protective Order came on for hearing before the Honorable Jon J. Shindurling, District Judge, sitting in open court at Idaho Falls, Idaho.

Ms. Nancy Marlow, Court Reporter, and Ms. Grace Walters, Deputy Court Clerk, were present. Mr. Kipp Manwaring appeared on behalf of the plaintiff. Mr. Justin Seamons appeared on behalf of the defendant.

Mr. Manwaring presented argument on the Motion for Protective Order and requested the deposition time be limited due to the health of the plaintiff.


Mr. Seamons clarified that this is the hearing on the Motion for Protective Order, then argued in opposition to the motion.

The Court will not restrict amount of time in deposition, but will restrict the time of sitting in a deposition and allow full and complete discovery, if it amounts to several sessions, but expects counsel to be sensitive to the health of the clients. If either client gets exhausted,

counsel will not get good answers, it would be to the benefit to stop the deposition and resume on another day.

Mr. Seamons reserved the right to bill the costs of court reporters to the plaintiffs.

Court was thus adjourned.



JON J. SHINDURLING
District Judge

c: Kipp Manwaring
Justin Seamons

2010 DEC 15 AM 10:05

CHARLES C. JUST, ESQ. – ISB 1779
KIPP L. MANWARING, ESQ. – ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
Idaho Falls, Idaho 83405
Telephone: (208) 523-9106
Facsimile: (208) 523-9146

Attorneys for the Campbells

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE**

V. LEO CAMPBELL and KATHLEEN
CAMPBELL, husband and wife;

Plaintiffs,

vs.

JAMES C. KVAMME and DEBRA
KVAMME, husband and wife; and JOHN
DOES I-X;

Defendants.

Case No. CV-20410-3879

**NOTICE OF COMPLIANCE –
Plaintiffs’ Second Supplemental
Response**

NOTICE IS HEREBY GIVEN that on this 14th day of December, 2010, I certify that I served a true and correct copy of **Plaintiffs’ Second Supplemental Response to Defendants’ Interrogatories**, pursuant to Rules 33, 34 and 36 of the Idaho Rules of Civil Procedure, upon the following individuals by the method indicated below:

Justin R. Seamons
Attorney at Law
414 Shoup Avenue
Idaho Falls, Idaho 83402

- Hand Delivered
- U.S. Mail, Postage Prepaid
- Facsimile
- Other _____


Leslie Northrup.
Paralegal

Justin R. Seamons
414 Shoup Avenue
Idaho Falls, ID 83402
Telephone Number: (208) 542-0600
Facsimile Number: (208) 529-4166
Idaho State Bar Number: 3903

BONNEVILLE COUNTY
2011 JAN 14 PM 4:01

Attorney for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

V. LEO CAMPBELL and KATHLEEN)
CAMPBELL,)
)
Plaintiffs,)
)
vs.)
)
JAMES C. KVAMME and DEBRA)
KVAMME,)
)
Defendants.)
_____)

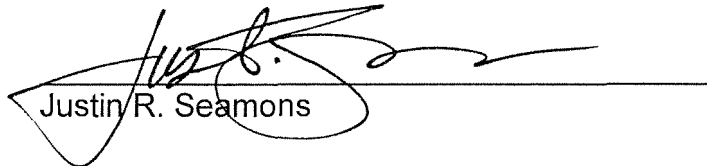
Case No. CV 10-3879

NOTICE OF SERVICE

The Defendants served the following documents on the Plaintiffs on January 14,
2011:

1. INTERROGATORY (No. 19)
2. REQUEST FOR PRODUCTION (No. 28)

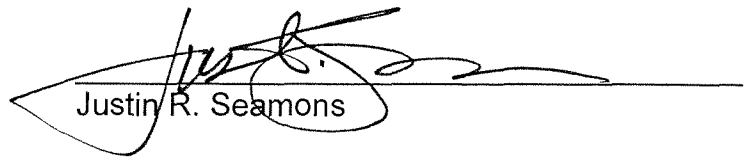
Dated January 14, 2011.


Justin R. Seamons

CERTIFICATE OF SERVICE

I served a copy of the foregoing NOTICE OF SERVICE on the following person
on January 14, 2011:

Kipp L. Manwaring
HAND DELIVERED


Justin R. Seamons

CHARLES C. JUST, ESQ. – ISB 1779
KIPP L. MANWARING, ESQ. – ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
Idaho Falls, Idaho 83405
Telephone: (208) 523-9106
Facsimile: (208) 523-9146

BONNEVILLE COUNTY CLERK
2011 JAN 25 AM 10:03

Attorneys for the Campbells

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE**

V. LEO CAMPBELL and KATHLEEN
CAMPBELL, husband and wife;

Plaintiffs,

vs.

JAMES C. KVAMME and DEBRA
KVAMME, husband and wife; and JOHN
DOES I-X;

Defendants.

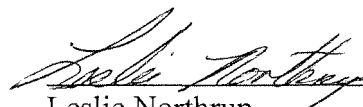
Case No. CV-2010-3879

**NOTICE OF COMPLIANCE –
Plaintiffs’ Response to Additional
Interrogatory and Request for
Production**

NOTICE IS HEREBY GIVEN that on this 24th day of January, 2011, I certify that I served a true and correct copy of **Plaintiffs’ Response to Defendants’ Additional Interrogatory and Request for Production**, pursuant to Rules 33, 34 and 36 of the Idaho Rules of Civil Procedure, upon the following individuals by the method indicated below:

Justin R. Seamons
Attorney at Law
414 Shoup Avenue
Idaho Falls, Idaho 83402

- Hand Delivered
- U.S. Mail, Postage Prepaid
- Facsimile
- Other _____



Leslie Northrup.
Paralegal

Justin R. Seamons
414 Shoup Avenue
Idaho Falls, ID 83402
Telephone Number: (208) 542-0600
Facsimile Number: (208) 529-4166
Idaho State Bar Number: 3903

BONNEVILLE CO. CLERK
OCT 27 2010 3:54

Attorney for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

V. LEO CAMPBELL and KATHLEEN)
CAMPBELL,)
)
Plaintiffs,)
)
vs.)
)
JAMES C. KVAMME and DEBRA)
KVAMME,)
)
Defendants.)
_____)

Case No. CV 10-3879

**DISCLOSURE OF EXPERT
WITNESSES**

The Defendants' hereby "disclose the names, addresses, and telephone numbers of expert witnesses [who] may be called to testify at trial" in accordance with the court's ORDER SETTING PRETRIAL CONFERENCE AND JURY TRIAL, dated October 12, 2010. See ORDER, p. 1, Section 1, Paragraph 2.

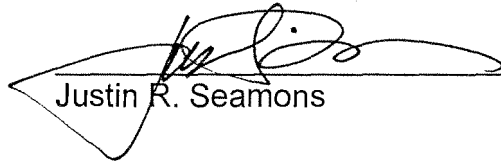
1. Robert Jon Meikle
Mountain River Engineering
1020 Lincoln Road
Idaho Falls, ID 83401
(208) 524-6175

2. Heather Elverud
Idaho Title & Trust, Inc.
400 Memorial Drive
Idaho Falls, ID 83402
(208) 522-7895

3. Kim H. Leavitt
Harper-Leavitt Engineering, Inc.
985 North Capital Avenue
Idaho Falls, ID 83402
(208) 524-0212

4. The Defendants hereby reserve the right to call Kevin Thompson. See PLAINTIFFS' RESPONSE TO DEFENDANTS' INTERROGATORIES AND REQUESTS FOR PRODUCTION, p. 1, dated September 30, 2010.

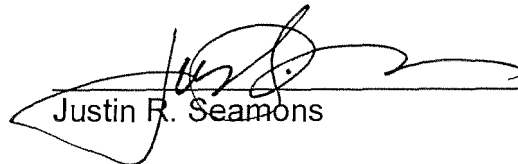
Dated January 25, 2011.


Justin R. Seamons

CERTIFICATE OF SERVICE

I served a copy of the foregoing DISCLOSURE OF EXPERT WITNESSES on the following person on January 25, 2011:

Kipp L. Manwaring
P.O. Box 50271
Idaho Falls, ID 83405-0271


Justin R. Seamons

BONNEVILLE COUNTY
IDAHO

2011 APR -7 PM 3:49

CHARLES C. JUST, ESQ. – ISB 1779
KIPP L. MANWARING, ESQ. – ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
Idaho Falls, Idaho 83405
Telephone: (208) 523-9106
Facsimile: (208) 523-9146

Attorneys for the Campbells

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE**

V. LEO CAMPBELL and KATHLEEN
CAMPBELL, husband and wife;

Plaintiffs,

vs.

JAMES C. KVAMME and DEBRA
KVAMME, husband and wife; and JOHN
DOES I-X;

Defendants.

Case No. CV- 2010-3879

MOTION TO CONTINUE

The Plaintiffs, V. Leo Campbell and Kathleen Campbell, move the court for its order continuing the trial currently scheduled for April 25, 2011 at 1:30 p.m. to another date convenient to court and counsel. The reason for the request is the added stress of trial could be fatal to Mr. Campbell in his current health condition.

Oral argument is reserved.

DATED this 7 day of April, 2011.



Kipp L. Manwaring
Attorney for the Campbells

CERTIFICATE OF MAILING

I **HEREBY CERTIFY** that on the 2nd day of April, 2011, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

Justin R. Seamons
Attorney at Law
414 Shoup Avenue
Idaho Falls, Idaho 83402

- Hand Delivered
- U.S. Mail, Postage Prepaid
- Facsimile
- Other _____



Leslie Northrup
Paralegal

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

V. LEO CAMPBELL, et al,)
)
Plaintiffs,)
)
-vs.-)
)
JAMES C. KVAMME, et al,)
)
Defendants.)

Case No. CV-2010-3879

MINUTE ENTRY

11 APR 12 AS:04

THE JUDICIAL DISTRICT OF BONNEVILLE COUNTY, IDAHO

On April 11, 2011, at 10:00 A.M., this pre-trial conference came on for hearing before the Honorable Jon J. Shindurling, District Judge, sitting in open court at Idaho Falls, Idaho.


Ms. Nancy Marlow, Court Reporter, and Ms. Grace Walters, Deputy Court Clerk, were present. Mr. Kipp Manwaring appeared on behalf of the plaintiffs. Mr. Justin Seamons appeared on behalf of the defendants.

The Court received a Motion to Continue filed by Mr. Manwaring.

Mr. Seamons advised the Court the depositions were not quite finished, and requested the trial be put on calendar during the winter months.

The Court reset the trial for March 5, 2012 at 1:30 PM. Pretrial conference is reset to February 27, 2012 at 10:00 AM.

Court was thus adjourned.



JON J. SHINDURLING
District Judge

c: Kipp Manwaring
Justin Seamons

BONNEVILLE COUNTY
2011 MAY 17 PM 4:00

CHARLES C. JUST, ESQ. – ISB 1779
KIPP L. MANWARING, ESQ. – ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
Idaho Falls, Idaho 83405
Telephone: (208) 523-9106
Facsimile: (208) 523-9146

Attorneys for the Campbells

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE**

V. LEO CAMPBELL and KATHLEEN
CAMPBELL, husband and wife;

Plaintiffs,

vs.

JAMES C. KVAMME and DEBRA
KVAMME, husband and wife; and JOHN
DOES I-X;

Defendants.

Case No. CV-2010-3879

**THE PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY
JUDGMENT**

In accordance with I.R.C.P. 56(a), the Plaintiffs move the court for its order granting partial summary judgment on the issues identified below.

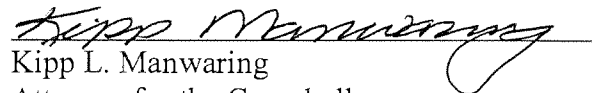
The issues are: Where the Defendants have failed to pay taxes on the Plaintiffs' property for a period of 20 years prior to filing the counterclaim, have the Defendants failed to sustain their burden of proving adverse possession?; Where a convenience fence was erected by the common owner of an entire parcel of land solely for purposes of securing livestock as was never agreed to be a boundary fence, have the Defendants failed to sustain their burden of proving boundary by agreement?; Are the Plaintiffs' entitled to judgment quieting title to their land in their name free of all claims and interests of the Defendants?; and, Where the Plaintiffs agree that the Defendants may remove any improvements they may have made upon the Plaintiffs'

land, should the court render judgment allowing the Defendants to remove their improvements at their cost?

This motion is based upon the pleadings of record, the Affidavit of Margy Spradling, Affidavit of Jo Campbell, Affidavit of Blake Mueller, Affidavit of Mark Hansen, Affidavit of Counsel, and the Memorandum in Support filed simultaneously with this motion.

Oral argument is requested.

DATED this 27 day of May, 2011.


Kipp L. Manwaring
Attorney for the Campbells

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 17th day of May, 2011, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

Justin R. Seamons
Attorney at Law
414 Shoup Avenue
Idaho Falls, Idaho 83402

Hand Delivered
 U.S. Mail, Postage Prepaid
 Facsimile
 Other _____


Leslie Northrup
Paralegal

BONNEVILLE COUNTY
MAY 17 PM 4:00

CHARLES C. JUST, ESQ. – ISB 1779
KIPP L. MANWARING, ESQ. – ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
Idaho Falls, Idaho 83405
Telephone: (208) 523-9106
Facsimile: (208) 523-9146

Attorneys for the Campbells

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE**

V. LEO CAMPBELL and KATHLEEN
CAMPBELL, husband and wife;

Plaintiffs,

vs.

JAMES C. KVAMME and DEBRA
KVAMME, husband and wife; and JOHN
DOES I-X;

Defendants.

Case No. CV-2010-3879

**MEMORANDUM IN SUPPORT
OF THE PLAINTIFFS' MOTION
FOR PARTIAL SUMMARY
JUDGMENT**

The common predecessor in interest to both parties was Hyrum L. Campbell. During the common ownership of the land now owned by the Campbells and the Kvammes, a fence was erected solely for convenience in fencing livestock in what was then pasture ground. Subsequently, the land was separated into two parcels. Neither the Campbells nor their predecessors have ever agreed that a convenience fence was the boundary between their land and the Kvammes' land. The Kvammes have never paid real property taxes on the Campbells' property. The Campbells are entitled to judgment quieting title to their land in their name.

FACTS

The following facts have been established through deposition testimony and affidavit.

Chain of Title

Hyrum L. Campbell and Charlotte Campbell were the prior owners of the Northeast Quarter of Section 17, Township 3 North, Range 38 E.B.M., in Bonneville County, Idaho. (*Affidavit of Counsel, Exhibit B; Affidavit of Counsel, Exhibit A—Deposition of V. Leo Campbell, Vol. II, p. 153, l. 25; p. 153, ll. 1-24*).

Following Hyrum Campbell's death, his widow Charlotte by warranty deed recorded as Instrument No. 305350 in the Recorder's Office for Bonneville County, Idaho conveyed the S½ of the Northeast Quarter of Section 17 to Leo H. Campbell and his wife, Phyllis B. Campbell. (*Affidavit of Counsel, Exhibit B; Affidavit of Counsel, Exhibit A—Deposition of V. Leo Campbell, Vol. II, p. 155, ll. 6-25, p. 156, ll. 1-25*).

Charlotte Campbell by warranty deed recorded as Instrument No. 380830 in the Recorder's Office for Bonneville County, Idaho conveyed the N½ of the Northeast Quarter of Section 17 to her daughter and son-in-law, Mary Killian and Delbert H. Killian. (*Affidavit of Counsel, Exhibit B; Affidavit of Counsel, Exhibit A—Deposition of V. Leo Campbell, Vol. II, p. 162, ll. 9-25; p. 163, ll. 1-17*). The N½ was given to the Killians for a place to live due to their poverty resulting from loss of their own farm property. (*Affidavit of Counsel, Exhibit A—Deposition of V. Leo Campbell, Vol. II, p. 159, ll. 18-25; p. 160, ll. 1-19*).

By Personal Representative's Deed recorded as Instrument No. 1122583 in the Recorder's Office for Bonneville County, Idaho the Estate of Delbert Killian conveyed title to the Kvammes. (*Affidavit of Counsel, Exhibit C*).

Leo H. Campbell and Phyllis B. Campbell partitioned the S½ of the NE¼ of Section 17 and conveyed separate parcels to their three children. (*Affidavit of Counsel, Exhibit B*). By gift deed recorded as Instrument No. 774870 in the Recorder's Office for Bonneville County, Idaho Leo H. Campbell and Phyllis B. Campbell conveyed title to 22.3 acres to V. Leo Campbell. (*Affidavit of Counsel, Exhibit B; Affidavit of Counsel, Exhibit A – Deposition of V. Leo Campbell, Vol. II, p. 166, ll. 14-20; p. 167, ll. 1-13*). In turn, through various recorded deeds, V. Leo Campbell conveyed to he and his wife Kathleen Campbell (the Campbells) title to their portion of the S½ of the NE¼ of Section 17. (*Affidavit of Counsel, Exhibit B*). By warranty deed recorded as Instrument No. 607254 in the Recorder's Office for Bonneville County, Idaho Leo H. Campbell and Phyllis B. Campbell conveyed title to approximately 1.14 acres to the

Campbells. (*Affidavit of Counsel, Exhibit B; Affidavit of Counsel, Exhibit A – Deposition of V. Leo Campbell*, Vol. II, p. 163, ll. 23-25; p. 164, ll. 1-15).

The Campbells own two contiguous parcels of real property: a small parcel where the Campbells' home is situated and a larger 22-acre farm parcel. (*Affidavit of Counsel, Exhibit B; Affidavit of Counsel, Exhibit A – Deposition of V. Leo Campbell*, Vol. II, p. 166, ll. 14-20; p. 167, ll. 1-13; *Affidavit of Counsel, Exhibit B*).

Orientation of the Properties and History of Use

The Campbells' two parcels abut the southern described boundary of the Kvammes N $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Section 17. (*Affidavit of Counsel, Exhibit D*). Lying fifteen feet south of the coterminous described boundary of the parties' respective parcels and entirely within the Campbells' land is a fence (disputed fence). (*Affidavit of Counsel, Exhibit D*).

In 2008 the Kvammes installed a center pivot irrigation system. A portion of the Kvammes' center pivot pad together with a pump and mainline encroach upon the Campbells' land. (*Affidavit of Counsel, Exhibit D*).

Either prior to or during Hyrum Campbell's ownership of the entire NE $\frac{1}{4}$ of Section 17, the disputed fence was erected. (*Affidavit of Counsel, Exhibit A – Deposition of V. Leo Campbell*, Vol. III, p. 218, ll. 7-25, p. 219, ll. 1-25, p. 220, ll. 1-4; *Affidavit of Margy Spradling; Affidavit of Jo Campbell*).

At some point in time the entire NE $\frac{1}{4}$ was enclosed by a perimeter fence. (*Affidavit of Counsel, Exhibit A – Deposition of V. Leo Campbell*, Vol. II, p. 13, ll. 1-18). Several interior convenience fences were erected over the years in the S $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Section 17. (*Affidavit of Counsel, Exhibit A – Deposition of V. Leo Campbell*, Vol. III, p. 185, ll. 12-25; p. 186, ll. 1-9).

While he was alive, Hyrum Campbell farmed, grazed cattle and raised animals on the entire NE $\frac{1}{4}$ of Section 17. (*Affidavit of Counsel, Exhibit A – Deposition of V. Leo Campbell*, Vol. II, p. 158, ll. 23-25; p. 159, ll. 1-17; p. 160, ll. 11-25; p. 161, ll. 1-2). Prior to the Killians occupying the N $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Section 17, Leo H. Campbell farmed and kept animals on the entire NE $\frac{1}{4}$. (*Affidavit of Counsel, Exhibit A – Deposition of V. Leo Campbell*, Vol. II, p. 157, ll. 7-25; p. 158, ll. 1-11; p. 160, ll. 9-25; p. 161, ll. 1-10).

The disputed fence consists of wood and steel posts with about three to six strands of barbed wire. (*Affidavit of Counsel, Exhibit A – Deposition of V. Leo Campbell*, Vol. III, p. 188, ll. 13-16; p. 189, ll. 1-4). The disputed fence was solely for convenience in controlling horses and livestock. (*Affidavit of Counsel, Exhibit A – Deposition of V. Leo Campbell*, Vol. III, p. 191, **Memorandum in Support of Motion for Summary Judgment – Page 3**

ll. 22-24, p. 220, ll. 23-25, p. 221, ll. 1-6, p. 222, ll. 6-25, p. 223, ll. 23-25; p. 224, ll. 1-3, p. 227, ll. 11-20, p. 228, ll. 4-7, p. 229, ll. 1-18; *Affidavit of Margy Spradling; Affidavit of Jo Campbell*). After Hyrum Campbell's death, the NE¼ was separated into two equal parcels and the N½ was conveyed to the Killians and the S½ was conveyed to Leo H. Campbell and Phyllis B. Campbell. (*Affidavit of Counsel, Exhibit A – Deposition of V. Leo Campbell*, Vol. II, p. 159, ll. 18-25; p. 160, ll. 1-19; *Affidavit of Margy Spradling*).

After Hyrum Campbell's death, the disputed fence continued to stand, but the neighboring family members did not treat or consider that fence to be the boundary of their properties. (*Affidavit of Counsel, Exhibit A – Deposition of V. Leo Campbell*, Vol. III, p. 224, ll. 23-25; p. 225, ll. 1-6; *Affidavit of Margy Spradling; Affidavit of Jo Campbell*). Because the Killians and Leo and Phyllis Campbell were family, no one objected to the disputed fence or its location or felt any need to move the fence. (*Affidavit of Counsel, Exhibit A – Deposition of V. Leo Campbell*, Vol. III, p. 235, ll. 12-25, p. 240, ll. 21-25, p. 241, ll. 1-3; *Affidavit of Margy Spradling; Affidavit of Jo Campbell*).

Leo H. Campbell knew the fence was not on the property line and knew his property boundary was some few feet north of the fence. (*Affidavit of Counsel, Exhibit A – Deposition of V. Leo Campbell*, Vol. III, p. 239, ll. 4-11; *Affidavit of Margy Spradling; Affidavit of Jo Campbell*). Leo H. Campbell had lived on his property for over 40 years. (*Affidavit of Counsel, Exhibit A – Deposition of V. Leo Campbell*, Vol. II, p. 130, ll. 9-13).

V. Leo Campbell has lived on his property for 30 years and has known of the disputed fence since he was six years of age. (*Affidavit of Counsel, Exhibit A – Deposition of V. Leo Campbell*, Vol. 1, p. 82, ll. 5-25; Vol. II, p. 130, ll. 6-8). Since about age 6, V. Leo Campbell has known the true boundary of the property was several feet north of the disputed fence. (*Affidavit of Counsel, Exhibit A – Deposition of V. Leo Campbell*, Vol. 1, p. 82, ll. 5-25; p. 83, ll. 1-12; Vol. III, p. 225, ll. 4-7).

As part of the Campbells' plans to sell their property, they obtained a survey to confirm the dimensions of their land. (*Affidavit of Counsel, Exhibit A – Deposition of V. Leo Campbell*, Vol. III, p. 213, ll. 20-25, p. 214, ll. 1-2). That survey confirmed the disputed fence lies within the Campbells' property. (*Affidavit of Counsel, Exhibit A – Deposition of V. Leo Campbell*, Vol. III, p. 213, ll. 20-25, p. 214, ll. 1-2; *Affidavit of Counsel, Exhibit D*).

Bonneville County assesses real property based upon the legal description contained in deeds of conveyance and not upon fence lines. (*Affidavit of Blake Mueller*). The Campbells have

been assessed real property taxes based upon the legal descriptions contained in deeds of record. (*Affidavit of Blake Mueller*). Bonneville County receives tax payments based upon the assessments as determined by the Assessor's Office. (*Affidavit of Mark Hansen*).

Since their ownership of their property, the Campbells have been assessed and paid real property taxes on all their land in the S $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Section 17. (*Affidavit of Mark Hansen*). No other person has paid any taxes assessed on the Campbells' land. (*Affidavit of Mark Hansen*). No part of the Kvammes' tax payments for their assessments on their property were in any manner applied to the Campbells' property. (*Affidavit of Mark Hansen*).

ARGUMENT

Standard for Summary Judgment

Summary judgment must be granted "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." I.R.C.P. 56(c). In order to determine whether judgment should be entered as a matter of law, the trial court must review the pleadings, depositions, affidavits, and admissions on file. I.R.C.P. 56(c).

The trial court liberally construes the record in the light most favorable to the party opposing the motion, drawing all reasonable inferences and conclusions in that party's favor. *Tolmie Farms v. J.R. Simplot Co.*, 124 Idaho 607, 609, 862 P.2d 299, 301 (1993); *Doe v. Durtschi*, 110 Idaho 466, 469, 716 P.2d 1238, 1241 (1986). If reasonable people could reach different conclusions or draw conflicting inferences from the evidence, the motion must be denied. *Featherston v. Allstate Insurance Co.*, 125 Idaho 840, 842, 875 P.2d 937, 939 (1994).

However, if the evidence reveals no disputed issues of material fact, the trial court should grant summary judgment. I.R.C.P. 56(c); *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 720, 791 P.2d 1285, 1299 (1990). If the district court sits as the trier of fact, it may draw reasonable inferences based upon the evidence before it and may grant summary judgment despite the possibility of conflicting inferences. *Cameron v. Neal*, 130 Idaho 898, 900, 950 P.2d 1237, 1239 (1997).

The party moving for summary judgment initially carries the burden to establish that there is no genuine issue of material fact and that he or she is entitled to judgment as a matter of law. *Eliopulos v. Knox*, 123 Idaho 400, 404, 848 P.2d 984, 988 (Ct. App. 1992). "Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion,

against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Dunnick v. Elder*, 126 Idaho 308, 311, 882 P.2d 475, 478 (Ct. App. 1994), citing, *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986).

Pertinent to the issues in this case are the following additional standards. Because the party holding title to property is presumed to be the legal owner, someone claiming ownership of that property must prove his or her claim by "clear, satisfactory, and convincing evidence." *Anderson v. Rex Hayes Family Trust*, 145 Idaho 741, 744, 185 P.3d 253, 256 (2008). "When an action will be tried before the court without a jury, the trial court as the trier of fact is entitled to arrive at the most probable inferences based upon the undisputed evidence properly before it and grant the summary judgment despite the possibility of conflicting inferences." *Shawver v. Huckleberry Estates, L.L.C.*, 140 Idaho 354, 360-61, 93 P.3d 685, 691-92 (2004).

Boundary by Agreement

"Boundary by agreement or acquiescence has two elements: (1) there must be an uncertain or disputed boundary and (2) a subsequent agreement fixing the boundary." *Luce v. Marble*, 142 Idaho 264, 271, 127 P.3d 167, 174 (2005). Lack of uncertainty of the true boundary is fatal to the first element. *Cox v. Clanton*, 137 Idaho 492, 493, 50 P.3d 987, 988 (2002); *Luce v. Marble*, 142 Idaho 264, 127 P.3d 167 (2005).

In Idaho, the phrase 'boundary by acquiescence' is often used interchangeably with 'boundary by agreement,' although the latter more accurately describes the doctrine. To prove boundary by agreement, there must be an uncertain or disputed boundary and a subsequent agreement fixing the boundary. The agreement need not be express, but may be implied by the surrounding circumstances and conduct of the parties. [T]he long existence and recognition of a fence as a boundary, in the absence of any evidence as to the manner or circumstances of its original location, strongly suggests that the fence was located as a boundary by agreement. Acquiescence is merely regarded as competent evidence of the agreement. [A]n agreement fixing the boundary line, whether express or implied, is essential to a claim of boundary by acquiescence.

Cox v. Clanton, 137 Idaho 492, 493, 50 P.3d 987, 988 (2002)(citations omitted).

The doctrine of boundary by agreement has long been established in Idaho's case law. To have a boundary by agreement, the location of the true

boundary line must be uncertain or disputed and there must be a subsequent agreement fixing the boundary. The agreement need not be express, but may be implied by the surrounding circumstances and conduct of the parties. The existence of such an agreement between adjoining landowners may appear where their property rights have been defined by the erection of a fence, followed by treatment of the fence by the adjoining owners as the boundary. Further, the long existence and recognition of a fence as a boundary, in the absence of any evidence as to the manner or circumstances of its original location, strongly suggests that the fence was located as a boundary by agreement.

* * *

Thus, the doctrine of boundary by agreement requires (1) an uncertain or disputed boundary and (2) an express or implied agreement subsequently fixing the boundary.

Johnson v. Newport, 131 Idaho 521, 522-523, 960 P.2d 742, 743-744 (1998)(citations omitted).

“Where the location of a true boundary line between coterminous owners is known to either of the parties, or is not uncertain, and is not in dispute, an oral agreement between them purporting to establish another line as the boundary between their properties constitutes an attempt to convey real property in violation of the statute of frauds ... and is invalid.” *Downing v. Boehringer*, 82 Idaho 52, 56, 349 P.2d 306, 308 (1960).

In recognizing the reliance people often place on fences to denote boundaries, courts should not overlook the equally important reliance that people place on legal descriptions in public records to define the boundaries of ownership. A description used and relied upon repeatedly by many persons-in addition to the owners of the property-for perhaps a century or longer, should not be disregarded lightly to accommodate the theory of boundary by oral agreement.

Dreher v. Powell, 120 Idaho 715, 721, 819 P.2d 569, 575 (Ct. App. 1991).

Where stock fences are erected as a barrier to livestock for the convenience of the property owner and not to mark the boundary of land, such fences cannot form the basis of boundary by agreement. *Griffin v. Anderson*, 144 Idaho 376, 378, 162 P.3d 755, 757 (2007); *Cox v. Clanton*, 137 Idaho 492, 50 P.3d 987 (2002).

“A fence is not converted into a boundary merely because it exists for the statutory period or longer.” *Trunnell v. Ward*, 86 Idaho 555, 561, 380 P.2d 221 (1964).

There has been no historic uncertainty of the boundary between the N½ and the S½ of the NE¼ of Section 17. V. Leo Campbell has known since childhood that the northern boundary of his property was a few feet to the north of the disputed fence.

Substantial evidence establishes that during Hyrum L. Campbell’s common ownership of the NE¼ of Section 17, the disputed fence was erected for the purpose of controlling livestock

and not to create a boundary. Corrals used for draft horses and other animals kept by the Campbells abutted the disputed fence. Indeed, as the owner of the entire NE¼ of Section 17, neither Hyrum L. Campbell nor his predecessor in interest would need to create a boundary fence by the erection of the disputed fence.

At no time since the erection of the disputed fence have the subsequent partitioned owners of the coterminous N½ and S½ of the NE¼ ever expressly agreed that the fence was the boundary.

The legal descriptions for the Campbells' property and the Kvammes' property clearly identify the actual proportions of their respective parcels. Those legal descriptions have been relied upon for many years for purposes of identifying ownership and tax assessments.

The Kvammes' claim of boundary by agreement rests solely on an argument that the Campbells and their predecessors in interest impliedly agreed through acquiescence with the Killians that the disputed fence was the boundary. The evidence does not sustain the Kvammes' burden of proving by clear and convincing evidence an implied agreement.

Consequently, the Kvammes' cannot prove by clear and convincing evidence their claim for boundary by agreement.

Adverse Possession

Idaho Code § 5-210 defines the elements of adverse possession under an oral claim of right. It specifically provides, "that in no case shall adverse possession be considered established under the provisions of any sections of this code unless it shall be shown that the land has been occupied and claimed for a period of twenty (20) years continuously, and the party or persons, their predecessors and grantors, have paid all the taxes, state, county or municipal, which have been levied and assessed upon such land according to law."

"The burden of showing all of the essential elements of adverse possession is upon the party seeking title thereunder and every element of adverse possession must be proved with clear and satisfactory evidence." *Baxter v. Craney*, 135 Idaho 166, 171, 16 P.3d 263, 268 (2000).

Assessments for real property taxes based on a metes and bounds description, as opposed to lot number or acreage assessments, make it possible to determine from the tax assessment record the precise quantum of property being assessed. *Baxter v. Craney, supra; Trappett v. Davis*, 102 Idaho 527, 633 P.2d 592 (1981).

The Bonneville County Assessor's Office assesses real property taxes based upon the legal descriptions contained in deeds of record. Where, as here, the legal description for the

Campbells' property is clearly defined, the Assessor's Office relied upon that description. The Assessor's Office does not rely upon or consider fence lines in making a determination of the acreage of real property for tax assessments purposes.

The Bonneville County Treasurer's Office collects tax payments based upon assessments performed by the Assessor's Office. All tax payments received are applied to the real property described in the assessment. No part of the tax collections received on the assessment of the Kvammes' real property were applied to the Campbells' real property. The Campbells have paid all taxes assessed on their real property.

Accordingly, the Kvammes cannot prove by clear and convincing evidence their claim for adverse possession.

Quiet Title

In quiet title actions, the plaintiff "asserts his own estate and declares generally that the defendant claims some estate in the land, without defining it, and avers that the claim is without foundation, and calls on the defendant to set forth the nature of his claim, so that it may be determined by decree." *Dickerson v. Brewster*, 88 Idaho 330, 336, 399 P.2d 407, 410 (1965). Once the parties have set forth the bases of their respective claims, the trial court must then determine the ownership rights of the parties based on the facts involved. "In making this determination, the district court should examine the facts by applying relevant legal principles and theories that define the property rights of the parties." *Drew v. Sorensen*, 133 Idaho 534, 541, 989 P.2d 276 (1999); *Loomis v. Union Pacific Railroad Co.*, 97 Idaho 341, 544 P.2d 299 (1975); I.C. § 6-401.

The Campbells have established their title to their real property. The only challenges the Kvammes' have asserted to the Campbell's title was the claims of boundary by agreement and adverse possession. Those claims have been shown unsupportable.

The Campbells are entitled to judgment quieting in their names title to their real property free of all claims and interests of the Kvammes.

Right to Improvements

In their counterclaim, the Kvammes asserted a right to recover any improvements they have made that are found or encroach upon the Campbells' property. In reply to the counterclaim, the Campbells disclaimed any interest in the Kvammes' improvements.

Under I.C. §§ 6-403, 405 and 414, the Kvammes may, upon order of the court, remove any improvements from the Campbells' property so long as the Kvammes do not injure the Campbells' real estate. The Kvammes may be required to post sufficient surety to cover any potential damages caused by their removal of any improvements. I.C. § 6-405.

Although the Campbells are not asserting any rights to or interest in the Kvammes' irrigation system presently encroaching in part upon the Campbells' property, in the Kvammes fail to timely remove their irrigation system from the Campbells' property, such improvements should be deemed abandoned and adjudged part of the Campbells' real estate as part of quiet title judgment.

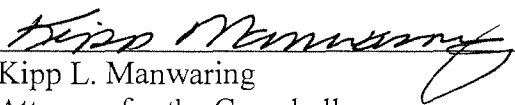
CONCLUSION

There are no genuine issues of material fact concerning the Kvammes' claims of boundary by agreement and adverse possession. As a matter of law, the Campbells are entitled to summary judgment on those claims.

With summary judgment on the claims of boundary by agreement and adverse possession, the Campbells' are entitled to summary judgment quieting in their names title to their real property free of the Kvammes' claims and interests.

Where the Campbells have agreed that the Kvammes' may retain their improvements, summary judgment should be entered directing the Kvammes at their sole cost to remove their improvements from the Campbells' land and restore the Campbells' land for any injury caused by removal of the Kvammes' property.

DATED this 17 day of May, 2011.

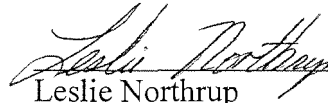

Kipp L. Manwaring
Attorney for the Campbells

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 17th day of May, 2011, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

Justin R. Seamons
Attorney at Law
414 Shoup Avenue
Idaho Falls, Idaho 83402

Hand Delivered
 U.S. Mail, Postage Prepaid
 Facsimile
 Other _____



Leslie Northrup
Paralegal

BONNEVILLE COUNTY
CLERK OF DISTRICT COURT
JULY 17 2010

CHARLES C. JUST, ESQ. – ISB 1779
KIPP L. MANWARING, ESQ. – ISB 3817
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Attorneys for the Campbells

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE**

V. LEO CAMPBELL and KATHLEEN
CAMPBELL, husband and wife;

Plaintiffs,

vs.

JAMES C. KVAMME and DEBRA
KVAMME, husband and wife; and JOHN
DOES I-X;

Defendants.

Case No. CV-2010-3879

AFFIDAVIT OF COUNSEL

STATE OF IDAHO)
 : ss
County of Bonneville)

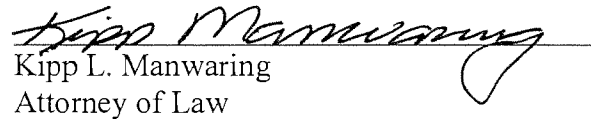
KIPP L. MANWARING, being first duly sworn under oath, deposes and states as follows:

1. I am a licensed attorney in the state of Idaho and represent the Plaintiffs in the above action.
2. Attached as Exhibit A and incorporated here by reference is a true and correct copy of select pages from Volumes I, II, and III of the deposition of V. Leo Campbell.
3. Attached as Exhibit B and incorporated here by reference are true and correct copies of deeds of record establishing the Campbells' chain of title.

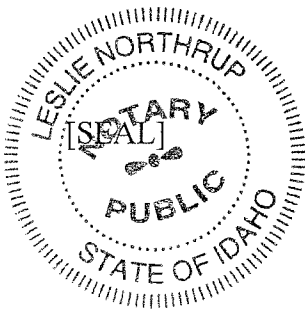
4. Attached as Exhibit C and incorporated here by reference are true and correct copies of deeds of record establishing the Kvammes' chain of title.

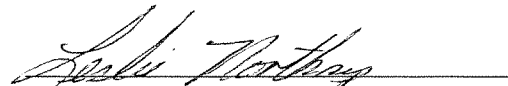
5. Attached as Exhibit D and incorporated here by reference is a true and correct copy of a survey performed by Thompson Engineering.

Dated this 17 day of May, 2011.


Kipp L. Manwaring
Attorney of Law

SUBSCRIBED AND SWORN TO before me this 17th day of May, 2011.




Notary Public for Idaho
Residing at: Moore, Idaho
My commission expires: 09/29/2015

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 17th day of May, 2011, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

Justin R. Seamons
Attorney at Law
414 Shoup Avenue
Idaho Falls, Idaho 83402

Hand Delivered
 U.S. Mail, Postage Prepaid
 Facsimile
 Other _____


Leslie Northrup
Paralegal

1 corner of the hundred and sixty acres that was out
2 there. That's the first home that the folks were
3 ever in. Jo was a toddler then.

4 **Q. And that's the -- sorry, that's the home
5 that the Robbins own today?**

6 A. No. That's a home that isn't there.
7 This was beyond the banks of the Winkler Canal, the
8 way I understand it. That's where the home was.

9 **Q. What's the earliest date that you know
10 that they lived on the farm?**

11 A. Probably after 1946 when I was born.

12 **Q. And in 1946, in what home did they
13 live?**

14 A. They lived on -- at one oh -- one oh --
15 10519 or 10915 North 15th, the old family home out
16 there.

17 **Q. Is that the one the Robbins live in
18 today?**

19 A. Yes.

20 **Q. Did you talk with your father or
21 correspond with your father about the facts of this
22 case?**

23 A. No. My dad talked to me when I was a
24 kid about the farm, but not about the facts of this
25 case. Kind of hard to talk to a dead guy about the

1 A. Not a whole lot other than where the
2 ditches used to run and what was buried where. By
3 "what was buried where," we're talking about the
4 south driveway at the folks's old place. That
5 property line is off about ten feet.

6 Once upon a time, there was a potato
7 cellar out there, and the ditch had to go around it,
8 so the fence went on the ditch line which put it off
9 the property line by that same distance.

10 And there were several old car parts,
11 one thing and another, buried out there along the
12 old potato cellar.

13 MR. SEAMONS: Just let --

14 THE VIDEOGRAPHER: We have five minutes
15 of tape left.

16 **Q. (BY MR. SEAMONS:) Is the old potato
17 cellar gone?**

18 A. Yes, it is.

19 **Q. Anything else you recall?**

20 A. No.

21 MR. SEAMONS: John, is it just a matter
22 of changing a tape, or is this a good place to stop
23 for you for the day?

24 THE VIDEOGRAPHER: We can stop any time,
25 but I'll have to change a tape because we'll run

1 facts of a case.

2 **Q. When you say he talked to you about the
3 farm --**

4 A. Uh-huh.

5 **Q. -- what did he discuss with you about
6 the facts of this case?**

7 A. The property lines and where they were
8 on both sides of the farm.

9 **Q. When did this conversation take place?**

10 A. Numerous times from the time I was six,
11 eight years old, probably, on up until probably a
12 few months before he killed himself.

13 **Q. What did he tell you?**

14 A. He told me where he thought the
15 relative -- or where he thought the property lines
16 were on both sides of the property, south and
17 north.

18 **Q. And specifically what did he tell you in
19 that regard?**

20 A. He told me the south property line fence
21 would line up with the power poles on the Ucon
22 Cemetery Road, and that the north property line
23 would be fifteen to sixteen feet north of the fence
24 line, that being my pasture fence.

25 **Q. Anything else he told you?**

1 out. We have four minutes left. So you can
2 question for four more minutes, if you'd like. It's
3 up to you.

4 If it's a great place for you to stop,
5 then stop here, or whatever. It doesn't matter.

6 MR. SEAMONS: I've got miles to go, but
7 do you want to stop here for the day?

8 THE WITNESS: Well, I'll have to change
9 oxygen bottles here in a few minutes, so it's
10 probably as good a place as any to stop.

11 MR. SEAMONS: Fair enough. Let's go
12 ahead --

13 MR. MANWARING: My observation is we
14 probably ought to just quit for the day. I can tell
15 when Leo's getting worn out even though he doesn't
16 want to admit when he's getting worn out.

17 MR. SEAMONS: Do you want to say
18 anything official to go off the record for the day?

19 THE VIDEOGRAPHER: You're going to
20 continue this, right?

21 MR. SEAMONS: Yes. We're going to
22 continue it.

23 THE VIDEOGRAPHER: We're not going to
24 conclude it at this point, so we'll just go off the
25 record, and that's what we'll do. Okay?

1 northeast quarter of Section 17?
 2 A. Well, he had the whole hundred sixty at
 3 one time.
 4 Q. Your father did?
 5 A. Yes.
 6 Q. When did your father get the entire one
 7 hundred sixty from your grandfather?
 8 A. I don't know. It was later after Marion
 9 Delbert starved out up to Poplar that grandpa split
 10 the farm and gave them the eighty acres that's on
 11 the south side.
 12 Q. When your father had the entire one
 13 hundred and sixty acres, was that in ownership, or
 14 was he simply operating it?
 15 A. He was buying it from granddad at the
 16 time. That's my understanding.
 17 Q. Where did you get that understanding?
 18 Who told you that?
 19 A. My dad.
 20 Q. Was there any kind of a purchase
 21 contract?
 22 A. I assume there was.
 23 Q. Did you ever see it?
 24 A. No.
 25 Q. Was the one hundred and sixty acres ever

1 answer.
 2 THE WITNESS: Okay.
 3 Q. (BY MR. SEAMONS:) When did your father
 4 begin calling the farm the seventy-four acre farm?
 5 A. He didn't. It was eighty acres.
 6 Q. Why did you call it the seventy-four
 7 acre farm?
 8 A. Because it has been reduced to that.
 9 Q. What happened to the other six acres?
 10 A. I live on one of them, and we lost the
 11 folks's home to some people my younger sister rented
 12 the home and yard area to.
 13 Q. That would be the Robbins family?
 14 A. Yes.
 15 Q. And your belief is that the acre around
 16 your home and the property around the Robbins home
 17 equals six acres?
 18 A. Could be. I don't know for sure.
 19 Q. But is that the reason you call it the
 20 seventy-four acre farm?
 21 A. Yes.
 22 Q. The eighty acres minus those two parcels
 23 only.
 24 A. Well, the seventy-five acres and because
 25 my brother and my sister each have twenty-five acres

1 deeded to your father?
 2 A. I don't know.
 3 Q. Do you know the year when your
 4 grandfather purchased the property?
 5 A. No, I don't.
 6 Q. Do you know the year when your father
 7 moved onto the property?
 8 A. No, I don't.
 9 Q. Do you know the year when your
 10 grandfather moved onto the property?
 11 A. No, I don't. I don't think my
 12 grandfather moved onto the property. I think he
 13 acquired it, or one of his predecessors.
 14 Q. Did your father ever move onto the
 15 property?
 16 A. Yes.
 17 Q. What year?
 18 A. I don't know.
 19 Q. In what year did your grandfather
 20 transfer half of the property --
 21 A. I don't know.
 22 Q. -- to Mary?
 23 A. -- that either.
 24 MR. MANWARING: Leo, make sure you wait
 25 until the question's completely asked and then

1 plus the acre that my house is sitting on.
 2 Q. Who is Phyllis Campbell?
 3 A. My mother.
 4 Q. When was she born?
 5 A. 1919, July.
 6 Q. Where was she born?
 7 A. Blackfoot.
 8 Q. Was she ever married to any person other
 9 than your father, Leo H. Campbell?
 10 A. I don't think so. None that I know
 11 of.
 12 Q. When did they get married?
 13 A. Don't know.
 14 Q. Do you know the year?
 15 A. Not for sure, no. It had been prior to
 16 1940.
 17 Q. Why do you say that?
 18 A. Because my brother was born in 1940.
 19 Q. And they together had the four
 20 children?
 21 A. Yes.
 22 Q. Did she have any siblings?
 23 A. Yes.
 24 Q. Are any of them still alive today?
 25 A. Yes.

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1 MR. MANWARING: If he's going to testify
 2 from it, we need to mark it.
 3 MR. SEAMONS: Okay. Mr. Campbell, can
 4 we continue?
 5 MR. MANWARING: Is he going to testify
 6 from this page?
 7 MR. SEAMONS: Let's take another
 8 break.
 9 MR. MANWARING: All right.
 10 THE VIDEOGRAPHER: Okay. We're off the
 11 record.
 12 (A brief recess was had.)
 13 MR. SEAMONS: Why don't you mark that,
 14 whatever you'd like to mark that.
 15 MR. MANWARING: We'll have the reporter
 16 mark this as a deposition exhibit. What are the
 17 numbers.
 18 THE VIDEOGRAPHER: Did you want this on
 19 the record or not.
 20 MR. SEAMONS: Yeah. That's fine. I do
 21 not want that marked with a number. You could mark
 22 that however you'd like, but not with a number.
 23 MR. MANWARING: A.
 24 THE VIDEOGRAPHER: So you're ready to go
 25 back on?

1 Q. Okay. Let's put a N at the top of the
 2 paper, then, for north.
 3 A. Okay.
 4 Q. All right. Please mark south.
 5 A. (Witness complying.)
 6 Q. Please mark east and west respectively.
 7 A. (Witness complying.)
 8 Q. Thank you. Along the northern boundary
 9 of Section 17, is there a road?
 10 A. Yes.
 11 Q. 113th North?
 12 A. I think it's 15th, 15th East.
 13 Q. Along the northern boundary is
 14 15th East?
 15 A. Along the northern boundaries.
 16 Q. Along the northern boundary of
 17 Section 17, is there a road?
 18 A. Yes.
 19 Q. Is that 113th North?
 20 A. I think so. I'm not aware of the
 21 numbers of those roads out there.
 22 Q. Okay. Along the eastern boundary of
 23 Section 17, is there a road?
 24 A. Yes.
 25 Q. Would that be 15th East or Ucon Road --

1 MR. SEAMONS: Yeah.
 2 THE VIDEOGRAPHER: We're now on the
 3 record.
 4 (Deposition Exhibit A was marked for
 5 identification.)
 6 Q. (BY MR. SEAMONS:) Mr. Campbell, how
 7 long have you purportedly lived in your house?
 8 A. Thirty years or so.
 9 Q. And how long did your father purportedly
 10 live on this property?
 11 A. Forty plus years, I assume. I think.
 12 Don't know for sure. Couldn't give you the
 13 numbers.
 14 Q. And do you hold yourself out as a person
 15 that knows this property and the directions that
 16 relate to it?
 17 A. Yes.
 18 Q. With reference, then, to what you have
 19 marked as the northeast quarter of Section 17, let's
 20 go back to Exhibit 4, and put the cardinal points on
 21 the document. Please mark north, south, east, and
 22 west on Exhibit 4 for me.
 23 A. Okay. Now, the schools I went to, the
 24 top of the piece of the paper was always north.
 25 That's what threw me off.

1 or St. Leon Road, pardon me?
 2 A. Yes.
 3 Q. All right. Would you please mark
 4 St. Leon Road?
 5 A. (Witness complying.)
 6 Q. And you don't know the number of the
 7 road on the northern boundary, but there is such a
 8 road?
 9 A. Yes. This was the Ucon Road.
 10 Q. Now, with reference to the northeast
 11 quarter, is there an exterior fence on the northern
 12 boundary of the northeast quarter of Section 17?
 13 A. That would be over here?
 14 Q. Yes. The northern boundary.
 15 A. No, there isn't. There's a partial
 16 fence.
 17 Q. Could you please mark the location of
 18 the partial fence.
 19 A. It would be about there.
 20 Q. On the western boundary of the northeast
 21 quarter, is there an exterior fence?
 22 A. Yes.
 23 Q. Could you please mark that on the map.
 24 A. (Witness complying.)
 25 Q. On the southern boundary of the

1 Q. The initial fence then enclosed all of
 2 the northeast quarter, correct?
 3 A. To my knowledge, yes.
 4 Q. And you would agree with me that that
 5 would protect the land --
 6 A. Yes.
 7 Q. -- enclosed within the fence?
 8 A. Yes.
 9 Q. And conversely, that fence would
 10 likewise protect the land from outside livestock
 11 roaming or drifting onto it, correct?
 12 A. Yes.
 13 Q. Or trespassers coming onto it?
 14 A. Yes.
 15 Q. And you would further agree that the
 16 fence was a substantial enclosure at the entire
 17 northeast quarter, correct?
 18 A. Yes.
 19 Q. With reference to the northern boundary
 20 where the fence is no longer up today, who took that
 21 fence down?
 22 A. I believe Mr. Kvamme did.
 23 Q. With reference to the eastern boundary
 24 of the property where there was no longer a fence
 25 today, who took that fence down?

1 Q. Okay.
 2 A. It's been taken down.
 3 Q. By Mr. Kvamme?
 4 A. Don't know.
 5 Q. Are you aware of any modifications to
 6 the exterior fence around the northeast quarter over
 7 the years?
 8 A. Yes.
 9 Q. What modifications have taken place to
 10 that exterior fence?
 11 A. I replaced posts on the old Killian
 12 homesite, around their corrals along the road. Hung
 13 new rails for my Aunt Mary.
 14 Q. Would that be the fence on the eastern
 15 boundary of the northeast quarter?
 16 A. That would be on the northern
 17 boundary.
 18 Q. On the northern boundary only?
 19 A. Yes.
 20 Q. And that is the section of fence that
 21 Mr. Kvamme has removed sometime since acquiring the
 22 property?
 23 A. No. That's part of the fence that's
 24 around the ground that Delbert kept for himself,
 25 around the old homestead, the house.

1 A. I believe it was Mr. Kvamme and his
 2 hired man.
 3 Q. With reference to the northern boundary,
 4 when did Mr. Kvamme allegedly take that fence
 5 down?
 6 A. It would have been three, four years
 7 ago, after he acquired the property.
 8 Q. With reference to the eastern boundary
 9 of the northeast quarter, when did Mr. Kvamme
 10 allegedly take that fence down?
 11 A. About the same time.
 12 Q. And your testimony is that he took the
 13 eastern fence down all the way along the eastern
 14 boundary?
 15 A. Of my property and my brother and
 16 sister's, yes.
 17 Q. From the northeast corner clear to the
 18 southeast corner?
 19 A. From the corner of my property to the
 20 corner of my brother's property, that fence was
 21 taken down.
 22 Q. And further south than that, does the
 23 fence still exist, or has it been taken down, too?
 24 A. I don't think there's a fence over
 25 there.

1 Q. That would be the house in the northeast
 2 corner?
 3 A. Yes.
 4 Q. And you have marked a small box in the
 5 northeast corner of the northeast quarter.
 6 Is that the section of fence to which
 7 you're referring?
 8 A. Yes.
 9 Q. And that's the only section where you've
 10 performed repairs or made modifications?
 11 A. On that fence, yes.
 12 Q. Are there any other exterior fences
 13 where you have performed repairs or modifications on
 14 the northeast quarter?
 15 A. No.
 16 Q. Do you know of any other person who has
 17 made repairs or modifications on the exterior fence
 18 of the northeast quarter?
 19 A. Are we talking just about this fence or
 20 the entire.
 21 Q. Any of the exterior fences.
 22 A. Okay. Yeah. I worked on this fence
 23 over here.
 24 Q. Would that be the fence on the southern
 25 boundary of the northeast quarter?

1 THE VIDEOGRAPHER: We're now off the
 2 record.
 3 (Discussion off the record.)
 4 THE VIDEOGRAPHER: We're now on the
 5 record.
 6 (Deposition Exhibit 6 was marked for
 7 identification.)
 8 Q. (BY MR. SEAMONS:) Mr. Campbell, I've
 9 handed you an exhibit, Exhibit Number 6. Let me
 10 have you review that for a moment and tell me when
 11 you're ready to answer a few questions.
 12 A. Okay.
 13 Q. This document is a warranty deed,
 14 correct?
 15 A. It appears to be, yes.
 16 Q. The opening phrase of this warranty deed
 17 is that it was made on March the 12th of 1937
 18 between Hannah Davis and Charlotte Campbell; is that
 19 correct?
 20 A. Yes.
 21 Q. Who is Hannah Davis?
 22 A. That would be my dad's grandmother, I
 23 believe.
 24 Q. And Charlotte Campbell, then, would be
 25 your father's --

1 identification.)
 2 Q. (BY MR. SEAMONS:) Let me next hand you
 3 a copy of Exhibit 7.
 4 Are you ready?
 5 A. Yes.
 6 Q. Exhibit 7, again, is a document entitled
 7 warranty deed, correct?
 8 A. Yes.
 9 Q. It appears to have been made on
 10 March 24th of 1950.
 11 A. Yes.
 12 Q. Is this the deed from Charlotte Campbell
 13 to your parents, Leo H. Campbell and Phyllis B.
 14 Campbell?
 15 A. It appears to be, yes.
 16 Q. To what property does this deed pertain?
 17 In other words, what ground is being transferred to
 18 your parents?
 19 A. Well, I didn't bring my reading glasses,
 20 and my eyes don't move as fast as my hands.
 21 Q. That's okay. On page 1 it seems to
 22 indicate this was the transfer of the south half of
 23 the northeast quarter to your parents; is that
 24 correct?
 25 A. Yes.

1 A. Mother.
 2 Q. -- mother, correct?
 3 A. Yes.
 4 Q. Your grandmother.
 5 A. Yes.
 6 Q. The language indicates that Hannah Davis
 7 at that point in time was a widow.
 8 A. Yes.
 9 Q. Was Charlotte Campbell a widow at that
 10 point in time, that is 1937?
 11 A. No, I don't think so.
 12 Q. You do know that your grandfather passed
 13 away before you were born in 1946, but you don't
 14 know --
 15 A. No.
 16 Q. -- exactly when?
 17 A. No.
 18 Q. Okay. Do you know why Hannah only
 19 conveyed the property to Charlotte and not to
 20 Charlotte and Hyrum both?
 21 A. I don't.
 22 Q. Is this the deed to the northeast
 23 quarter of Section 17?
 24 A. It appears to be, yes.
 25 (Deposition Exhibit 7 was marked for

1 Q. On page 2 of this exhibit, if you turn
 2 it sideways, it shows that this document was
 3 recorded on January 30th of 1962, twelve years
 4 later.
 5 A. Okay.
 6 Q. Do you know who had this deed for that
 7 twelve-year period of time?
 8 A. Possibly my grandmother.
 9 Q. Do you know when she delivered the deed
 10 to your father and your mother?
 11 A. No, I don't.
 12 Q. Where does your grandmother live, that
 13 is Charlotte, between 1950 and 1962?
 14 A. In Rigby.
 15 Q. Did she live on this property?
 16 A. No.
 17 Q. Where did your father and mother live
 18 between 1950 and 1962?
 19 A. On this property.
 20 Q. In the Robbins' home?
 21 A. No. In the Campbell home. It became
 22 the Robbins.
 23 Q. Right. Today it's called the Robbins
 24 home, but that is the homesite which they lived from
 25 1950 to 1962?

1 A. Yes.
 2 Q. Do you know when they moved into that
 3 home?
 4 A. No, I don't.
 5 Q. Did they ever move out of that home?
 6 A. No.
 7 Q. What did your father do for a living?
 8 A. Farmed. Did custom farm work and worked
 9 at the county, grader operator and a welder in the
 10 shop, so he moved into the shop.
 11 Also ran the gravel crusher up on Eagle
 12 Creek when they were improving the roads in the Bohn
 13 area.
 14 Q. Between 1950 and 1962, what did your
 15 father do for a living?
 16 A. Farmed, custom farm work, worked in the
 17 sugar factory in the winters.
 18 Q. Did he farm the south half of the
 19 northeast quarter of Section 17?
 20 A. Yes.
 21 Q. Did he farm the north half of the
 22 northeast quarter of Section 17?
 23 A. No. If you're talking about the Killian
 24 place, no.
 25 Q. You earlier testified that your father

1 Q. Did he farm the northeast quarter, to
 2 your knowledge?
 3 A. I'm sure he did a lot of work out there,
 4 but his -- you know, I guess you could call it
 5 farming.
 6 Q. Did he cultivate the northeast quarter
 7 of Section 17?
 8 A. In pieces, yes.
 9 Q. Did he raise cattle and pasture
 10 cattle --
 11 A. Yes.
 12 Q. -- on the northeast quarter of
 13 Section 17?
 14 A. And horses.
 15 Q. And horses also?
 16 A. Yes. This is -- probably needs an
 17 explanation, but it's quite lengthy.
 18 Q. You say that Mary and Delbert starved
 19 out up at Poplar.
 20 What did you mean by that?
 21 A. They went broke, dry farming.
 22 Q. What year was that?
 23 A. I don't know.
 24 Q. I take it from your answer, though, that
 25 at some point they began farming part of the

1 was going to buy the entire one hundred sixty acres,
 2 that is the northeast quarter of Section 17,
 3 correct?
 4 A. Yes.
 5 Q. When was he going to make that
 6 purchase?
 7 A. Well, I think it was his understanding
 8 that it was his to buy when they got all that the
 9 legalese knocked out between him and his folks. But
 10 in the interim, Delbert and Mary starved out of
 11 Poplar and needed a place to live.
 12 Q. Did Hyrum and Charlotte ever live in the
 13 Robbins home?
 14 A. No.
 15 Q. Did they ever live anywhere on the
 16 northeast quarter --
 17 A. No.
 18 Q. -- of Section 17?
 19 Between 1937 and 1950, who was using the
 20 northeast quarter of Section 17?
 21 A. I imagine my folks and the Killians. My
 22 granddad, possibly.
 23 Q. What did Hyrum do for a living? Did he
 24 farm?
 25 A. He was a farmer.

1 northeast quarter?
 2 A. Yes.
 3 Q. That would be the north half of the
 4 northeast quarter.
 5 A. Yes.
 6 Q. The half that your father never
 7 farmed?
 8 A. You said that.
 9 Q. I thought I asked if your father --
 10 A. My dad farmed it.
 11 Q. Your father did farm the --
 12 A. My grandfather farmed it. It was my
 13 dad's understanding he was going to get the entire
 14 hundred and sixty.
 15 Q. Okay.
 16 A. Then Delbert and Mary starved out.
 17 Granddad said: Well, we'll just cut it up because
 18 there's a couple houses on that property. They can
 19 live in one, and you can live where you're at.
 20 Q. All right. To be clear, then, your
 21 grandfather, Hyrum Campbell, did cultivate the
 22 northeast quarter in its entirety of Section 17 --
 23 A. Yes.
 24 Q. -- true?
 25 A. Yes.

1 Q. And grazed cattle and horses --
 2 A. Yes.
 3 Q. -- on the northeast quarter.
 4 Your father, however, only cultivated
 5 and farmed the south half of the northeast
 6 quarter.
 7 A. No. While my dad was on that property,
 8 he run the whole hundred and sixty. His
 9 understanding was that he was getting the entire
 10 hundred sixty.
 11 Q. But you don't recall the year that he
 12 went onto the property?
 13 A. No, I wasn't around.
 14 Q. Sometime before 1946?
 15 A. Yes.
 16 Q. And sometime after 1937?
 17 A. Yes. As far as Hannah owning it, I'm
 18 pretty sure that was part of the collective brothers
 19 and sisters thing that was going on between my
 20 granddad and his siblings. It was a family farm, it
 21 took the whole family to run it.
 22 Q. And you don't recall the year that Mary
 23 and Delbert began farming the north half of the
 24 northeast quarter?
 25 A. No. They were always over on the corner

1 to 1968?
 2 A. No, I don't. I would assume my
 3 grandmother.
 4 Q. Do you know when she delivered it to
 5 Delbert and Mary Killian?
 6 A. No, I don't.
 7 Q. Between 1950 and 1968, where did Delbert
 8 and Mary Killian live?
 9 A. On the property.
 10 Q. On the north half of the northeast
 11 quarter?
 12 A. Yes.
 13 Q. Would that be in the home that you
 14 earlier marked in the northeast corner of that
 15 property?
 16 A. Yes. It's about the time that Delbert
 17 died, '67 or '8.
 18 Q. Perhaps 1969?
 19 A. Could have been. I wasn't around then.
 20 I was in the military.
 21 (Deposition Exhibit 9 was marked for
 22 identification.)
 23 Q. (BY MR. SEAMONS:) Let's now move to
 24 Exhibit 9, which you've previously had a chance to
 25 review. Exhibit 9 is the warranty deed from your

1 all of my life, and I don't know anything about
 2 it.
 3 (Deposition Exhibit 8 was marked for
 4 identification.)
 5 Q. (BY MR. SEAMONS:) Let me hand you
 6 Exhibit 8.
 7 Are you ready, Mr. Campbell?
 8 A. Yes.
 9 Q. Exhibit 8 is another deed entitled
 10 warranty deed, again from your grandmother,
 11 Charlotte Campbell, this time to Delbert H. Killian
 12 and Mary Killian; is that correct?
 13 A. Yes.
 14 Q. It bears the date of April 10, 1950; is
 15 that correct?
 16 A. Yes.
 17 Q. And with reference to the description of
 18 the property, this is the north half of the
 19 northeast quarter of Section 17, correct?
 20 A. Yes.
 21 Q. On page 2, this document appears to have
 22 been recorded, not appears. This document was
 23 recorded on January 9th of 1968, correct?
 24 A. Yes.
 25 Q. Do you know who had this deed from 1950

1 parents, Leo H. Campbell and Phyllis Campbell, to
 2 you and your wife, Kathy; is that correct?
 3 A. Yes.
 4 Q. And this deed is only for a parcel of
 5 ground in Section 17 measuring two hundred eight by
 6 two hundred thirty-eight feet; is that correct?
 7 A. Yes.
 8 Q. Do you know how many square feet that
 9 equals?
 10 A. No.
 11 Q. Do you know if that is approximately
 12 1.13 to 1.14 acres?
 13 A. Yes.
 14 Q. Is that accurate?
 15 A. Yes.
 16 Q. Did you request or otherwise receive a
 17 survey to confirm the two hundred eight by two
 18 hundred thirty-eight feet granted to you in this
 19 deed?
 20 A. I believe my dad had the survey done.
 21 Q. Well, whether he did or didn't, did you
 22 request a survey --
 23 A. No.
 24 Q. -- to confirm the two hundred eight by
 25 two hundred thirty-eight feet?

1 A. No, I didn't. I don't think. I don't
 2 remember. It's been a long time ago.
 3 Q. And, again, with reference to the
 4 possible survey your father requested, you haven't
 5 seen it and have no personal knowledge of it?
 6 A. No.
 7 Q. That is one of those surveys that we
 8 concluded was speculative.
 9 A. Yes.
 10 Q. The description of the property says:
 11 Beginning at the northeast corner of the south half
 12 of the northeast quarter.
 13 Did you request a survey to confirm that
 14 location, that is the northeast corner of the south
 15 half of the northeast quarter?
 16 A. No. Again, I assumed my father did
 17 that. I don't think I did it.
 18 Q. When did you build a house on this piece
 19 of property?
 20 A. I didn't. I moved the house onto it.
 21 Q. What year was that?
 22 A. 1980.
 23 Q. The date of this deed is May 28th,
 24 1981?
 25 A. Okay. I misspoke. It would have been

1 Q. And at that time the address of the
 2 homesite you moved onto, your one-acre parcel, was
 3 10909 North 15th East; is that correct?
 4 A. Yes.
 5 Q. Why did your parents only grant this
 6 property or this deed of gift to you and not to you
 7 and Kathy both?
 8 A. 1989? I don't know. Well, that's the
 9 way my dad did business. Family discussions were,
 10 in Scott's clan tradition, the men only attend.
 11 Girls go outside and pull weeds in the garden,
 12 something like that. Dad was very old school and
 13 adamant about that.
 14 Q. Your father, likewise, gave a deed of
 15 gift to Jo --
 16 A. Uh-huh.
 17 Q. -- one to Margie --
 18 A. Yes.
 19 Q. -- and one to Helene.
 20 A. Yes.
 21 Q. Am I pronouncing Helene's name,
 22 correct?
 23 A. Yes.
 24 Q. With reference to the amount of property
 25 being transferred to you, earlier today you

1 '81.
 2 Q. So earlier today when you testified that
 3 you moved onto your property in 1979, that, too,
 4 would have been a mistake?
 5 A. Yes.
 6 Q. You moved onto the property -- moved a
 7 house onto the property and began residing there in
 8 1981?
 9 A. Yes.
 10 Q. Ready, Mr. Campbell?
 11 A. Yes.
 12 (Deposition Exhibit 10 was marked for
 13 identification.)
 14 Q. (BY MR. SEAMONS:) The next exhibit is
 15 Exhibit 10, which is another deed, this time
 16 entitled deed of gift; is that correct?
 17 A. Yes.
 18 Q. This is a deed from your parents to you
 19 in 1989; is that correct?
 20 A. Yes.
 21 Q. In 1989, the street address of the house
 22 where your parents lived, the Robbins house, was
 23 one -- well, 10519 North 15th East; is that
 24 correct?
 25 A. Yes.

1 indicated that was twenty-five acres.
 2 A. Yes.
 3 Q. That's not correct, is it?
 4 A. Yes.
 5 Q. In the legal description on page 1, it
 6 indicates that the parcel being transferred to you
 7 contains 20.48 acres.
 8 A. Yes.
 9 Q. Is that accurate?
 10 A. Yes.
 11 Q. And goes on to state that this, quote,
 12 includes 1.14 acres heretofore deeded to donee in
 13 the northeast corner and in which the donee has
 14 constructed substantial improvements prior hereto;
 15 is that correct?
 16 A. Yes.
 17 Q. As of 1989, your ownership of record,
 18 based on this document, was 20.48 acres total,
 19 correct?
 20 A. Yes.
 21 Q. Have you ever added the acreage deeded
 22 to you with that deeded to Jo, Margie, and Helene?
 23 A. Just Helene.
 24 Q. You do not know, then, whether it is
 25 more or less than eighty acres, do you?

1 finished?
 2 A. I said they were all with K's.
 3 Q. At the time you constructed this fence
 4 in approximately 1995 to 1996, why did you construct
 5 it where it is?
 6 A. Convenience.
 7 Q. And by "convenience," what in particular
 8 was convenient about that location?
 9 A. Access to the corrals, the house and
 10 yard. I didn't put the corral fences or any of that
 11 in.
 12 Q. I understand from that answer that you
 13 may have some additional interior fences on your
 14 property --
 15 A. Yes.
 16 Q. -- that pertain to corrals and other
 17 horse-keeping areas.
 18 A. Yes.
 19 Q. Okay. With the exception of the two
 20 fences that you've drawn that run east to west
 21 across the northeast quarter, are there any other
 22 interior fences that used to be there that have
 23 since been taken out and renewed?
 24 A. There is lots of fences used to be
 25 there.

1 northeast quarter between your property and
 2 Mr. Kvamme's property.
 3 Am I incorrect in that understanding?
 4 A. Yes, sir, you are. The fence runs
 5 fifteen, sixteen feet inside the surveyed property
 6 line.
 7 Q. Okay. Now, I understand that's your
 8 allegation in this case, but this is the fence
 9 that's in dispute in this case; is that correct?
 10 A. Yes.
 11 Q. All right. So when you and I talked
 12 about this fence, I understand your allegation is
 13 that it's in the wrong location, but this is the
 14 fence that's the dispute in this case, correct?
 15 A. No, sir.
 16 Q. No?
 17 MR. MANWARING: I'm going to make an
 18 objection as to the form, but you can answer.
 19 Q. (BY MR. SEAMONS:) Okay. Is there a
 20 fence in this case that's in dispute as to its
 21 location?
 22 A. No, sir. There's a pump in this case
 23 that is in dispute.
 24 Q. What pump is in dispute in this case?
 25 A. Mr. Kvamme's ditch pump.

1 Q. Give me an approximate number of
 2 interior fences that have been on the northeast
 3 quarter over the years.
 4 A. Six to ten in the last -- how many
 5 years?
 6 Q. Well, we picked up our chain of title
 7 yesterday in 1937.
 8 A. Well, there's been a bunch of fences in
 9 there.
 10 Q. Okay. With reference to the fence, the
 11 interior fence furthest to the north that you have
 12 drawn, what is that fence, and what does it
 13 demarcate?
 14 A. Pasture.
 15 Q. Is this the fence that is the one
 16 furthest to the north that you have drawn that
 17 separates your property from Mr. Kvamme's property
 18 in the northeast quarter?
 19 A. No. There isn't a fence that separates
 20 our property.
 21 Q. There is no fence between your
 22 properties?
 23 A. No, sir.
 24 Q. My understanding of this case is that
 25 there is a fence that runs east and west across the

1 Q. And what's in dispute about his ditch
 2 pump?
 3 A. It's on my deeded property.
 4 Q. Well, I understand that's your
 5 allegation, but, again, the court's going to have to
 6 determine whether that's your property. You claim
 7 that it is, but the point is when we talk about this
 8 fence, the one that you demarcated furthest to the
 9 north and running east and west across the property,
 10 that's the fence in dispute, and you claim the
 11 underlying property is your property, correct?
 12 A. Yes.
 13 Q. All right. Describe this fence for me.
 14 A. Barb wire and posts.
 15 Q. How many lines of barb wire?
 16 A. Three to five, six in some places.
 17 Q. So it's a three to five or six strand
 18 barb wire fence.
 19 A. Yes. With at one time electrical wire
 20 strung on it as well.
 21 Q. When was the electrical wire on this
 22 fence, the approximate year?
 23 A. '95-ish. I think there was some on
 24 there before then, but I couldn't tell you what year
 25 it was. It had been probably the sixties, early

1 sixties.
 2 Q. And what type of post was utilized for
 3 this fence?
 4 A. Wood posts and steel T posts.
 5 Q. We talked yesterday about the exterior
 6 fences and this property in general, the northeast
 7 quarter. The interior fence that we're currently
 8 discussing that runs east and west across the
 9 property, does that run from -- does it run all the
 10 way across the northeast quarter?
 11 A. No.
 12 Q. Where does it begin, and where does it
 13 end?
 14 A. Well, within fifty feet of the canal at
 15 the west end, and fifty to a hundred feet on the
 16 east end.
 17 Q. Let's go first with the west end. As
 18 that fence that we're discussing runs east and west
 19 across the property to the west end of the property,
 20 does it connect with the exterior fence on the west
 21 boundary of the property?
 22 A. No.
 23 Q. Does it connect with anything?
 24 A. No. I didn't put this in down here at
 25 the west end on my pasture fence.

1 Q. All right.
 2 A. Part way.
 3 Q. Correct. Because yesterday you
 4 explained that Mr. Kvamme, in connection with his
 5 use of the property, has removed part of the eastern
 6 fence.
 7 A. Yes.
 8 Q. All right. Whether we're talking about
 9 Mr. Kvamme's property in the north half or your
 10 property in the south half of the northeast quarter,
 11 in both instances again, this is not open range, is
 12 it?
 13 A. No.
 14 Q. And whether you're standing on
 15 Mr. Kvamme's property or standing on your property,
 16 that fence running east to west across the property
 17 encloses property, does it not?
 18 A. Yes, it does.
 19 Q. In fact, it encloses his property to the
 20 north and your property to the south.
 21 A. That's arguable.
 22 Q. Why do you say it's arguable?
 23 A. It's a convenience fence. It was
 24 erected as a convenience fence.
 25 Q. Okay. I understand that's your

1 Q. There is no fence on the west boundary,
 2 then, to which that fence can exit?
 3 A. There is. It's the pasture fence on the
 4 west end.
 5 Q. All right. So there is a fence on the
 6 west boundary --
 7 A. No.
 8 Q. -- which --
 9 A. There is a fence on the west end. The
 10 boundary is on the other side of the canal.
 11 Q. Okay.
 12 A. There's an official easement for the
 13 canal company --
 14 Q. All right.
 15 A. -- through there.
 16 Q. So there is a fence on the west end of
 17 the property to which this fence running east and
 18 west across the property connects.
 19 A. Yes.
 20 Q. All right. On the east end of the
 21 property, does it connect to a fence?
 22 A. It does.
 23 Q. All right. And that is the fence that
 24 runs along the eastern end of the property?
 25 A. Yes.

1 allegation, but the fact of the matter is it
 2 encloses his property and your property, his on the
 3 north, yours on the south, correct?
 4 MR. MANWARING: Do you understand what
 5 he's asking?
 6 THE WITNESS: Yeah. I think he's asking
 7 me to admit that that's Mr. Kvamme's property to the
 8 north of the fence and mine to the south.
 9 Q. (BY MR. SEAMONS:) I'm not asking you to
 10 admit whose property it is. I'm simply asking if
 11 it's true that the fence encloses property, his on
 12 the north and yours on the south, and that fence
 13 acts as an enclosure going both directions, does it
 14 not?
 15 A. No, it doesn't. There aren't any fences
 16 on the north side. It doesn't enclose anything. It
 17 encloses my pasture.
 18 Q. Right. Yesterday you testified that
 19 Mr. Kvamme has removed the fence on the northern end
 20 of the property --
 21 A. Uh-huh.
 22 Q. -- but with reference to the fence that
 23 we're discussing, and that is the fence you've
 24 marked as an interior fence running east to west
 25 across the property, that encloses the property, 092

1 why they built the fence, and I know that this is
 2 going to be a fertile ground for disagreement.
 3 A. Okay.
 4 Q. But I want to go through some
 5 preliminary questions where there may not be
 6 disagreement, but I'll find out.
 7 A. Okay.
 8 Q. And I want to get to the nuts and bolts
 9 of who, when, and why. But from a preliminary
 10 standpoint let me ask a few questions.
 11 Irrespective of the fences that we've
 12 been discussing, of your own personal knowledge, do
 13 you know the boundary, the line of separation, the
 14 boundary between the north half of the northeast
 15 quarter and the south half of the northeast quarter
 16 of Section 17?
 17 A. Yes.
 18 Q. How do you know that?
 19 A. Survey.
 20 Q. Okay. So, again, with reference to your
 21 personal knowledge, what I understand from your
 22 answer is you had a survey done at 2009 by Mr. Kevin
 23 Thompson, correct?
 24 A. Yes, sir.
 25 Q. And your allegation is that survey shows

1 that runs east and west across the property, does
 2 not mark the boundary, correct?
 3 A. Correct.
 4 Q. That's your allegation. That it does
 5 not fix the boundary?
 6 A. No.
 7 Q. And your contention is the true and
 8 correct boundary is somewhere north of that fence?
 9 A. Correct.
 10 Q. The basis or evidence that you would
 11 tender to me to support your allegation, would be
 12 the survey from Mr. Kevin Thompson, correct?
 13 A. Correct.
 14 Q. And with the exception of that survey,
 15 you have no other evidence of the boundary between
 16 the north half and the south half of the northeast
 17 quarter of Section 17, do you?
 18 MR. MANWARING: Object to the form. You
 19 can go ahead and answer.
 20 THE WITNESS: There's the survey done
 21 when I first occupied the land. There was the
 22 survey done before that when my dad occupied the
 23 land.
 24 Q. (BY MR. SEAMONS:) Yesterday we talked
 25 about those surveys as having been a possibility,

1 a boundary and a fence, correct?
 2 A. Correct.
 3 Q. All right. That's not your knowledge.
 4 Mr. Kevin Thompson did that survey. I'm talking
 5 about your personal knowledge.
 6 Of your own personal knowledge, do you
 7 know the boundary, the actual boundary, the true and
 8 correct boundary, between the north half of the
 9 northeast quarter and the south half of the
 10 southeast quarter of Section 17?
 11 A. Not the exact, no.
 12 Q. And when you say not the exact boundary,
 13 no, by that you would also agree that you're
 14 uncertain as to the true and correct boundary
 15 between the north half and the south half of the
 16 northeast quarter of Section 17?
 17 A. I agree. I would be uncertain, as would
 18 everybody else.
 19 Q. Now, notwithstanding the fact that you
 20 are uncertain about that boundary, your contention
 21 in this case is that the boundary is in dispute,
 22 correct?
 23 A. Correct.
 24 Q. And your claim is the fence that we have
 25 been discussing, the northernmost interior fence

1 but my understanding of your testimony was, of your
 2 own personal knowledge, whether your father did or
 3 did not ever get such a survey was speculative,
 4 correct?
 5 A. Correct.
 6 Q. And with reference to the one that you
 7 may have gotten in 1981, that, too, is speculative.
 8 You can't even remember, correct?
 9 A. It has been a few days, yes, but I don't
 10 think my mortgage holder would have loaned on it had
 11 it have been speculative.
 12 Q. But whether they would or would not have
 13 loaned on it, that too is speculative. You're not
 14 the mortgage guy, are you?
 15 A. No, I'm not the mortgage guy.
 16 Q. All right. So, really, Mr. Campbell,
 17 when you boil this thing down, and we'll get to the
 18 who, why, and when in just a moment, but when you
 19 boil this case down to some simple propositions,
 20 with exception to the survey by Mr. Kevin Thompson,
 21 you have no other evidence that the fence does not
 22 mark the boundary, do you?
 23 MR. MANWARING: Object as to form. Go
 24 ahead and answer.
 25 THE WITNESS: Well, in that light, I

1 suppose not.
 2 Q. (BY MR. SEAMONS:) And you have no other
 3 evidence that the fence does not fix the boundary,
 4 do you?
 5 MR. MANWARING: Object to form. You can
 6 answer.
 7 THE WITNESS: I think we need to go off
 8 the record.
 9 MR. MANWARING: Okay.
 10 MR. SEAMONS: I'd like to have that
 11 question answered before we go off the record. That
 12 was a fair question.
 13 THE WITNESS: And it was, if you
 14 wouldn't mind repeating.
 15 Q. (BY MR. SEAMONS:) Yeah. And my
 16 question was, with the exception of the survey, you
 17 have no other evidence that the fence does not fix
 18 the boundary, correct?
 19 A. Correct.
 20 MR. MANWARING: Object as to form. You
 21 can still answer.
 22 THE WITNESS: I answered correct.
 23 Q. (BY MR. SEAMONS:) Okay. Let's go ahead
 24 and take a break, and we'll come back with who,
 25 when, and why.

1 THE VIDEOGRAPHER: We'll now go off the
 2 record.
 3 (Discussion off the record.)
 4 THE VIDEOGRAPHER: We are now on the
 5 record.
 6 Q. (BY MR. SEAMONS:) Thank you.
 7 During the discovery process in this
 8 case, Mr. Campbell, we served an interrogatory on
 9 you, Interrogatory Number 14, to be specific, that
 10 asked who built the fence. And your answer to that
 11 was you believed Hyrum Campbell built the fence.
 12 And so now I want to go into the next
 13 section here and that is who built it, when they
 14 built it, and why they built it. We'll start with
 15 who.
 16 In light of the fact that your
 17 grandfather passed away, Hyrum, passed away before
 18 you were born in 1946, why do you believe that he
 19 was the one that built this fence?
 20 A. I don't think he was the one that built
 21 it. The fence, to my knowledge, was there when the
 22 property was first purchased.
 23 Q. And by first purchased, you mean in
 24 1937?
 25 A. 1937.

1 Q. By Charlotte?
 2 A. No. That would have been Hannah.
 3 Q. Hannah granted the property to Charlotte
 4 in 1937?
 5 A. Well, I believe the fence was there
 6 before the Davises brought the property.
 7 Q. Okay. Do you know in what year Hannah
 8 and her husband bought the property?
 9 A. No, I don't.
 10 Q. Why do you believe the fence was there
 11 even as early as that date?
 12 A. It was the property itself that my
 13 grandfather and great grandfather and the Davises
 14 were all interested in because of the diversity of
 15 soils on that hundred and sixty acres.
 16 Most of the farming in the area was done
 17 by horse drawn implement, and that's what made that
 18 property so attractive to them because of the
 19 diversity of soils across the property.
 20 Q. Okay. So with reference, then, to your
 21 answer to Interrogatory Number 14 that you believe
 22 Hyrum Campbell constructed the fence, your testimony
 23 today would be you have no personal knowledge that's
 24 accurate, and it may have been, in fact, long before
 25 him?

1 A. Exactly.
 2 Q. In simple terms, you don't know who
 3 constructed that fence, do you?
 4 A. No, I don't.
 5 Q. And a word we've used now several times
 6 would be speculative and that is whether it was
 7 Hyrum or some person before him, long before him
 8 would be raw speculation at this point?
 9 A. Yes.
 10 Q. In Interrogatory Number 15, we asked
 11 when the fence was constructed, no matter who did
 12 it, when it was constructed. Your answer there was
 13 you didn't know.
 14 A. No.
 15 Q. And I take it you mean that at face
 16 value that you simply don't know when that fence was
 17 constructed?
 18 A. I don't.
 19 Q. And you have no personal knowledge of
 20 it, and everything in that regard would be, again,
 21 just raw speculation.
 22 A. Yup.
 23 Q. That, in turn, would mean that of your
 24 knowledge, whoever constructed the fence and
 25 whenever they constructed it, may or may not have

1 known the boundaries of the northeast quarter,
 2 true?
 3 A. I don't think that was a concern. They
 4 owned the entire hundred and sixty acres. What
 5 difference would it make where they put a fence if
 6 they owned it.
 7 Q. Well -- but if we don't know who
 8 constructed it and when they constructed it, you
 9 obviously don't know if they knew where the
 10 boundaries were for the northeast quarter, do you?
 11 A. No.
 12 Q. That, again, would be speculation.
 13 A. Exactly.
 14 Q. And we could even take that down one
 15 level and say that you don't know if they knew where
 16 the north half was located or where the south half
 17 was located of the northeast quarter, do you?
 18 A. No.
 19 Q. Again, that would be conjecture and
 20 speculation.
 21 A. Uh-huh.
 22 Q. Thus, as far as you know of your own
 23 personal knowledge, whoever built the fence and
 24 whenever they built the fence, may have been
 25 uncertain of the boundary between the north half and

1 the south half of the northeast quarter, right?
 2 MR. MANWARING: Objection as to form.
 3 Go ahead and answer.
 4 THE WITNESS: I don't think that was
 5 ever their concern.
 6 Q. (BY MR. SEAMONS:) But, again, based on
 7 your personal knowledge, you don't know.
 8 A. On my personal knowledge, I don't know.
 9 I, on my own personal knowledge, don't see why they
 10 would put a fence there except for a convenience
 11 fence.
 12 Q. That would be your speculation, but as
 13 to what they knew, you don't know if they knew the
 14 actual boundary between the north half and the south
 15 half of the northeast quarter, do you?
 16 MR. MANWARING: Objection to form. Go
 17 ahead and answer.
 18 THE WITNESS: No, I don't. I can't
 19 speak for those people.
 20 Q. (BY MR. SEAMONS:) So as far as you know
 21 that person, whoever it was and whenever it was, may
 22 have been uncertain about the boundary?
 23 A. Again, I don't think it matters to them.
 24 They owned the whole hundred sixty. What's the
 25 point other than putting a convenience fence in?

1 Q. I understand that's your allegation that
 2 the fence is a convenience fence, but the point is
 3 they may have been uncertain about the boundary, and
 4 you just don't know, do you?
 5 MR. MANWARING: Objection as to the form
 6 of the question.
 7 THE WITNESS: I don't think they
 8 cared.
 9 MR. SEAMONS: Just answer my question.
 10 MR. MANWARING: Same objection.
 11 THE WITNESS: You're asking me to make
 12 an assumption for people who aren't even alive
 13 anymore.
 14 Q. (BY MR. SEAMONS:) But based on your
 15 personal knowledge, they may have been uncertain
 16 about the boundary; isn't that true?
 17 MR. MANWARING: Object as to form.
 18 THE WITNESS: When I put the fence down
 19 the south side of my pasture, I did that for my
 20 convenience.
 21 Q. (BY MR. SEAMONS:) I understand,
 22 Mr. Campbell. But this fence --
 23 A. Okay. When that fence was put in, I'm
 24 sure it was a fence of convenience because the
 25 individuals who owned the property owned both sides

1 on either side of the fence. It really didn't
 2 matter where it went in except as a convenience to
 3 them.
 4 Q. I understand that's your argument, but
 5 we've already established you don't know who built
 6 the fence or when they built the fence and therefore
 7 you don't know if they were certain about the
 8 boundary, do you?
 9 MR. MANWARING: Objection as to form.
 10 You can answer. I think it's been asked and
 11 answered as well, but you can --
 12 MR. SEAMONS: He's trying hard not to
 13 answer it, but it's a pretty straightforward
 14 question.
 15 You don't know, do you?
 16 MR. MANWARING: It's an objectionable
 17 question. Go ahead and answer.
 18 THE WITNESS: I don't know, but I don't
 19 see what would matter to them. If they own the
 20 entire piece, who cares where the fence goes as long
 21 as it's convenient for you and what you desire in
 22 your fence.
 23 Q. (BY MR. SEAMONS:) And conversely, then,
 24 since you don't know if they knew and were certain
 25 about the boundary, for all you know, based on your

1 own personal knowledge, that fence may have fixed
2 the boundary, true?

3 MR. MANWARING: Objection.

4 THE WITNESS: No, I don't agree to that
5 at all. My dad told me when I was ten, twelve years
6 old that that fence wasn't the boundary.

7 Q. (BY MR. SEAMONS:) Well, I understand
8 that's your allegation --

9 A. Okay.

10 Q. -- and we'll come back and talk about
11 those conversations later.

12 A. Okay.

13 Q. But of your own personal knowledge as
14 far as you know, that fence, at the time the person
15 built it, whenever it was and whoever it was, may
16 have fixed the boundary of the south half and the
17 north half of the northeast quarter, right?

18 MR. MANWARING: Object as to form. You
19 can try to answer that.

20 THE WITNESS: I don't really think so.

21 Q. (BY MR. SEAMONS:) I know you may not
22 think so, but based on your own personal knowledge,
23 that's a possibility, isn't it?

24 MR. MANWARING: Object as to form. I
25 think it's asked and answered.

1 that constructed it, you don't know why they put
2 that fence in the location where it stands to this
3 day, do you?

4 A. No, I don't.

5 MR. MANWARING: Objection as to form.
6 You can answer.

7 Q. (BY MR. SEAMONS:) You would agree with
8 me that that fence has been there for a long period
9 of time.

10 A. Correct.

11 Q. I'm going to give you a chance now to
12 give me your bit of speculation.

13 Why do you think that person, whoever it
14 was and whenever it was, would construct that fence
15 in the wrong spot?

16 MR. MANWARING: Objection as to form.
17 Assumes facts not in evidence.

18 THE WITNESS: I don't know that it's a
19 wrong spot. For that person who constructed that
20 fence, it might have been the correct spot.

21 Q. (BY MR. SEAMONS:) Fair enough. Let me
22 rephrase the question.

23 Whenever it was and whoever it was, why
24 do you think they built that fence not on the
25 alleged boundary between the north half and the

1 Q. (BY MR. SEAMONS:) True?

2 A. You're asking me to agree to something
3 that I can't agree to. I would have to assume that
4 they were putting a fence for north and south
5 boundary. Again, I'm assuming.

6 Q. It would be speculative.

7 A. Very much so. So I really don't. I
8 didn't know those people, I don't know why the fence
9 was put in there. I can't answer that.

10 Q. And I think that's the key. You admit
11 you don't know why that person, whenever it was, put
12 that fence where it is, do you?

13 A. I would believe it would be a fence of
14 convenience.

15 Q. I understand what you believe, but of
16 your own personal knowledge, you don't know why they
17 did it, do you?

18 A. All I can tell you is what my dad told
19 me.

20 Q. And we'll go to those conversations
21 later.

22 A. Okay.

23 Q. But, again, Mr. Campbell, of your own
24 personal knowledge, of your own personal knowledge,
25 whenever that fence was erected and whoever it was

1 south half of the northeast quarter?

2 MR. MANWARING: Objection as to form.
3 You can try to answer it.

4 THE WITNESS: Because there was no north
5 half and south half. It was a fence of convenience.
6 He owned the entire hundred and sixty acres. It was
7 pretty much his business where he put a fence.

8 Q. (BY MR. SEAMONS:) You assume that the
9 person owned the entire one sixty. You don't know
10 that of your own personal knowledge, though, do you?
11 You've already established you don't know who did it
12 and when they did it, correct?

13 A. Correct.

14 Q. Now, you say there was no north half,
15 there was no south half. There has always been a
16 north half and a south half of the northeast
17 quarter. In fact, there's an east half and the west
18 half of the northeast quarter, true?

19 A. Agreed, yes.

20 Q. So when you say there was no north half
21 and south half, you're actually arguing that the
22 person put the fence wherever he wanted as a
23 convenience to him.

24 That's your argument, correct?

25 A. Correct.

1 A. He did --
 2 Q. Why did --
 3 A. He did --
 4 Q. -- he move it --
 5 A. He did farm --
 6 Q. -- to what you allege is the true and
 7 correct boundary?
 8 MR. MANWARING: You have to wait --
 9 THE WITNESS: Okay.
 10 MR. MANWARING: -- until the question is
 11 asked --
 12 MR. SEAMONS: So since he never owned --
 13 MR. MANWARING: -- before you give your
 14 answer.
 15 Q. (BY MR. SEAMONS:) Since he never owned
 16 the entire one sixty, why didn't he move the fence
 17 to what you allege is the true and correct boundary
 18 in this case?
 19 MR. MANWARING: Objection as to form.
 20 You can try and answer that.
 21 THE WITNESS: It wasn't cost effective.
 22 Couldn't afford it.
 23 Q. (BY MR. SEAMONS:) And that would be
 24 speculation on your part.
 25 A. Yes. That would be speculation on my

1 MR. MANWARING: You're saying he didn't
 2 record anything that stated that. Is that what
 3 you're asking?
 4 Q. (BY MR. SEAMONS:) That he declared any
 5 kind of ownership interest in the land north of the
 6 fence, did he?
 7 MR. MANWARING: Object as to form.
 8 THE WITNESS: It didn't really matter
 9 where the fence was.
 10 It was his understanding he owned land
 11 the other side of the fence.
 12 Q. (BY MR. SEAMONS:) And that, again, goes
 13 back to the hearsay conversations, we'll go over
 14 those later.
 15 A. Okay.
 16 Q. That's what he allegedly told you,
 17 right?
 18 A. No. That's what he told me. Don't call
 19 me a liar. I'm not alleging anything.
 20 Q. Okay. But your father is not here to
 21 testify --
 22 A. No, he isn't.
 23 Q. -- and that, by definition, is hearsay,
 24 so we'll cover those later.
 25 A. Okay.

1 part as the kid that grew up with hand-me-down
 2 clothes and having damn little.
 3 Q. Also growing up with a father who owned
 4 eighty acres.
 5 A. Exactly.
 6 Q. Okay. What we do know is that he didn't
 7 move the fence ever, did he?
 8 A. No, he didn't.
 9 Q. And, again, in a phrase, he acquiesced
 10 in its location for a long period of time, didn't
 11 he?
 12 MR. MANWARING: Objection as to form.
 13 THE WITNESS: Acquiesced?
 14 MR. SEAMONS: Consented to right where
 15 it was.
 16 MR. MANWARING: Objection as to form.
 17 THE WITNESS: No, he didn't.
 18 Q. (BY MR. SEAMONS:) He never filed any
 19 kind of document --
 20 A. No, he didn't.
 21 Q. -- declaring or stating it was in the
 22 wrong location, did he?
 23 A. No.
 24 Q. Or that he claimed an interest in any of
 25 the property north of it, did he?

1 Q. We likewise know that Mary, Delbert,
 2 Delbert, Jr., and that entire side of the family
 3 never moved the fence to what you allege is the true
 4 and correct boundary, did they?
 5 A. No, they didn't.
 6 Q. Why?
 7 MR. MANWARING: Object as to form.
 8 THE WITNESS: I'm pretty sure it had
 9 something to do with money.
 10 Q. (BY MR. SEAMONS:) Again, speculation on
 11 your part.
 12 A. Oh, yeah. Yeah.
 13 Q. You entered upon this property in 1981,
 14 correct?
 15 A. Correct.
 16 Q. And you allege that your father told you
 17 that the land actually extended some distance beyond
 18 the fence as early as the age of six, true?
 19 A. True. Six to ten years old, somewhere
 20 in there.
 21 Q. Why didn't you move the fence to what
 22 you claim is the true and correct boundary?
 23 A. I didn't perceive it as a problem where
 24 the fence and the property boundary was. It was
 25 family on the other side of the fence.

1 Q. What difference does that make?
 2 A. Well, I guess your family is different
 3 than mine.
 4 Q. What we do know is you never moved it,
 5 did you?
 6 A. No, I didn't.
 7 Q. And, in fact, you acquiesced in its
 8 location and left it right where it is, true?
 9 MR. MANWARING: Objection as to form.
 10 You can try and answer.
 11 THE WITNESS: I left it where it is.
 12 Q. (BY MR. SEAMONS:) When did you build or
 13 move your hand onto that 1.41 acre parcel that your
 14 father gave to you in 1981?
 15 A. In 1981.
 16 Q. The same year?
 17 A. Yes.
 18 Q. How close to the fence does your home
 19 sit?
 20 A. I don't know for sure. I'd have to go
 21 measure.
 22 Q. Why didn't you move the fence at that
 23 time to what you allege is the true and correct
 24 boundary between the properties?
 25 MR. MANWARING: Objection as to form.

1 Q. And you did not otherwise have the money
 2 to move the fence to what you allege is the true and
 3 correct boundary?
 4 MR. MANWARING: Objection.
 5 THE WITNESS: You're right. I didn't.
 6 Q. (BY MR. SEAMONS:) After moving onto the
 7 property, it sounds like you began to run some
 8 horses on the property?
 9 A. Correct.
 10 Q. You now have corrals and pastures
 11 identified on the property?
 12 A. I do.
 13 Q. You've constructed other improvements
 14 and outbuildings on the property?
 15 A. No.
 16 Q. There are no other outbuildings, sheds,
 17 barns of any kind?
 18 A. There's a two-sided shed.
 19 Q. Okay. So we do have some outbuildings
 20 that you've put onto the property, correct?
 21 A. I don't think it qualifies as an
 22 outbuilding. More like a leanto.
 23 Q. And you've planted lawns, gardens,
 24 true?
 25 A. True.

1 THE WITNESS: Money.
 2 Q. (BY MR. SEAMONS:) So your testimony is
 3 that --
 4 Did your father sell that land to you or
 5 give it to you?
 6 A. He gave it to me.
 7 Q. So notwithstanding the free land, you
 8 didn't have the money --
 9 A. No, I didn't.
 10 Q. -- to --
 11 A. I married a woman with four kids. We
 12 added one more.
 13 Q. Sometime after you acquired that
 14 one-acre parcel and moved the home onto it -- did
 15 you pay for that home, by the way?
 16 A. It's in mortgage.
 17 MR. MANWARING: Objection as to form.
 18 Q. (BY MR. SEAMONS:) Has that mortgage
 19 been there since 1981?
 20 A. Yes.
 21 Q. That would be thirty years this year?
 22 A. Yes.
 23 Q. And you borrowed the money, I guess, to
 24 buy that home and move it onto the property?
 25 A. Yes.

1 Q. And you have kept up with the pasture,
 2 true?
 3 A. Tried to.
 4 Q. Why over all those years didn't you move
 5 the fence to what you allege is the true and correct
 6 boundary between the properties?
 7 MR. MANWARING: Objection.
 8 THE WITNESS: Didn't have the money.
 9 Q. (BY MR. SEAMONS:) With reference to
 10 your property now only, and that is the property
 11 south of this fence, and if you would like you could
 12 include the portion north of the fence that you
 13 claim as your property, I need a list of all of the
 14 people that you've ever rented your property to.
 15 Sounds like Mr. Kvamme at some point in
 16 time --
 17 A. Yes.
 18 Q. -- was a tenant, so Craig Kvamme. Who
 19 else?
 20 A. Flat Rock Ranches, Mike Smith, Mark
 21 Berry.
 22 I'm sure there's one or two more in
 23 there, but I can't remember right off the top of my
 24 head.
 25 Q. Who was your point of contact, so to

THIS INDENTURE, Made this 12th day of March in the year 1937
 thousand nine hundred and Thirty-seven, by and between
 Hannah Davis, a Widow
 of the County of Bonneville, State of Idaho
 the part Y of the first part, and Charlotte Campbell
 of the County of Jefferson, State of Idaho
 the part Y of the second part:

WITNESSETH, That said part Y of the first part, for and in consideration of the sum of
 One and other valuable considerations DOLLARS,
 lawful money of the United States of America, to her in hand paid by the part Y of the second part, the receipt whereof
 is hereby acknowledged, has Granted, Bargained and Sold, and by these presents do es Grant, Bargain, Sell, Convey and
 Confirm, unto the said part Y of the second part, and to her heirs and assigns, forever, all the following described
 real estate, situated in Bonneville County, State of Idaho, to-wit:

The North-east quarter of Section Seventeen (17) Township Three (3), North of Range Thirty-Eight
 (38), East of Boise Meridian.
 Together with all and sundry the Water rights and ditch rights thereunto belonging or in any wise
 appertaining.

TOGETHER With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise apper-
 taining, and the reversion ~~and~~ reversions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title and interest,
 in and to the said property, as well in law as in equity, of said part Y of the first part.
 TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, unto
 the part Y of the second part, and to her heirs and assigns forever. And the said part Y of the first part, and her
 heirs, the said premises in the quiet and peaceable possession of the said part Y of the second part, and her heirs and assigns,
 against the said part Y of the first part, and her heirs, and against all and every person or persons whomsoever, lawfully
 claiming or to claim the same, shall and will WARRANT and by these presents forever DEFEND. and

IN WITNESS WHEREOF, The said part Y of the first part has hereunto set her hand and seal
 the day and year first above written.

Signed, Sealed and Delivered in the Presence of
 Percy Groom } Hannah Davis (SEAL)
 _____ } _____ (SEAL)
 _____ } _____ (SEAL)
 _____ } _____ (SEAL)

STATE OF IDAHO, }
 COUNTY OF Jefferson } ss.

On this 12th day of March, in the year 1937, before me,
 Percy Groom, a notary public
 in and for the State of Idaho, personally appeared
 Hannah Davis, a Widow

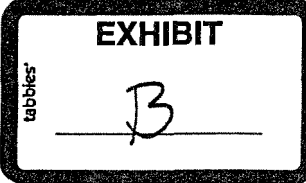
known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me
 that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and
 year in this certificate first above written.

(SEAL) Percy Groom
 My commission expires 4/7/39 1937. Residing at Rigby, Idaho Notary Public.

Recorded at the request of Charlotte Campbell
 June 23, 1941 at 10:12 A. M.
 W. L. Brewrink Recorder.
 By Lulu Foley Deputy Recorder.
 Book 43 of Idaho, Page 817
 Recorder's Fees, \$ 1.20

099



STATE OF IDAHO

County of Blaine

On this 24th day of March, in the year 1907, before me the undersigned, a Notary Public in and for the State of Idaho, personally appeared Charlotte B. Campbell

known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this 24th day of March, 1907.

Charlotte B. Campbell
Notary Public
Residing at Blaine, Idaho
My commission expires Nov. 1, 1907

705750

Warranty Deed

Charlotte B. Campbell
Nov 11 1907
L. B. Campbell and
B. Campbell, His Wife
The State of Idaho

WASIELO BELLO
County of Blaine

I hereby certify that this instrument is a true and correct copy of the original as the same is on file in my office

WASIELO BELLO
Notary Public
Residing at Blaine, Idaho
My commission expires Nov. 1, 1907

Charlotte B. Campbell
Notary Public
Residing at Blaine, Idaho
My commission expires Nov. 1, 1907

BONNEVILLE COUNTY

DEED OF GIFT

774870

89 OCT -4 PM 4:02

This indenture, made this 4th day of October, 1989, between LEO H. CAMPBELL and PHYLLIS B. CAMPBELL, husband and wife, "DONOR", of 10519 North 15 East, City of Idaho Falls, Bonneville County, State of Idaho, and V. LEO CAMPBELL, "DONEE" of 10909 North 15 1st East, City of Idaho Falls, Bonneville County, Idaho, WITNESSETH:

That the Donor, for and in consideration of the love and affection which Donor has and bears unto the Donee, and for the purpose of making a gift to Donee and also for the better maintenance, support and protection and livelihood of Donee, does by these presence give, grant, convey and confirm unto the said Donee the following described real property, situate in Bonneville County, State of Idaho, to-wit:

Beginning at a point 982.50 feet North of the Southeast corner of the Northeast Quarter of Section 17, Township 3 North, Range 38 East, Boise Meridian, Bonneville County, Idaho and running thence S89°58'35"W 2643.85 Feet; Thence N. 0°15'30"E. 332.30 feet; thence N89°45'00"E 2642.37 feet; thence South 342.72 feet to the point of beginning. Contains 20.48 acres, less county road right-of-way on the East Side. Includes 1.14 Acres heretofore deeded to Donee in the Northeast Corner and on which Donee has constructed substantial improvements prior hereto.

TOGETHER with all and singular the tenements, heretiments and appurtuances thereunto belonging to in anywise appertaining, and the reversion or reversions, remainder and remainders, rents, issues and profits thereof

the same, understood the contents thereof and the legal effect thereof, and that they had executed same of their own free will and choice.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

L. Ray Norman
NOTARY PUBLIC FOR IDAHO
Residing at Idaho Falls, Idaho
My Commission Expires: 2/14/95

INSTRUMENT NO.	<u>774770</u>
DATE	<u>10-4-89</u>
INST. CODE	<u>336</u>
FICHE NO.	<u>6004-13</u>
FEE	<u>90</u>
STATE OF IDAHO) COUNTY OF BONNEVILLE) ss	
I hereby certify that the within instrument was recorded.	
Ronald Longmore, County Recorder	
By <u>Michael Bellinger</u>	
Request of <u>Colt Olson</u>	

13621

WARRANTY DEED

FOR VALUABLE CONSIDERATION RECEIVED LEO H. CAMPBELL and PHYLLIS B. CAMPBELL, husband and wife, the Grantor,

does hereby grant, bargain, sell and convey unto V. LEO CAMPBELL and KATHY CAMPBELL, husband and wife, the Grantee,

whose current address is 795 Marcia, Idaho Falls, Idaho the following described real estate situated in Bonneville County, State of Idaho, to-wit:

TOWNSHIP 3 NORTH, RANGE 38, EAST BOISE MERIDIAN,

Section 17: Beginning at the Northeast corner of the S1/4 of said Section, thence South 208 feet; thence West 238 feet; thence North 208 feet; thence East 238 feet to the point of beginning, Bonneville County, Idaho.

TO HAVE AND TO HOLD the said premises, together with all tenements, hereditaments and appurtenances thereto belonging unto the said Grantee, his successors and assigns forever. Grantor does hereby covenant to and with the said Grantee that IT is the owner in fee simple of said premises and that IT will warrant and defend the same from all lawful claims whatsoever.

In construing this Deed and where the context so requires, the singular includes the plural and the masculine, the feminine and neuter.

DATED: May 28, 1981

Leo Campbell LEO H. CAMPBELL

Phyllis B. Campbell PHYLLIS B. CAMPBELL

STATE OF IDAHO, COUNTY OF Bonneville On this 28th day of May 1981 before me, a notary public in and for the said State personally appeared LEO H. CAMPBELL and PHYLLIS B. CAMPBELL

known to me to be the persons whose names are subscribed to the within instrument, and in whose presence they

Residing at Idaho Falls Conn. Expires Life

007254

Notary Seal

IDAHO TITLE & TRUST COMPANY Escrows • Title Insurance

547 N. Capital Ave., Idaho Falls, Idaho 83402

DE GR. CAI 110 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120

WARRANTY DEED

V. LEO CAMPBELL aka VEE LEO CAMPBELL, spouse of KATHLEEN A. CAMPBELL aka KATHLEEN ANNE CAMPBELL

as GRANTOR,

of Idaho Falls, State of Idaho, for good and valuable considerations, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto V. LEO CAMPBELL and KATHLEEN A. CAMPBELL, husband and wife

10909 N. 15th P. Idaho Falls, State of Idaho, as GRANTEE,

and to his successors and assigns forever, all of the following described real estate situated in the State of Idaho, to-wit:

Township 3 North, Range 38 East of the Boise Meridian, Bonneville County, Idaho.

Section 17: Beginning at the Northeast Corner of the S1/2 NE1/4 of said Section; thence South 208 feet; thence West 238 feet; thence North 208 feet; thence East 238 feet to the point of beginning.

91 FEB 9 PM 4 00

BONNEVILLE COUNTY
RECORDER

870810

TOGETHER WITH any and all improvements, water, water rights, ditches, ditch rights, easements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

~~Does not constitute a mortgage or lien on any real estate of any person or persons.~~

In construing this Deed and where the context so requires, the singular includes the plural, and the masculine, the feminine and gender.

IN WITNESS WHEREOF, the Grantor hereunto has set his hand and seal the 4th day of February, 1994

V. Leo Campbell
V. Leo Campbell

STATE OF IDAHO

County of Bonneville } ss.

On this 4th day of February, 1994

before me, the undersigned, a Notary Public in and for said State, personally appeared V. LEO CAMPBELL aka VEE LEO CAMPBELL,

known to me to be the person(s) whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for the State of Idaho

Residence: Idaho Falls, ID

Commission Expiration Date: 1/19/99

Bonneville Land & Title Co

RECORDING DATA

INSTRUMENT NO. 870640
DATE 2-9-94
INST. CODE 205
FICHE NO. 9522-76
FEE 2.00

STATE OF IDAHO } ss.
COUNTY OF BONNEVILLE }

I hereby certify that the within instrument was recorded.

Ronald Langmore,
County Recorder
By *Ruth Avery* Deputy



QUITCLAIM DEED

Printed and for sale by Evans-Tark Company, Boise

797916

(Optional)
 Recorded Platted Key Punched To Treasurer
 Microfilmed Deed Card Master File
 Indexed Computed Abstracted

QUITCLAIM DEED

797916

THIS INDENTURE, Made this twentieth day of November
 in the year of our Lord one thousand nine hundred and Ninety between

Kathleen Anne Campbell
 of 10581 Beneca, Boise County of Ada
 State of Idaho, the party of the first part, and Vea Leo Campbell
 of 10909 N. 15th E., Idaho Falls County of Bonneville
 State of Idaho, the party of the second part,

whose current address is 10909 N. 15th E., Idaho Falls, ID 83401.

WITNESSETH That the said party of the first part, for and in consideration of the sum of
 \$100.00 One and no 100ths dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents remise, release and forever QUITCLAIM, unto the said party of the second part, and to his heirs and assigns all that certain lot, piece or parcel of land, situate, lying and being in County of Bonneville, State of Idaho, bounded and particularly described as follows, to-wit:

1.14 acres, S 1/2 NE 1/4 section, 17 township, 3N range 38, 1977 28x66 Royal Oaks

INSTRUMENT NO.	797916
DATE	12-2-78
INST. CODE	68309
FICIF NO.	68309
FEU	
STATE OF DAIRY	
County of BONNEVILLE	
I hereby certify that the within or limited was recorded.	
Notary Public	
By <u>[Signature]</u>	
Notary <u>V.L. Campbell</u>	

Location of above described property. House No. 10907 N. 15th E. 17-83401

MAIL DEED TO:	MAIL, TAX NOTION TO:
Name	Name
Address	Address
City & State	City & State

90 DEC -6 AM
 BONNEVILLE COUNTY
 CLERK

TOGETHER with all and singular the tenements, hereditaments and appurtenances therunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, All and singular the said premises, together with the appurtenances, unto the party of the second part, and to his heirs and assigns forever.

IN WITNESS WHEREOF, The said party of the first part has hereunto set her hand and seal 20 the day and year first above written.

SIGNED, SEALED AND DELIVERED IN PRESENCE OF
Kathleen Campbell (Seal)
..... (Seal)
..... (Seal)
..... (Seal)

STATE OF IDAHO
County of ~~Blaine~~ *Ada*) ss.

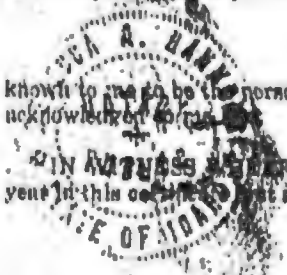
On this 20th day of November in the year 1922 before me

a Notary Public

In and for said county, personally appeared

known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Robert C. Harrison
Notary Public for the State of Idaho,
Residing at *Mendon*, Idaho.

No. _____
QUITCLAIM DEED.
-70-
Dated _____, 19____
STATE OF IDAHO,
County of _____
I hereby certify that this instrument was filed
for record at request of _____
at _____ o'clock _____ M., this _____ day
of _____, A.D. 19____
in my office, and duly recorded in Book _____
of _____ at page _____
By _____
Treas. _____ Deputy _____
Filed to _____

7/23

976340 14-19719-DA

QUITCLAIM DEED

ATEC

For Value Received

KATHLEEN A. CAMPBELL, SPOUSE OF V. LEO CAMPBELL

do hereby convey, release, remise and forever quit claim unto

V. LEO CAMPBELL, A MARRIED MAN DEALING WITH HIS SOLE AND SEPARATE PROPERTY

whose current address is

10909 N 15TH E IDAHO FALLS, ID 83401

the following described premises, to-wit:

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTH HALF NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 3 NORTH, RANGE 38, EAST OF THE BOISE MERIDIAN, BONNEVILLE COUNTY, IDAHO; THENCE SOUTH 208 FEET; THENCE WEST 238 FEET; THENCE NORTH 208 FEET; THENCE EAST 238 FEET TO THE POINT OF BEGINNING. LESS AND EXCEPTING THEREFROM: THE EXISTING COUNTY ROAD RIGHT OF WAY ALONG THE EAST SIDE OF THE ABOVE DESCRIBED PROPERTY.

198 SEP 2 PM 2 14

BONNEVILLE COUNTY
RECORDER

976340

together with their appurtenances.

Dated: AUGUST 26, 1998

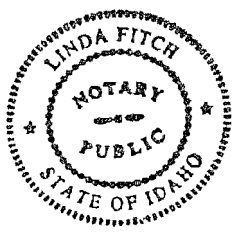
Kathleen A. Campbell
KATHLEEN A. CAMPBELL

INSTRUMENT NO.	976340
DATE	7-2-98
INST CODE	229
FICHE NO.	13030-49
FEE	3-
STATE OF IDAHO) COUNTY OF BONNEVILLE) ss	
I hereby certify that the within instrument was recorded.	
Ronald Longmore, County Recorder	
By	<i>[Signature]</i> Deputy
Request of	

STATE OF IDAHO, COUNTY OF BONNEVILLE
On this 26TH day of AUGUST, 1998,
before me, a notary public in and for said State, personally
appeared
KATHLEEN A. CAMPBELL

known to me to be the person whose name is
subscribed to the within instrument, and acknowledged to
me that SHE executed the same

Linda Fitch
Notary Public
Residing at Idaho Falls, Idaho
Comm Expires 8/12/1999



Furnished by the

ALLIANCE

LD-5-2000

1014290

INSTRUMENT NO.	1014290
DATE	1-5-00
INST. CODE	220
IMAGED PGS	7
FEE	3.00
STATE OF IDAHO) COUNTY OF BONNEVILLE)	
I hereby certify that the within instrument was recorded.	
For #1 Long Term	
County Recorder	
By	<i>[Signature]</i> Deputy
Request of	

ATEC

BONNEVILLE COUNTY RECORDER
1014290 JAN 5 '00 AM 11:09

QUITCLAIM DEED

ORDER NO.: 3039900508

FOR VALUE RECEIVED, V. Leo Campbell, a married man as his sole and separate property

Do(es) hereby convey, release, remise and forever quit claim unto

V. Leo Campbell and Kathy Campbell, husband and wife

whose current address is:: 10909 North 115 East, Idaho Falls, ID. 83401

the following described premises:

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTH HALF NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 3 NORTH, RANGE 38, EAST OF THE BOISE MERIDIAN, BONNEVILLE COUNTY, IDAHO; THENCE SOUTH 208 FEET; THENCE WEST 238 FEET; THENCE NORTH 208 FEET; THENCE EAST 238 FEET TO THE POINT OF BEGINNING. LESS AND EXCEPTING THEREFROM: THE EXISTING COUNTY ROAD RIGHT OF WAY ALONG THE EAST SIDE OF THE ABOVE DESCRIBED PROPERTY.

TO HAVE AND TO HOLD the said premises, unto the said grantees, heirs and assigns forever.

[Signature]
V. Leo Campbell

State of Idaho)
County of Bonneville)

On this 4 day of January, before me, a Notary Public in and for said state, personally appeared
V. Leo Campbell

known or identified to me to be the person whose name(s) are subscribed to the within Instrument and acknowledged to me that they executed same.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



[Signature]
Notary Public for the State of
Residing at: Idaho Falls, ID.
Commission Expires: 08/29/03

Miss

QUITCLAIM DEED

V. LEO CAMPBELL, a married man, as GRANTOR,

for good and valuable considerations, the receipt of which is hereby acknowledged, does hereby release, remise, and forever QUITCLAIM unto V. LEO CAMPBELL and KATHY CAMPBELL, husband and wife, as GRANTEE,

whose address is 10909 North 115 East, Idaho Falls, ID 83401, and Grantee's successors and assigns, all of the following described real property, to-wit:

Beginning at a point 982.50 feet North of the Southeast corner of the Northeast Quarter of Section 17, Township 3 North, Range 38 East of the Boise Meridian, Bonneville County, Idaho and running thence S89°58'35"W 2643.85 feet; thence N0°30'E 332.30 feet; thence N89°45'00"E 2642.37 feet; thence South 342.72 feet to the point of beginning.

TOGETHER WITH any and all improvements, water and ditch rights, easements, tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and any reversion, remainder, rents, issues, and profits thereof.

In construing this Deed and where the context so requires, the singular includes the plural, and the masculine, the feminine and neuter.

Dated: 6-22-05

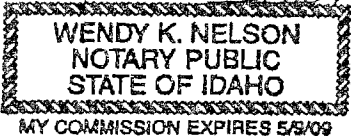
V. Leo Campbell

STATE OF IDAHO)
COUNTY OF Bonneville) ss

On 6-22-05, before me, the undersigned, personally appeared V. LEO CAMPBELL known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

Wendy K. Nelson

Notary Public for the State of Idaho
Commission Expiration Date: 5/9/09



INSTRUMENT NO.	<u>1189866</u>
DATE	<u>6-22-05</u>
INST. CODE	<u>920</u>
IMAGED PGS	<u>1</u>
FEE	<u>3.00</u>
STATE OF IDAHO	1 ss
COUNTY OF BONNEVILLE	1
I hereby certify that the within instrument was recorded.	
Ronald Longmore, County Recorder	
By	<u>L. B. Ward</u>
Deputy	
Request of	<u>AMT</u>

AmeriTitle
497 N. Capital Ave
Idaho Falls, ID 83401

WARRANTY DEED

380830

THIS INDENTURE, Made this 10th day of April in the year of our Lord, One Thousand Nine Hundred and Sixty, by and between Charlotte R. Campbell, widow of ... deceased,

of the County of Jefferson, State of Idaho, the part of the first part, and Delbert H. Millian and ... his wife,

of the County of Bonneville, State of Idaho, the part of the second part.

WITNESSETH, That the said party of the first part, for and in consideration of the sum of One Hundred and No/100 (\$10.00) DOLLARS of the United States of America, and other considerations, to have in hand ... of the second part, the receipt whereof is hereby acknowledged, has ... and sold, and by these presents do grant, bargain, sell, convey and ... of the second part and to their heirs and assigns forever, ... real estate, situate in the County of Bonneville, State of

The North Half of the Northeast Quarter (N1/2), of Section Seventeen (17), Township Three (3), North of Range Thirty-eight (38), East of the ... Meridian, together with the tenements, hereditaments, water and ditch rights, and appurtenances, hereunto belonging or in anywise appertaining, and particularly including 30 shares of the capital stock of Harrison Canal and Irrigation Company, an Idaho corporation.

This Deed is given subject to 1950 taxes and assessments and subsequent taxes and assessments.

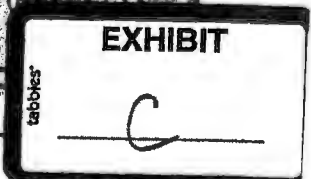
With all and singular the tenements, hereditaments and appurtenances thereunto in anywise appertaining, and the reversion or reversions, remainder and reversion thereof, and all estate, right, title and interest in and to the same, as well as law as in equity, of the said party of the first part.

TO HAVE AND TO HOLD, All and singular, the above mentioned and described premises, unto the parties of the second part, and to their heirs and assigns forever, and the said party of the first part, and her heirs, the said party of the second part, and their heirs, shall and lawfully shall defend the said party of the first part and her heirs and assigns against all and singular persons, whomsoever lawfully claiming or to claim the same, shall and lawfully shall defend by these presents forever DEFEND.

WHEREUPON, The said party of the first part has hereunto set her hand and seal the day and year first, above written.

Charlotte R. Campbell (SEAL)

(SEAL)



STATE OF IDAHO,
County of Bonneville } ss.

On this 14th day of April, in the year 1950,
the undersigned, a Notary Public in and for the State of Idaho,
appeared Charlotte A. Tomhall, a widow,

known to me to be the person whose name is subscribed to the within instrument
and acknowledge to me that he executed the same.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal
this 14 day and year in this certificate first above written.

Robert W. St. Clair
Notary Public

Residing at Idaho Falls, Idaho
My commission expires November 1, 1951

9800990

No.
Warranty Deed
TO
Dated April 14, 1950 ss.
STATE OF IDAHO,
County of Bonneville ss.

I hereby certify that this instrument
was filed for record at the request of
Charlotte A. Tomhall
at 48 minutes past 10
o'clock P. M., this 9
day of April, 1950
in my office and duly recorded in
Book 184 of 184 pages at

Robert W. St. Clair
By Robert W. St. Clair
Notary Public

PERSONAL REPRESENTATIVE'S DEED

THIS INDENTURE is made this 29th day of July, 2003, between H. Delbert Killian, Personal Representative of the Estates of Delbert Henry Killian and Mary C. Killian, the "Grantor", and James Craig Kvamme and Debra Kvamme, husband and wife, whose mailing address is 10278 N. 15th E. Idaho Falls, ID 83401, the "Grantee".

WITNESSETH, that the Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) lawful money of the United States of America, and other good and valuable consideration, to the Grantor in hand paid by the Grantee, the receipt whereof is hereby acknowledged, has granted, and by these presents does grant and confirm unto the Grantee, and to Grantee's heirs and assigns forever, all of the following described property in the County of Bonneville, State of Idaho, to-wit:

The North Half of the Northeast Quarter, Section 17, Township 3 North, Range 38 East, of the Boise Meridian. LESS AND EXCEPTING THE FOLLOWING TWO TRACTS:

Beginning at the Northeast corner of Section 17, Township 3 North, Range 38 East of the Boise Meridian; running thence West along the Section line 164.92 feet; thence S. 00°58'40" W. 260.56 feet; thence S. 88°45'53" E. 167.20 feet to the East line of said Section 17; thence N. 00°28'42" E. along said East line 264.13 feet to the point of beginning.

Also less: Beginning at a point that is West along the Section line 164.92 feet from the Northeast corner of Section 17, Township 3 North, Range 38 East of the Boise Meridian; running thence West along the Section line 195.64 feet; thence S. 09°40'58" E. 261.06 feet; thence S. 88°45'53" E. 147.32 feet; thence N. 00°58'40" E. 260.56 feet to the point of beginning.

SUBJECT to all existing easements or claims of easements, patent reservations, rights of way, protective covenants, zoning ordinances, and applicable building codes, laws and regulations, encroachments, overlaps, boundary line disputes and other matters which would be disclosed by an accurate survey or inspection of the premises.

TOGETHER with the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and any reversions, any remainders, and rents, issues and profits therefrom; and all estate, right, title and interest in and to said property, as well in law as in equity, of the Grantor.

*IF 54856
First American title*

TO HAVE AND TO HOLD, the premises and the appurtenances unto the Grantee, and to Grantee's heirs and assigns forever.

In construing this deed and where the context so requires, the singular includes the plural.

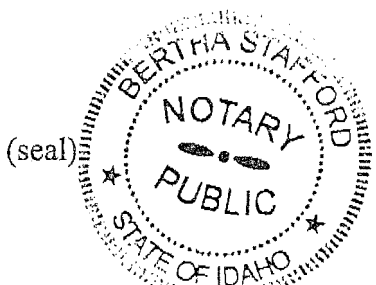
IN WITNESS WHEREOF, the Grantor has executed the within instrument the day and year first above written.

H. Delbert Killian
H. Delbert Killian
Personal Representative

STATE OF IDAHO)
)ss.
County of Bonneville)

On the 29th day of July, 2003, before me, the undersigned, a notary public in and for said State, personally appeared H. Delbert Killian known or identified to me to be the person whose name is subscribed to the within instrument as Personal Representative of the Estate of Delbert Henry Killian and Mary C. Killian and acknowledged to me that he executed the same as such Personal Representative.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



C:\Program Files\Qualcomm\USA\prr\attach\prdeed.wpd.as

Bertha Stafford
Notary Public for Idaho
Residing at: Idaho Falls, Idaho
My Commission Expires: 1-27-05

INSTRUMENT NO.	<u>1122583</u>
DATE	<u>7-29-03</u>
INST. CODE	<u>270</u>
IMAGED PGS	<u>2</u>
FEE	<u>6.00</u>
STATE OF IDAHO) COUNTY OF BONNEVILLE) ss	
I hereby certify that the within instrument was recorded.	
Ronald Longmore, County Recorder	
By	<u>R Long</u> Deputy
Request of	<u>FATCO</u>

Parcel 1

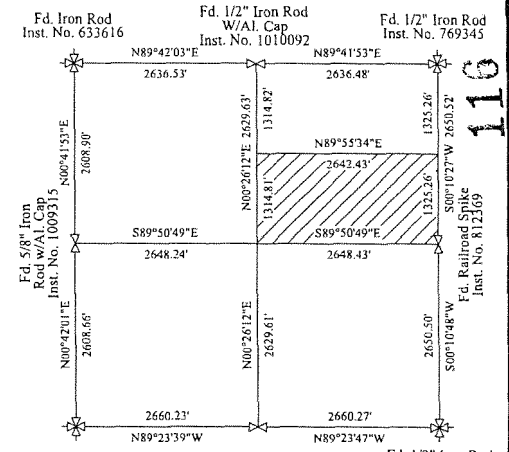
A Parcel of Land Situated in Bonneville County, State of Idaho, Township 3 North, Range 38 East of the Boise Meridian, Section 17, More Particularly Described as Follows: Beginning at the Northeast Corner of Section 17, Township 3 North, Range 38 East, B.M.
 Thence $S00^{\circ}10'27''W$ along the East line of Section 17 for a Distance of 1325.26 feet to the Northeast Corner of the South Half (S 1/2) of the Northeast Quarter (NE 1/4), said point also being the True Point of Beginning.
 Thence $N89^{\circ}50'35''W$ (Record = South) along the East line of Section 17 for a Distance of 438.65 feet;
 Thence $N89^{\circ}50'35''W$ for a Distance of 2644.37 feet to the West line of the South Half (S 1/2) of the Northeast Quarter (NE 1/4);
 Thence $N00^{\circ}26'12''E$ (Record = $N00^{\circ}15'30''E$) for a Distance of 428.00 feet to the Northwest Corner of said South Half (S 1/2);
 Thence $N89^{\circ}55'34''E$ (Record = $N89^{\circ}45'00''E$) along the North line of said South half (S 1/2) for a Distance of 2642.43 (Record = 2642.37) feet to the True Point of Beginning, Containing 26.30 Acres More or Less.
 Subject to: Easements and Right-of-Ways for highways, roads, ditches, canals, power poles, and transmission lines as they exist.

Parcel 2

A Parcel of Land Situated in Bonneville County, State of Idaho, Township 3 North, Range 38 East of the Boise Meridian, Section 17, More Particularly Described as Follows: Beginning at the Northeast Corner of Section 17, Township 3 North, Range 38 East, B.M.
 Thence $S00^{\circ}10'27''W$ along the East line of Section 17 for a Distance of 1763.91 feet to the True Point of Beginning.
 Thence $S00^{\circ}10'27''W$ (Record = South) along the East line of Section 17 for a Distance of 423.00 feet;
 Thence $N89^{\circ}51'13''W$ for a Distance of 2646.30 feet to the West line of the South Half (S 1/2) of the Northeast Quarter (NE 1/4);
 Thence $N00^{\circ}26'12''E$ (Record = $N00^{\circ}15'30''E$) along said West line for a Distance of 423.50 feet;
 Thence $S89^{\circ}50'35''E$ for a Distance of 2644.37 feet to the True Point of Beginning, Containing 25.70 Acres More or Less.
 Subject to: Easements and Right-of-Ways for highways, roads, ditches, canals, power poles, and transmission lines as they exist.

Parcel 3

A Parcel of Land Situated in Bonneville County, State of Idaho, Township 3 North, Range 38 East of the Boise Meridian, Section 17, More Particularly Described as Follows: Beginning at the Northeast Corner of Section 17, Township 3 North, Range 38 East, B.M.
 Thence $S00^{\circ}10'27''W$ along the East line of Section 17 for a Distance of 2186.91 feet to the True Point of Beginning.
 Thence $S00^{\circ}10'27''W$ (Record = South) along the East line of Section 17 for a Distance of 203.00 feet;
 Thence $N89^{\circ}40'48''W$ (Record = $N89^{\circ}51'13''W$) for a Distance of 455.42 feet;
 Thence $S00^{\circ}26'27''E$ (Record = $S00^{\circ}36'34''E$) for a Distance of 236.97 feet;
 Thence $S89^{\circ}50'58''E$ (Record = $N89^{\circ}58'35''E$) for a Distance of 452.88 feet to the East line of Section 17;
 Thence $S00^{\circ}10'27''W$ (Record = South) along the East line of Section 17 for a Distance of 25.00 feet to the East Quarter Corner of Section 17;
 Thence $N89^{\circ}50'49''W$ (Record = $S89^{\circ}58'35''E$) for a Distance of 2648.43 (Record = 2648.28) feet to the Southwest Corner of the South Half (S 1/2) of the Northeast Quarter (NE 1/4) of Section 17;
 Thence $N00^{\circ}26'12''E$ (Record = $N00^{\circ}15'30''E$) along the West line of said South Half (S 1/2) for a Distance of 463.31 feet;
 Thence $S89^{\circ}51'11''E$ for a Distance of 2646.30 feet to the True Point of Beginning, Containing 25.70 Acres More or Less.
 Subject to: Easements and Right-of-Ways for highways, roads, ditches, canals, power poles, and transmission lines as they exist.



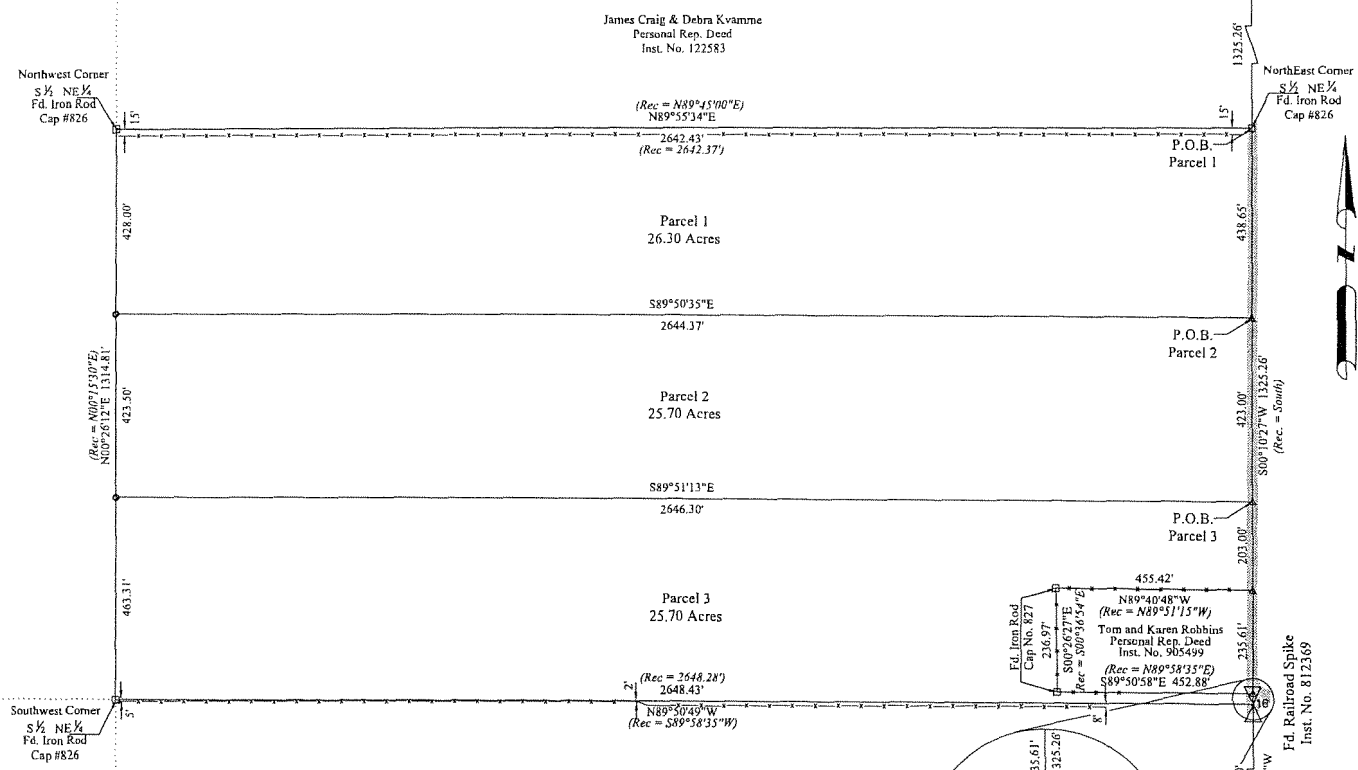
James Craig & Debra Kvamme
 Personal Rep. Deed
 Inst. No. 122583

Fd. 1/2" Iron Rod
 Inst. No. 769345



Northwest Corner
 S 1/2 NE 1/4
 Fd. Iron Rod
 Cap #826

NorthEast Corner
 S 1/2 NE 1/4
 Fd. Iron Rod
 Cap #826



James Craig & Ray Cammack
 & Micheal L. Smith
 Warranty Deed
 Inst. No. 1161870

Fd. 1/2" Iron Rod
 Inst. No. 578952

SECTION 17 BREAKDOWN
 (NO SCALE)

Narrative
 Kevin Thompson meet with Leo Campbell and onsite on September 8, 2009. Leo asked that Kevin combine 6 Deeds as described in Instrument Numbers 924841, 1202459, 847849, 774872, and 1189866 into 3 parcels of land as shown on this Record of Survey. The boundaries of the property had previously been surveyed, although no Record of Survey's were found in the Courthouse.
 The Section Breakdown was taken from the City of Idaho Falls Control.
 This Survey does not constitute a Title Search by Thompson Engineering, Inc., and may not show all Easements of Record.

- Legend**
- Set 1/2" X 30" Iron Rod with Cap Marked L.S. 10563
 - △ Set Mag Nail
 - Fd. Iron Rod with Cap as Noted
 - Fenceline

CERTIFICATE OF SURVEY
 I, Kevin L. Thompson, do hereby Certify that I am a Registered Professional Land Surveyor in the State of Idaho, and that the attached plat was drawn from an actual Survey made on the ground under my direct supervision, and that this map is an accurate representation of said Survey.

PROFESSIONAL LAND SURVEYOR
 REGISTERED
 10563
 STATE OF IDAHO
 KEVIN L. THOMPSON

October 5, 2009
 Date

10563
 License No.

RECORD OF SURVEY			
LOCATED IN THE NE 1/4 OF SECTION 17, TOWNSHIP 3 NORTH, RANGE 38 EAST, BONNEVILLE COUNTY, IDAHO			
Project Name:	Campbell Family	Scale	1" = 200'
Job Number:	2009-101		
CoGo File:	CampbellLeo2009-101		
Date:	September 17, 2009		
Surveyor:	K.L.T.	Sheet	Of
Drawn By:	J.W.T.	1	1

TE THOMPSON ENGINEERING, INC.
 CONSULTING ENGINEERS
 RIGBY, IDAHO 83442

EXHIBIT

tabbles

D

CHARLES C. JUST, ESQ. – ISB 1779
KIPP L. MANWARING, ESQ. – ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
Idaho Falls, Idaho 83405
Telephone: (208) 523-9106
Facsimile: (208) 523-9146

BONNEVILLE COUNTY
MAY 17 PM 4:00

Attorneys for the Campbells

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE**

V. LEO CAMPBELL and KATHLEEN
CAMPBELL, husband and wife;

Plaintiffs,

vs.

JAMES C. KVAMME and DEBRA
KVAMME, husband and wife; and JOHN
DOES I-X;

Defendants.

Case No. CV-2010-3879

**AFFIDAVIT OF BLAKE
MUELLER**

STATE OF IDAHO)
 : ss
County of Bonneville)

Blake Mueller, being first duly sworn under oath, deposes and states as follows:

1. I am the duly elected and serving assessor for Bonneville County, Idaho and have personal knowledge based upon records maintained and kept by the Assessor's Office of the facts and information contained in this affidavit.

2. I am responsible for and control all assessments made on real property situated in Bonneville County, Idaho. Bonneville County assesses real property based upon legal descriptions set forth in deeds of record for the property. Bonneville County does not make assessments for real property tax purposes based upon topography of a parcel or the physical location of fence lines. The Bonneville County Assessor's Office maintains public records as part of its duty imposed by law. All assessment records are kept and maintained in the

Assessor's Office as part of its regular practice of business activity as the assessor for Bonneville County.

3. I am familiar with and have reviewed the real property assessment history for that certain parcel of land currently designated by tax parcel number RP03N38E171802. Attached as Exhibit A and incorporated here by reference is a true and correct copy of Bonneville County's assessment map for that parcel. The assessment for that parcel was made in reliance upon the legal description of the property contained in deeds of record.

4. According to Bonneville County assessment records, V. Leo Campbell and Kathleen Campbell are the record owners of the above identified tax parcel. Since 1989, the Campbells have been assessed real property taxes on their parcel every year to the present year. From 1989 to 2005, the Campbells had two tax parcel numbers: one for a small acreage with a home and one for a larger agricultural parcel. Upon recording of a quitclaim deed in 2005, both parcels were combined by the Assessor's Office into the current tax parcel number given above.

5. I am familiar with and have reviewed the real property assessment history for that certain parcel of land designated as tax parcel number RP03N38E170008 in Bonneville County, Idaho. That parcel is also shown on Exhibit A attached and incorporated here by reference. The real property assessment for that parcel was made in reliance upon the legal description of the property contained in deeds of record. No part of the assessment for that parcel incorporated any portion of tax parcel number RP03N38E171802.

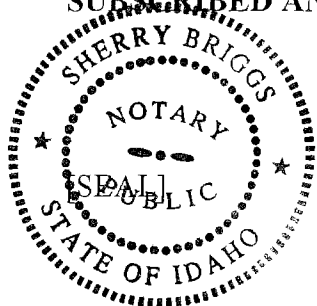
6. From July 23, 2003, the record owner of tax parcel RP03N38E170008 was James Craig Kvamme. Since 1989 all property taxes assessed on that parcel were assessed in the names of the owners of record.

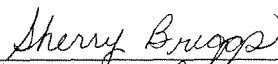
Dated this 7th day of April, 2011.



Blake Mueller

SUBSCRIBED AND SWORN TO before me this 7th day of April, 2011.





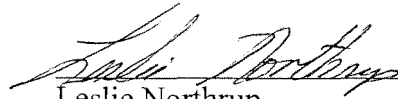
Notary Public for Bonneville County
Residing at: Sheeley, Idaho
My commission expires: 9-20-12

CERTIFICATE OF MAILING

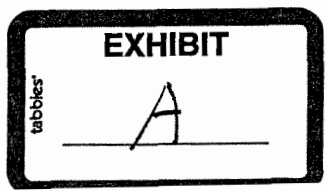
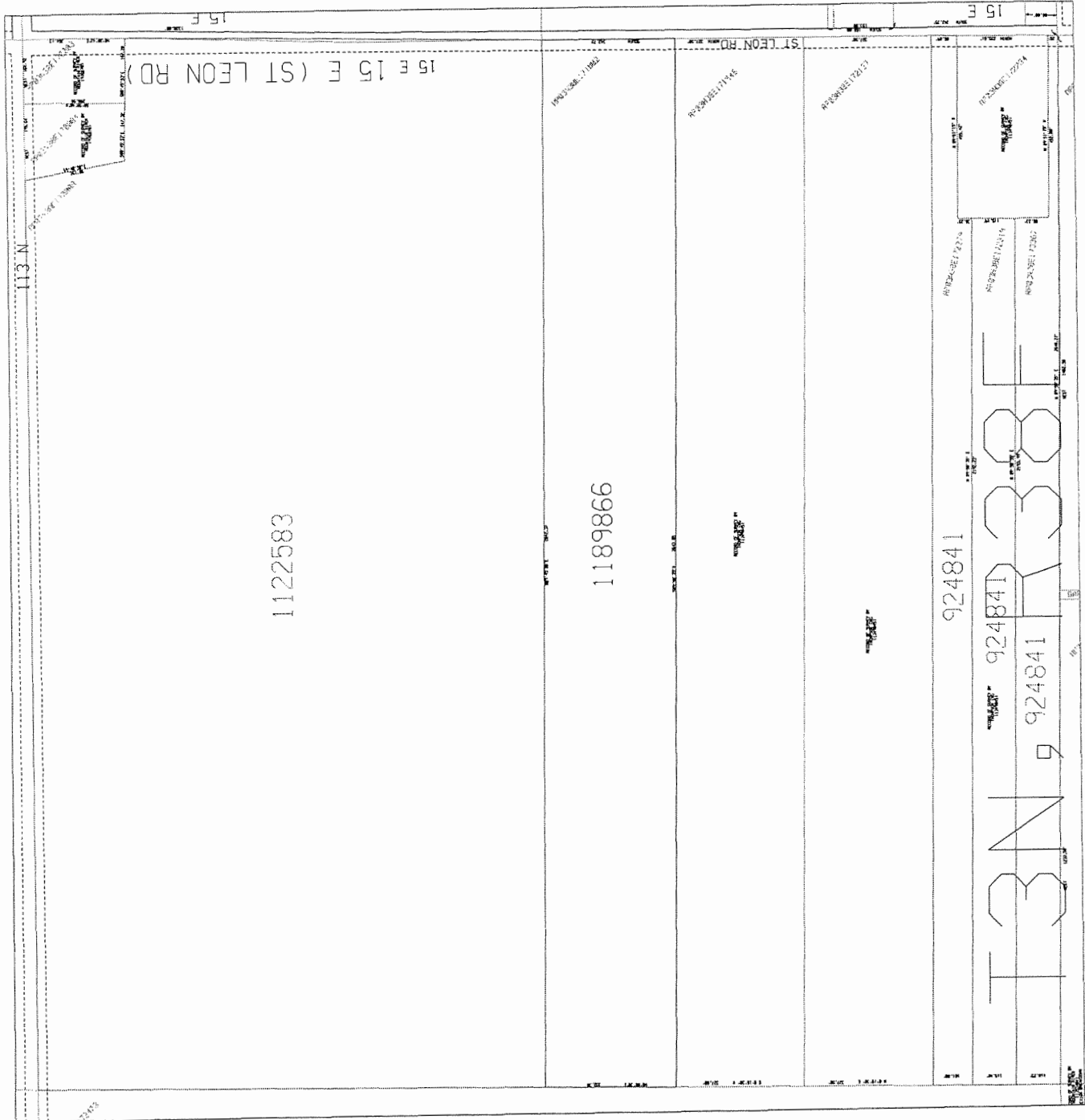
I HEREBY CERTIFY that on the 17th day of May, 2011, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

Justin R. Seamons
Attorney at Law
414 Shoup Avenue
Idaho Falls, Idaho 83402

Hand Delivered
 U.S. Mail, Postage Prepaid
 Facsimile
 Other _____



Leslie Northrup
Paralegal



... COUNTY ...
... 17 PM 4:00

CHARLES C. JUST, ESQ. — ISB 1779
KIPP L. MANWARING, ESQ. — ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
Idaho Falls, Idaho 83405
Telephone: (208) 523-9106
Facsimile: (208) 523-9146

Attorneys for the Campbells

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE**

V. LEO CAMPBELL and KATHLEEN
CAMPBELL, husband and wife;

Plaintiffs,

vs.

JAMES C. KVAMME and DEBRA
KVAMME, husband and wife; and JOHN
DOES I-X;

Defendants.

Case No. CV-2010-3879

**AFFIDAVIT OF MARK
HANSEN**

STATE OF IDAHO)
 : ss
County of Bonneville)

Mark Hansen, being first duly sworn under oath, deposes and states as follows:

1. I am the duly elected and serving Treasurer for Bonneville County, Idaho and have personal knowledge based upon records maintained and kept by the Treasurer's Office of the facts and information contained in this affidavit.

2. I have responsibility to receive and account for all tax payments made on real property assessments in Bonneville County, Idaho. The Bonneville County Treasurer's Office maintains public tax payment records as part of its duty imposed by law. Tax payment records are public records kept and maintained in the Treasurer's Office as a part of its regular practice

of business activity as the tax collector for Bonneville County. Select records for certain years are kept by the State Tax Commission.

3. I am familiar with and have reviewed the tax payment history for that certain parcel of land designated by tax parcel number RP03N38E171802. From 1988 to 2005, that tax parcel had two tax parcel numbers: one for a small acreage with a home and one for a larger agricultural parcel. In 2006 both parcels were combined by the Assessor's Office into the current tax parcel number.

4. According to Bonneville County's records, V. Leo Campbell and Kathleen Campbell are the record owners of the above identified tax parcels. Based upon readily available records, since 1988, the Campbells or their lender have paid all real property taxes on those parcels. Based upon those records no other person has paid any portion of the taxes assessed for those parcels. Attached as Exhibit A and incorporated here by reference is a true and correct summary of available tax payment records from 1988 through 2010 maintained by Bonneville County for tax parcel numbers RP03N38E171801, 71802 and 71808.

5. I am familiar with and have reviewed the tax payment history for that certain parcel of land designated as parcel number RP03N38E170008 in Bonneville County, Idaho. Prior to 1999 tax parcel number RP03N38E170008 was identified as RP03N38E170002. I have located tax payment records for both tax parcel numbers, dating from 1988 for that parcel number ending in 70002 and from 2001 for that parcel number ending in 70008. Also shown on Exhibit B and incorporated here by reference is a true and correct summary of available tax payment records from 1988 through 2010.

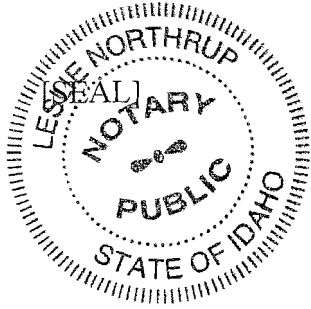
6. According to Bonneville County's records, Mary C. Killian was the record owner of the tax parcel number RP03N38E170002 and RP03N38E170008 from 1988 through July 28, 2003. From July 29, 2003 to the present the record owner of that tax parcel RP03N38E170008 has been James Craig Kvamme. Since 1988 all assessed property taxes on those parcels were paid by either Killian or Kvamme. None of those payments were applied to any other tax parcel, including tax parcel number RP03N38E171802.

Dated this 11th day of May, 2011.



Mark Hansen

SUBSCRIBED AND SWORN TO before me this 11th day of May, 2011.



Leslie Northrup

Notary Public for Idaho

Residing at: Moore, Idaho

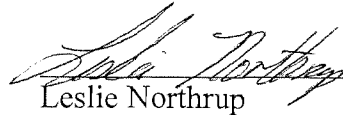
My commission expires: 9.29.2015

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 19th day of May, 2011, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

Justin R. Seamons
Attorney at Law
414 Shoup Avenue
Idaho Falls, Idaho 83402

- Hand Delivered
- U.S. Mail, Postage Prepaid
- Facsimile
- Other _____



Leslie Northrup
Paralegal

BONNEVILLE COUNTY TREASURER
EXHIBIT "A"

Payment histories

Parcel prefix: RP03N38E

Listed owner: V Leo Campbell
(171801 & 171808 were combined
to make 171802)

171802

Date	Payee
12/20/2006	Lender
6/14/2007	Lender
12/21/2007	Lender
6/18/2008	Lender
12/21/2008	Lender
6/18/2009	Lender
12/16/2009	Lender
3/9/2010	V L Campbell
12/17/2010	Lender

Listed owner: V Leo Campbell

171801

Date	Payee	Tax year(s)
12/20/1988	Lender	1988
12/20/1990	Lender	1990
12/12/1991	Lender	1991
12/20/1992	Lender	1992
12/20/1993	Lender	1993
12/22/1997	Lender	1997
6/16/1998	Lender	1997
2/10/2003	Lender	2001,02
8/1/2003	Lender	2002
12/3/2003	Lender	2003
5/24/2004	Lender	2003
12/14/2004	Lender	2004
6/15/2005	Lender	2004
12/7/2005	Lender	2005
6/14/2006	Lender	2005

Listed owner: V Leo Campbell

171808

Date	Payee	Tax year(s)
1/6/1994	V L Campbell	
3/8/1994	V L Campbell	
1/14/1998	Kathleen Campbell	
12/16/2004	V L Campbell	2001 - 2004
12/20/2006	V L Campbell	2005

BONNEVILLE COUNTY TREASURER
EXHIBIT "B"

Payment histories

Parcel prefix: RP03N38E

James Kvamme

170008

<u>Date</u>	<u>Payee</u>
No available information prior to 2001	
12/5/2001	Delbert Killian
12/4/2002	Delbert Killian
12/26/2003	James Kvamme
6/8/2004	James Kvamme
12/21/2004	James Kvamme
5/3/2005	James Kvamme
12/7/2005	James Kvamme
6/22/2006	James Kvamme
12/28/2006	James Kvamme
6/25/2007	James Kvamme
6/28/2007	James Kvamme
12/20/2007	James Kvamme
6/20/2008	James Kvamme
12/22/2008	James Kvamme
6/22/2009	James Kvamme
12/21/2009	James Kvamme
6/2/2010	James Kvamme
12/20/2010	James Kvamme

Delbert Killian

170002

<u>Date</u>	<u>Payee</u>	<u>Billed to</u>
12/6/1988	Mary Killian	Mary Killian
12/13/1989	Name not noted	Mary Killian
12/14/1990	Name not noted	Mary Killian
12/10/1992	Name not noted	Mary Killian
12/8/1993	Name not noted	Mary Killian
12/5/1994	Mary Killian	Mary Killian
12/4/1995	Mary Killian	Mary Killian
12/9/1996	Mary Killian	Mary Killian

Converted to #0008 in 1998

5. I grew up and worked on our family's farm in Bonneville County. When I was a young boy, the family farm was the entire northeast quarter section of Section 17, Township 3 North, Range 38 East Boise Meridian.

6. Since my earliest childhood, I recall my grandfather Campbell. He was a hard working farmer and used horses to plow, cultivate, and work his land. As I grew older I came to understand that my grandfather Campbell purchased that quarter section because of the varied types of soil on the land; some of it was prime for farming with horses, other of it was rocky and best suited for pasture.

7. During my childhood, there was in existence an east-west pasture fence running across the quarter section. I understood that either my father or my grandfather Campbell erected and maintained that fence. The area south of that fence included corrals and pasture. I recall that fence was referred to as the pasture fence because it separated the good farmland to the north from the rocky pasture ground on the south. That pasture fence controlled our family's horses and other farm animals, preventing them from straying from the pasture to the farm ground.

8. I recall when my aunt and uncle, Mary Killian and Delbert Killian, lost their farm. Their situation was of concern to my parents and grandparents. As I recall, my grandparents decided to have the Killians move onto the north part of the quarter section, while my parents and family remained in the home on the southern edge of the south part of the quarter section.

9. The Killians had livestock when they moved onto the north half. The pasture fence in existence was left in place for the convenience of both families. Despite the location of the pasture fence, it was never considered the boundary because everyone was family and we all just got along without fretting over boundary lines.

10. I understand the Kvammes contend the fence should be the new boundary line because they claim the fence had been or was now treated as the boundary. I know that is not true. In all my years growing upon on our family farm, I knew the fence was not the boundary. I knew the fence was several feet south of the legally described boundary line between the north and south halves of that quarter section. From my recollection, my parents and siblings and the Killian family members had the same understanding.

11. By gift deed recorded October 4, 1989 as Instrument No. 774872 in the Recorder's Office for Bonneville County, Idaho my parents conveyed to me title to 19.88 acres of their land. A copy of that deed is attached as Exhibit A and incorporated here by reference.

Dated this 28 day of March, 2011.

Jo Le Campbell
Jo Le Campbell

SUBSCRIBED AND SWORN TO before me this 28 day of March, 2011.



Jackie Hugo
Notary Public for State of Texas
Residing at: 0993 Kenworthy El Paso TX
My commission expires: Dec 29 2012⁷⁹⁹

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 17th day of May, 2011, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

Justin R. Seamons
Attorney at Law
414 Shoup Avenue
Idaho Falls, Idaho 83402

- Hand Delivered
- U.S. Mail, Postage Prepaid
- Facsimile
- Other _____



Leslie Northrup
Paralegal

DEED OF GIFT

776872

80027-4 PM 4:02

This indenture, made this 1 day of October, 1989, between LEO H. CAMPBELL and PHYLLIS B. CAMPBELL, husband and wife, "DONOR", of 10519 North 15 East, City of Idaho Falls, Bonneville County, State of Idaho, and JO. L. CAMPBELL, "DONEE" of 4701 Fairbanks Avenue, City of El Paso, El Paso County, Texas, WITNESSETH:

That the Donor, for and in consideration of the love and affection which Donor has and bears unto the Donee, and for the purpose of making a gift to Donee and also for the better maintenance, support and protection and livelihood of Donee, does by these presents give, grant, convey and confirm unto the said Donee the following described real property, situate in Bonneville County, State of Idaho, to-wit:

Beginning at a point 982.50 feet North of the Southeast corner of the Northeast Quarter of Section 17, Township 3 North, Range 38 East, Boise Meridian, Bonneville County, Idaho and running thence S89°58'35"E 2643.85 Feet; thence S.0°15'30"W. 327.50 feet; thence N69°58'35"E 2645.32 feet; thence North 327.50 feet to the point of beginning. Contains 19.88 acres, less county road right-of-way along the East Side.

TOGETHER with all and singular the tenements, heretiments and appurtuances thereunto belonging to in anywise appertaining, and the reversion or reversions, remainder and remainders, rents, issues and profits thereof together with 7.5 shares in the Harrison Canal and Irrigation Company together with the water, water rights and ditch rights appertuant thereto.

131

EXHIBIT

A

BONNEVILLE COUNTY
JULY 17 PM 4:00

CHARLES C. JUST, ESQ. – ISB 1779
KIPP L. MANWARING, ESQ. – ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
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Attorneys for the Campbells

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE**

V. LEO CAMPBELL and KATHLEEN
CAMPBELL, husband and wife;

Plaintiffs,

vs.

JAMES C. KVAMME and DEBRA
KVAMME, husband and wife; and JOHN
DOES I-X;

Defendants.

Case No. CV-2010-3879

**AFFIDAVIT OF MARGY
SPRADLING**

STATE OF ARIZONA)
 : ss
County of Mohave)

Margy Spradling, being first duly sworn under oath, deposes and states as follows:

1. I am eighteen years of age or older and have personal knowledge of the facts and information contained in this affidavit.
2. I am a sister to V. Leo Campbell, one of the plaintiffs in this action.
3. I am the daughter of Leo H. Campbell and Phyllis Campbell.
4. My grandparents were Hyrum Campbell and Charlotte Campbell.
5. I grew up on our family's farm in Bonneville County. I knew my Campbell grandparents and was acquainted with the land I believed they owned. I believed those

grandparents owned an entire quarter section of land. My grandfather Campbell died when I was six years old.

6. My grandfather Campbell farmed and used draft horses for his farm work. He maintained corrals and fence lines to control his horses and other farm animals. For as long as I can remember, my grandfather maintained a fence on the northern edge of his corrals that extended east to west across the entire quarter section of land he owned. That is the fence now in dispute in this action.

7. I always understood the east-west fence crossing the entire quarter section was merely a convenience fence for controlling livestock.

8. The east-west fence across the quarter section was to my knowledge arbitrarily placed as a fence of convenience. During my lifetime, that fence was never observed as a legal boundary line or boundary fence.

9. Sometime in the early 1950s, my aunt, Mary Killian, and her husband, Delbert Killian, lost their farm in the Ririe area. Family discussions centered on helping the Killians have a place to live. I know my grandfather Campbell had the Killians come to live on the north half of the quarter section and help work the farm. I know my parents acquired the south half of the quarter section.

10. As a family of Campbells and Killians, I believe everyone knew and understood the situation surrounding the division of land and that the east-west fence was not considered the boundary between the divided parcels.

11. The east-west fence line was known to be several feet south of the actual described boundary line between the north and south halves of the quarter section. That fence was an amusing family anecdote over the years until the Killian property was purchased by the Kvammes. From my understanding, the Kvammes have ignored the legal boundary.

12. I understand the Kvammes contend the fence should be the new boundary line because they claim the fence was treated as the boundary. I know that is not true.

13. All the years I lived with my parents on the south half of the quarter section, it was common knowledge to everyone in our family that the east-west fence across the quarter section was not the boundary. I believe the same understanding was held by the Killians.

14. At not time to my knowledge has anyone in the Campbell family and the Killian family ever agreed that the east-west fence was the boundary. In fact, no one in either family

seemed to have any concerns about the actual boundary between the properties; we were all family and we lived and worked together without worrying about a boundary line.

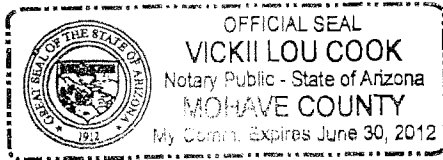
15. By gift deed recorded October 4, 1989 as Instrument No. 774871 in the Recorder's Office for Bonneville County, Idaho my parents conveyed to me title to 19.89 acres of their land. A copy of that deed is attached as Exhibit A and incorporated here by reference.

16. Based upon knowledge of the history of the east-west fence, I believe my grandfather, Hyrum Campbell, erected and maintained that fence as a convenience fence for his horses and livestock. Where he was the owner of the entire quarter section at the time the east-west fence was erected, I believe the fence was not intended to designate any boundary.

Dated this 1 day of ~~March~~ April, 2011.

Margy Spradling
Margy Spradling

SUBSCRIBED AND SWORN TO before me this 1st day of April, 2011.



[SEAL]

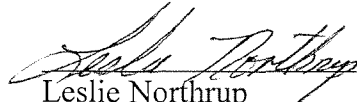
Vicki Lou Cook
Notary Public for Arizona
Residing at: Kingman, AZ
My commission expires: 6-30-11

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 17th day of May, 2011, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

Justin R. Seamons
Attorney at Law
414 Shoup Avenue
Idaho Falls, Idaho 83402

- Hand Delivered
- U.S. Mail, Postage Prepaid
- Facsimile
- Other _____



Leslie Northrup
Paralegal

BONNEVILLE COUNTY

DEED OF GIFT

774871

89007-4 894:02

This indenture, made this 11th day of October, 1989, between LEO H. CAMPBELL and PHYLLIS B. CAMPBELL, husband and wife, "DONOR", of 18519 North 15 East, City of Idaho Falls, Bonneville County, State of Idaho, and MARGY L. SPRADLING, "DONEE" of 5135 Lamanca Way, City of Salt Lake City, Salt Lake County, Utah, WITNESSETH:

That the Donor, for and in consideration of the love and affection which Donor has and bears unto the Donee, and for the purpose of making a gift to Donee and also for the better maintenance, support and protection and livelihood of Donee, does by these presents give, grant, convey and confirm unto the said Donee the following described real property, situate in Bonneville County, State of Idaho, to-wit:

Beginning at a point 327.50 feet North of the Southeast corner of the Northeast Quarter of Section 17, Township 3 North, Range 38 East, Boise Meridian, Bonneville County, Idaho and running S89°58'35"W 2646.60 Feet; thence N. 0°15'30"E 327.50 feet; thence N89°58'35"E 2645.32 feet; thence South 327.50 feet to the point of beginning. Contains 19.89 acres, less county road right-of-way along the East Side.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging to in anywise appertaining, and the reversion or reversions, remainder and remainders, rents, issues and profits thereof together with 7.5 shares in the Harrison Canal and Irrigation Company together with the water, water rights and ditch rights appertuant thereto.

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EXHIBIT

A

Subject to all existing easements and rights-of-way as appear of record or on the ground or by way of use.

SUBJECT, however, and reserving to Donor, and each of them, a life estate in and to all of such real property and improvements for and during the term of their natural lives, with the specific right to collect, receive, use and enjoy the income, dividends and proceeds therefrom during such term of their natural lives. Upon the death of both Donors, such life estate shall terminate.

IN WITNESS WHEREOF, the Donor have hereunto set their hands and seals the day and year first above written.

DONOR

Leo H. Campbell

LEO H. CAMPBELL

Phyllis B. Campbell

PHYLLIS B. CAMPBELL

STATE OF IDAHO)
)ss.
County of Bonneville)

On this _____ day of October, 1989, before me, the undersigned, a Notary Public in and for said said, personally appeared, LEO H. CAMPBELL and PHYLLIS B. CAMPBELL, husband and wife, known to me to be the persons whose names are subscribed to the within and foregoing DEED OF GIFT, and acknowledged to me that they had read the same, understood the contents thereof and the legal effect thereof, and that they had executed same of their own free will and choice.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Wanda L. Johnson
NOTARY PUBLIC FOR IDAHO
Residing at Idaho Falls, Idaho
My Commission Expires: 8/1/82

INSTRUMENT NO.	<u>74821</u>
DATE	<u>10-4-81</u>
INST. CODE	<u>356</u>
FICHE NO.	<u>6008-16</u>
FEE	<u>7.00</u>
STATE OF IDAHO) COUNTY OF BONNEVILLE) ss	
I hereby certify that the within instrument was recorded.	
Recorded Longmore, County Recorder	<u>Wanda L. Johnson</u>
Request of	<u>Carl + Dora</u>

POB621 140

BONNEVILLE COUNTY
IDAHO
11 MAY 20 11:37

CHARLES C. JUST, ESQ. – ISB 1779
KIPP L. MANWARING, ESQ. – ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
Idaho Falls, Idaho 83405
Telephone: (208) 523-9106
Facsimile: (208) 523-9146

Attorneys for the Campbells

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE**

V. LEO CAMPBELL and KATHLEEN
CAMPBELL, husband and wife;

Plaintiffs,

vs.

JAMES C. KVAMME and DEBRA
KVAMME, husband and wife; and JOHN
DOES I-X;

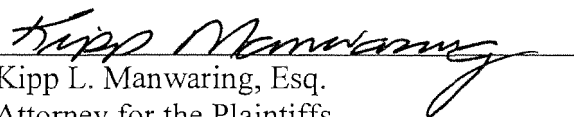
Defendants.

Case No. CV-2010-3879

**NOTICE OF HEARING –
Plaintiff’s Motion for Summary
Judgment**

NOTICE IS HEREBY GIVEN that a hearing on Plaintiff’s Motion for Summary Judgment has been scheduled for the **5th day of July, 2011, at the hour of 11:00 a.m.**, or as soon thereafter as counsel can be heard, before the Honorable Jon J. Shindurling, in the Bonneville County Courthouse, Idaho Falls, Idaho.

DATED this 19 day of May, 2011.


Kipp L. Manwaring, Esq.
Attorney for the Plaintiffs

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 19th day of May, 2011, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

Justin R. Seamons
Attorney at Law
414 Shoup Avenue
Idaho Falls, Idaho 83402

Hand Delivered
 U.S. Mail, Postage Prepaid
 Facsimile
 Other _____



Leslie Northrup
Paralegal

Justin R. Seamons
 414 Shoup Avenue
 Idaho Falls, ID 83402
 Telephone Number: (208) 542-0600
 Facsimile Number: (208) 529-4166
 Idaho State Bar Number: 3903

BONNEVILLE COUNTY
 11 JUN -7 PM 4:53

Attorney for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

V. LEO CAMPBELL and KATHLEEN)
 CAMPBELL,)
)
 Plaintiffs,)
)
 vs.)
)
 JAMES C. KVAMME and DEBRA)
 KVAMME,)
)
 Defendants.)
 _____)

Case No. CV 10-3879

MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

James C. Kvamme and Debra Kvamme respectfully file the following MOTION FOR SUMMARY JUDGMENT in accordance with I.R.C.P. 56.

SUPPORTING DOCUMENTS

1. AFFIDAVIT OF JAMES C. KVAMME
2. EXHIBITS IN SUPPORT OF AFFIDAVIT OF JAMES C. KVAMME
3. AFFIDAVIT OF KIM H. LEAVITT
4. EXHIBITS IN SUPPORT OF AFFIDAVIT OF KIM H. LEAVITT
5. AFFIDAVIT OF BLAKE MUELLER

6. AFFIDAVIT OF MARK HANSEN
7. NOTICE OF SUBMISSION OF DEPOSITION OF V. LEO CAMPBELL

APPLICABLE LAW

I.R.C.P. 56 governs the disposition of this motion:

. . . The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

See I.R.C.P. 56(c) (emphasis added); see also G & M Farms v. Funk Irrigation Co., 119 Idaho 514, 808 P.2d 851 (1991).

The following excerpts summarize the law that pertains to motions for summary judgment:

The purpose of summary judgment proceedings is to eliminate the necessity of trial where facts are not in dispute and where existent and undisputed facts lead to a conclusion of law which is certain.

Berg v. Fairman, 107 Idaho 441, 690 P.2d 896 (1984).

The purpose of the rule is to allow the court to pierce the pleadings in order to eliminate groundless denials and paper issues in cases which would end in directed verdicts or other rules of law.

Hall v. Bacon, 93 Idaho 1, 3, 453 P.2d 816, 818 (1969).

Finally, a party opposing summary judgment must "set forth specific facts showing that there is a genuine issue for trial and may not rest upon the mere allegations of the pleadings to oppose the motion." Brown v. Matthews Mortuary, Inc., 118 Idaho 830, 839, 801 P.2d 37, 46 (1990).

FACTS

V. Leo Campbell and Kathleen Campbell own a parcel of real property, located in the NE1/4 of Section 17, Township 3 North, Range 38 East of the Boise Meridian, Bonneville County, Idaho.

In addition, James C. Kvamme and Debra Kvamme own a parcel of real property, located in the NE1/4 of Section 17, Township 3 North, Range 38 East of the Boise Meridian, Bonneville County, Idaho.

The foregoing parcels of real property are contiguous—to wit, the north boundary of the Plaintiffs' parcel of real property is contiguous with the south boundary of the Defendants' parcel of real property.

The complaint in this case states, in pertinent part, the following:

On its northern boundary, the Subject Property abuts the Kvammes' real property . . . and the purpose of this action is to quiet title to the Subject Property in the name of the Campbells against any and all persons with adverse claims, interests, encumbrances, easements, liens, or rights.

See COMPLAINT, p. 2, Paragraph 5.

The Defendants acknowledge that the Plaintiffs' parcel of real property "abuts" their parcel of real property; however, they deny that the Plaintiffs have the right to "quiet title to the Subject Property" that lies north of the fence between their respective parcels of real property. See ANSWER, COUNTERCLAIM, AND DEMAND FOR JURY TRIAL, pp. 2-3, Paragraph 5.

In this regard, please note that a fence runs across the NE1/4 of Section 17. The fence is approximately one-half mile long and runs across the entire NE1/4 of Section 17.

The Plaintiffs allege that the fence does not sit on the boundary between the parties' respective parcels of real property; instead, the Plaintiffs allege that the fence sits on their parcel of real property and is off by 15 feet. The Defendants deny that the fence sits on the Plaintiffs' parcel of real property.

In the alternative, if the Plaintiffs can carry their burden of proof and establish that the fence sits on their parcel of real property and is off by 15 feet, the Defendants claim that they now own the "Subject Property" that lies north of the fence between their respective parcels of real property, based on the following:

- a. The doctrine of adverse possession;
- b. The doctrine of boundary by agreement or acquiescence; and/or
- c. The doctrine of quasi-estoppel.

See ANSWER, COUNTERCLAIM, AND DEMAND FOR JURY TRIAL, pp. 8-9, Paragraph 9(f), (g), and (h).

This MOTION FOR SUMMARY JUDGMENT only addresses the following three issues: The location of the fence, the doctrine of adverse possession, and the doctrine of boundary by agreement or acquiescence.

This MOTION FOR SUMMARY JUDGMENT does not address the doctrine of quasi-estoppel.

Thus, if this MOTION FOR SUMMARY JUDGMENT is not dispositive—that is, if this MOTION FOR SUMMARY JUDGMENT does not dispose of the Plaintiffs' complaint, the Defendants will file a separate motion for summary judgment to address the doctrine of quasi-estoppel.

For purposes of this MOTION FOR SUMMARY JUDGMENT, the Defendants will address the foregoing issues in the following order:

- a. The doctrine of adverse possession.
- b. The doctrine of boundary by agreement or acquiescence.
- c. The location of the fence.

I.

ADVERSE POSSESSION

Idaho Code Section 5-210 states the following:

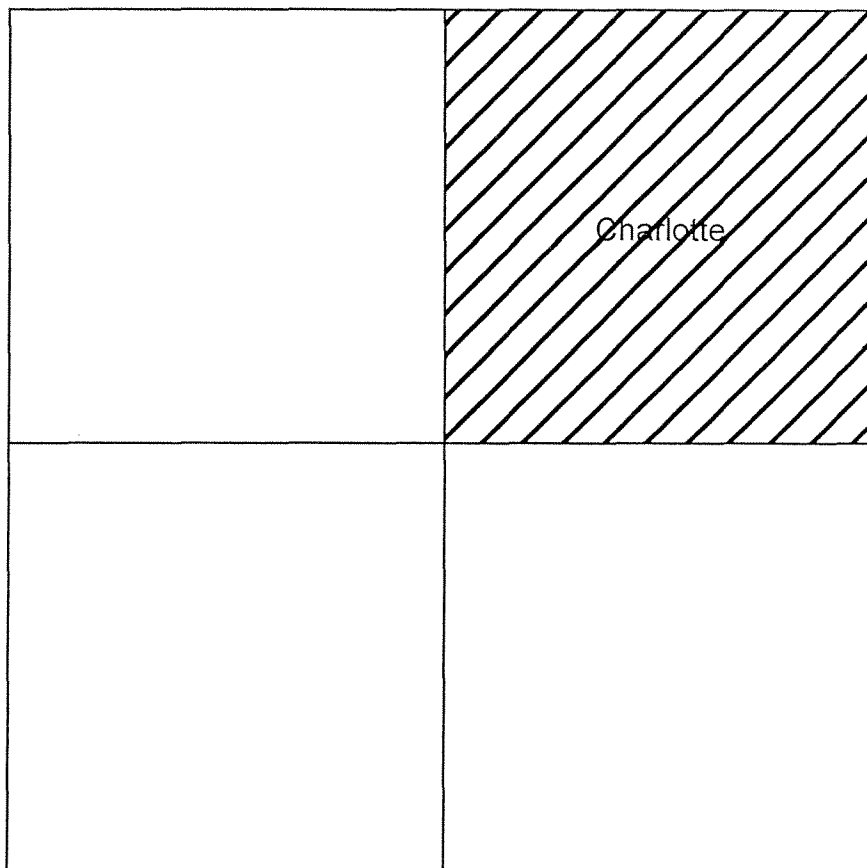
For the purpose of constituting an adverse possession, by a person claiming title not founded upon a written instrument, judgment, or decree, land is deemed to have been possessed and occupied in the following cases only:

- (1) Where it has been protected by a substantial enclosure.
- (2) Where it has been usually cultivated or improved.

Provided, however, that in no case shall adverse possession be considered established under the provisions of any sections of this code unless it shall be shown that the land has been occupied and claimed for the period of 20 years continuously, and the party or persons, their predecessors and grantors, have paid all the taxes, state, county, or municipal, which have been levied and assessed upon such land according to law. Provided, further, that adverse possession shall not be considered established under the provisions of any sections of this code if a written instrument has been recorded in the real estate records kept by the county recorder of the county in which the property is located and such written instrument declares that it was not the intent of a party to such instrument, by permitting possession or occupation of real property, to thereby define property boundaries or ownership.

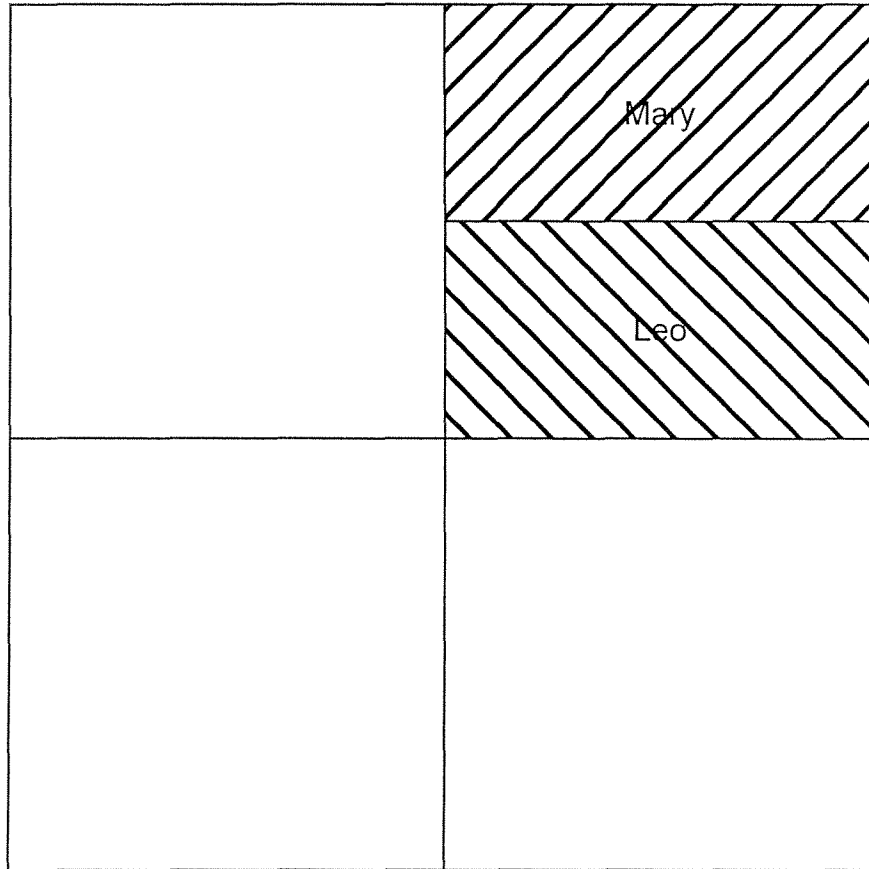
NE1/4 OF SECTION 17

Hannah Davis transferred the NE1/4 of Section 17 to Charlotte Campbell in 1937:



Hannah Davis has long since passed away. Charlotte Campbell was thereafter "in actual possession of, farmed, and paid the taxes on the above-described real property"—that is, the NE1/4 of Section 17. Charlotte Campbell has also long since passed away.

In 1950, Charlotte Campbell transferred the N1/2 of the NE1/4 to her daughter, Mary Killian, and the S1/2 of the NE1/4 to her son, Leo H. Campbell:

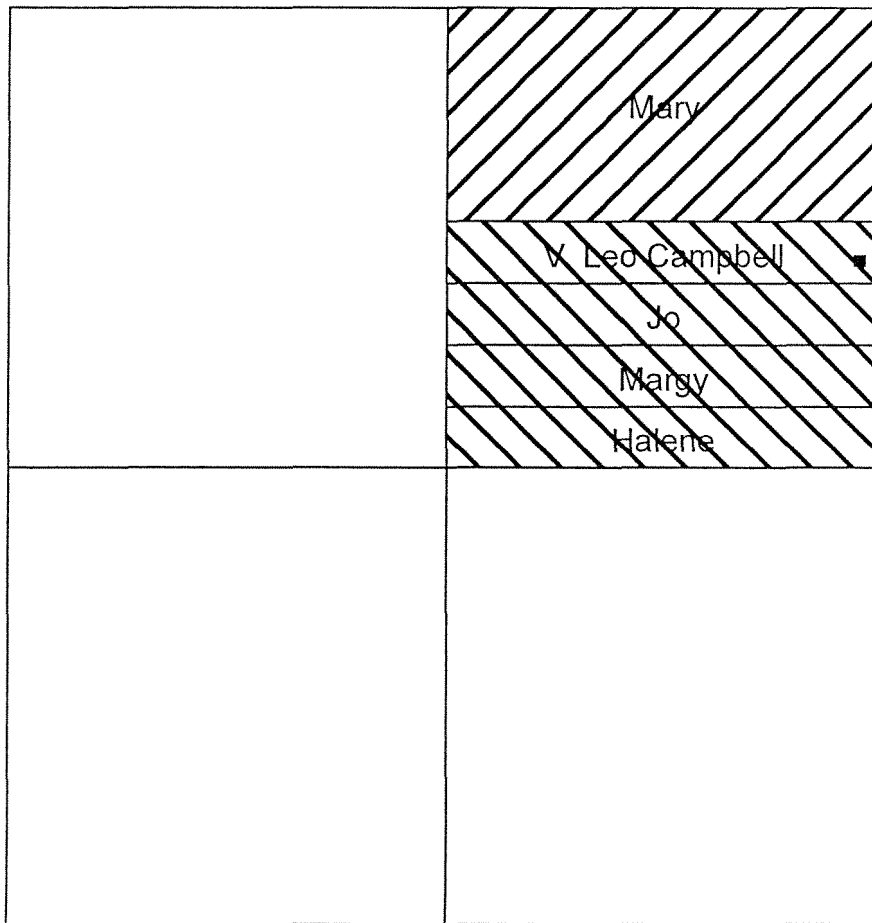


Leo H. Campbell was the father of V. Leo Campbell, the Plaintiff in this case. Mary Killian thereafter “possessed and occupied” the N1/2 of the NE1/4 and Leo H. Campbell thereafter “possessed and occupied” the S1/2 of the NE1/4. Mary Killian and Leo H. Campbell have also long since passed away.

S1/2 OF THE NE1/4 OF SECTION 17

With respect to the S1/2 of the NE1/4, before he passed away, Leo H. Campbell transferred approximately 1.4 acres thereof to his son, V. Leo Campbell, in 1981. V. Leo Campbell moved a home onto this acre in the same year—that is, in 1981—and he lives in that home to this day, 30 years later.

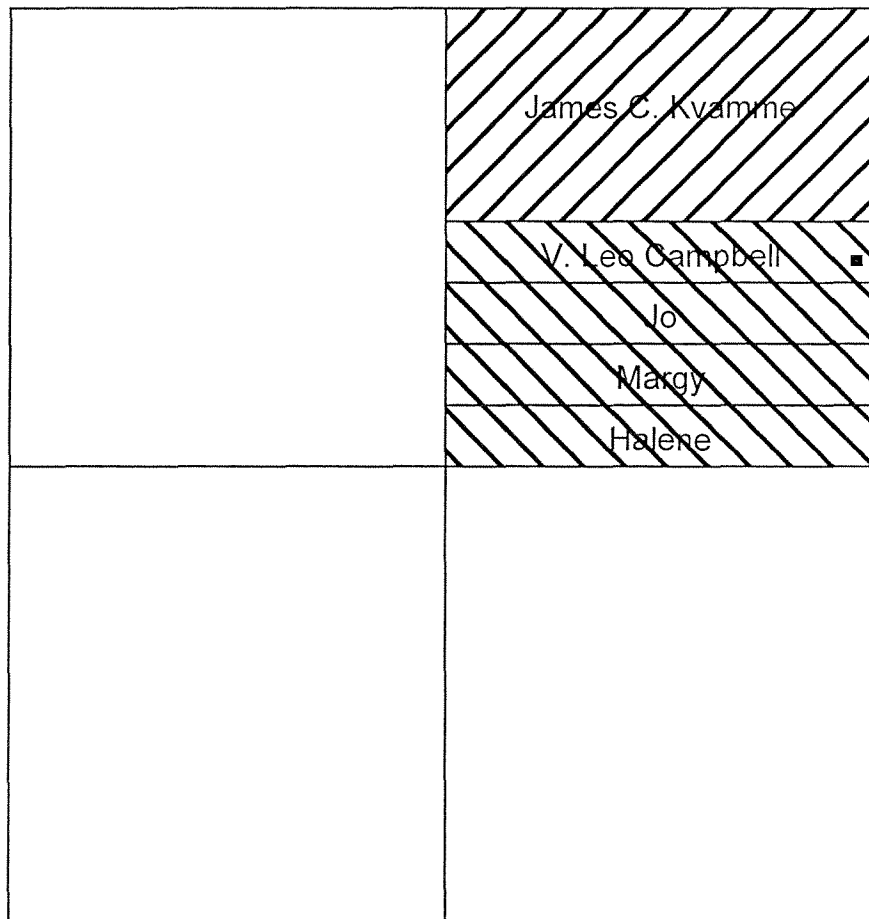
In addition, Leo H. Campbell split the S1/2 of the NE1/4 into four parcels of real property. He then transferred one parcel of real property to each of his four children—namely, V. Leo Campbell, Jo Campbell, Margy Spradling, and Halene Campbell:



Leo H. Campbell transferred the foregoing parcels of real property to his children by DEED OF GIFT, not by warranty deed.

N1/2 OF THE NE1/4 OF SECTION 17

With respect to the N1/2 of the NE1/4, the estate of Mary Killian transferred it to James C. Kvamme and Debra Kvamme on July 29, 2003. Since then—that is, since July 29, 2003, the Defendants have continuously “possessed and occupied” it:



FENCE

With respect to the fence that runs across the NE1/4—that is, the fence that runs between the Plaintiffs’ parcel of real property and the Defendants’ parcel of real property, again, the Plaintiffs allege that the fence does not sit on the boundary

between the parties' respective parcels of real property; instead, the Plaintiffs allege that the fence sits on their parcel of real property and is off by 15 feet. Of course, the Defendants deny that the fence sits on the Plaintiffs' parcel of real property.

The fence has been in its current location since time immemorial. During his deposition, V. Leo Campbell testified that he "believes the fence was there before the Davises bought the property." Hannah Davis and her husband, Parley Davis, purchased the NE1/4 on March 3, 1919.

For purposes of this motion, as well as convenience and common sense, the Plaintiffs and the Defendants both acknowledge and agree that the fence has been in its current location since their predecessors in interest purchased their respective parcels of real property in 1950.

ELEMENT NO 1: "PROTECTED BY A SUBSTANTIAL ENCLOSURE"

The estate of Mary Killian transferred the N1/2 of the NE1/4 to the Defendants on July 29, 2003. The N1/2 of the NE1/4 used to have a fence around it, which fully enclosed it. The fence around the N1/2 of the NE1/4 was a "substantial enclosure." In this regard, please note that this area is not open range.

Before 2003, and going back to at least 1950, the Defendants' predecessor in interest grazed cattle and pastured horses on the N1/2 of the NE1/4.

Today, the Defendants farm the N1/2 of the NE1/4, and they have done so since 2003. For purposes of farming, the fence is not necessary and the Defendants do not need it; again, they farm the N1/2 of the NE1/4; they do not graze cattle or pasture horses on it.

Thus, the Defendants have not maintained the fence on the east boundary, which runs along 15th East Street, or the north boundary, which runs along 113 North Street, and the fence is currently not there. Nonetheless, with respect to the south boundary, the fence is still there. Of course, that is the fence that runs between the Plaintiffs' parcel of real property and the Defendants' parcel of real property. Again, that fence has been in its current location since at least 1950.

More importantly, that fence was and still is a "substantial enclosure." In this regard, please note the following:

Before 2003, and going back to at least 1950, the Defendants' predecessor in interest grazed cattle and pastured horses on the north side of the fence. The fence enclosed and protected the real property on the north side of the fence; for example, it contained the cattle and horses and stopped them from drifting or straying or roaming at large, including onto the Plaintiffs' parcel of real property.

In addition, the Plaintiffs pasture horses on the south side of the fence; so, too, did their predecessor in interest—that is, Leo H. Campbell. Again, the fence encloses and protects the real property on the south side of the fence; for example, it contains the Plaintiffs' horses and stops them from drifting or straying or roaming at large, including onto the Defendants' parcel of real property.

Thus, from at least 1950 to the present, the fence has protected the real property on the both sides of the fence; and, with specific reference to the north side of the fence, which is the Defendants' side of the fence, the fence has protected the real property by stopping outside cattle and horses from drifting or straying or roaming at

large onto the real property, as well as stopping trespassers and other third parties from coming onto the real property, including the Plaintiffs and their horses.

The fence is sturdy and strong. It includes metal posts, solid steel T-bars, wooden posts, and five strands of barbed wire. It is approximately 4.5 feet high and the bottom wire is less than 20 inches above the ground. The posts are less than 24 feet apart, evenly spaced, and solidly set in the ground. The barbed wire is reasonably tight, well-stretched, and securely fastened to the posts.

Since 2003, the Defendants have personally maintained the fence; so, too, have the Plaintiffs. In addition, before 2003, and going back to at least 1950, the Defendants' predecessor in interest maintained the fence; so, too, did the Plaintiffs and their predecessor interest.

ELEMENT NO 2: "USUALLY CULTIVATED OR IMPROVED"

The N1/2 of the NE1/4 is not in native condition; it is not high plateau desert or growing indigenous plants, such as sagebrush and bitter brush. The N1/2 of the NE1/4 has been "usually cultivated or improved" since time immemorial; for example, it has been farmed, used for pasture, in production, and under irrigation since at least 1927.

For their part, the Defendants have cultivated or improved the N1/2 of the NE1/4 since 2003; for example, they have farmed it and installed a pivot on it, which further improved it.

Of course, before 2003, and going back to at least 1950, the Defendants' predecessor in interest cultivated or improved it; again, it has been farmed, used for pasture, in production, and under irrigation since at least 1927.

ELEMENT NO. 3: ADVERSE POSSESSION FOR “20 YEARS”

The following quote summarizes the elements of adverse possession:

In the case of boundary disputes between contiguous landowners, where one landowner can establish continuous open, notorious and hostile possession of an adjoining strip of his neighbor’s land, and taxes are assessed by lot number or by government survey designation, rather than by metes and bounds description, payment of taxes on the lot within which the disputed tract is enclosed satisfies the tax payment requirement of the statute.

Standall v. Teater, 96 Idaho 152, 156, 525 P.2d 347, 351 (1974); see also Scott v. Gubler, 95 Idaho 441, 511 P.2d 258 (1973).

This case is a “boundary dispute between contiguous landowners”; again, the north boundary of the Plaintiffs’ parcel of real property is contiguous with the south boundary of the Defendants’ parcel of real property.

Since 2003, the Defendants have “possessed an adjoining strip of [their] neighbor’s land”—to wit, the real property that lies north of the fence between their respective parcels of real property—and they have done so “continuously, openly, and notoriously and hostilely”—that is, they have done so against the right, title, and interest of the Plaintiffs and without the Plaintiffs’ permission, consent, or approval.

Of course, before 2003, and going back to at least 1950, the Defendants’ predecessor in interest “possessed” the real property that lies north of the fence between the parties’ respective parcels of real property—and she did so “continuously, openly, and notoriously and hostilely”—that is, she did so against the right, title, and interest of the Plaintiffs and without the Plaintiffs’ permission, consent, or approval.

During his deposition, V. Leo Campbell duly admitted to all of the elements of adverse possession. See AFFIDAVIT OF JAMES C. KVAMME.

ELEMENT NO. 4: "PAID ALL THE TAXES"

Since 2003, the Defendants have "paid all the taxes" that have been "levied and assessed" against their parcel of real property—that is, Parcel No. RP03N38E170008, whether state, county, or municipal. The Plaintiffs agree.

Of course, before 2003, and going back to at least 1950, the Defendants' predecessor in interest "paid all the taxes" that were "levied and assessed" against their parcel of real property, whether state, county, or municipal. Again, the Plaintiffs agree.

The taxes on Parcel No. RP03N38E170008 are current. No taxes are outstanding, past due, or otherwise in default or arrears.

The legal description of the Defendants' parcel of real property is the N1/2 of the NE1/4. The legal description of their parcel of real property is not a legal description, based on metes and bounds—that is, a legal description, based on specific calls of directions and distances from a stated point of beginning; instead, it is a legal description, based on a standard section of land under the U.S. Public Land Survey System, which nominally contains 640 acres.

Thus, the "payment of taxes on the lot within which the disputed tract is enclosed satisfies the tax payment requirement of the statute." See Standall v. Teater, 96 Idaho 152, 156, 525 P.2d 347, 351 (1974). Of course, the "disputed tract" in this case is located "within" the real property that lies north of the fence, which is the Defendants' parcel of real property.

ELEMENT NO. 5: NO “WRITTEN INSTRUMENT HAS BEEN RECORDED”

Finally, the Plaintiffs, including their predecessor in interest did not record a “written instrument” in the records of Bonneville County, Idaho, “declaring that it was not the intent of the party to such instrument, by permitting possession or occupancy of real property, to thereby define property boundaries or ownership.”

II.

BOUNDARY BY AGREEMENT OR ACQUIESCENCE

The following quote summarizes the elements of boundary by agreement or acquiescence:

Boundary by agreement or acquiescence has two elements: (1) There must be an uncertain or disputed boundary, and (2) a subsequent agreement fixing the boundary. . . . A subsequent agreement may be inferred from the conduct of parties or their predecessors, including acquiescence to the location and maintenance of a fence for a long period of time.

Weitz v. Green, 148 Idaho 851, 860, 230 P.3d 743, 752 (2010).

ELEMENT NO. 1: “UNCERTAIN OR DISPUTED BOUNDARY”

The Defendants purchased the N1/2 of the NE1/4 on July 29, 2003. They paid good and valuable consideration for it: \$150,000.00. They did so upon the belief that their predecessor in interest had good and marketable title to the N1/2 of the NE1/4 and that her title thereto was valid, including the real property that lies north of the fence; and, with specific reference to the real property that lies north of the fence, they did so upon the belief that it was part of the N1/2 of the NE1/4.

The Defendants did not have any notice, whether actual or constructive, that the Plaintiffs claimed any right, title, or interest in the real property that lies north of the

fence; and, with specific reference to the real property that lies north of the fence, they did not have any notice, whether actual or constructive, of any outstanding and/or adverse rights of another, including, without limitation, the Plaintiffs.

The Defendants farm the N1/2 of the NE1/4. They are not professional land surveyors and they are not licensed to practice professional land surveying under Chapter 12, Title 54, of the Idaho Code.

From that standpoint, they do not know the boundary between the Plaintiffs' parcel of real property and their parcel of real property; thus, the boundary is "uncertain or disputed."

Likewise, the Plaintiffs do not know the boundary between the parties' respective parcels of real property; again, the boundary is "uncertain or disputed":

Q. Of your own personal knowledge, do you know the boundary, the actual boundary, the true and correct boundary, between the north half of the northeast quarter and the south half of the northeast quarter of Section 17?

A. Not the exact, no.

Q. And when you say not the exact boundary, no, by that you would also agree that you're uncertain as to the true and correct boundary between the north half and the south half of the northeast quarter of Section 17?

A. I agree. I would be uncertain, as would everybody else.

Q. Now, notwithstanding the fact that you are uncertain about that boundary, your contention in this case is that the boundary is in dispute, correct?

A. Correct.

See DEPOSITION OF V. LEO CAMPBELL, vol. III, p. 214, ll. 6-23.

**ELEMENT NO. 2: "SUBSEQUENT AGREEMENT FIXING THE
BOUNDARY, WHICH MAY BE INFERRED FROM THE CONDUCT
OF THE PARTIES OR THEIR PREDECESSORS, INCLUDING
ACQUIESCENCE TO THE LOCATION AND MAINTENANCE
OF A FENCE FOR A LONG PERIOD OF TIME"**

With respect to the location of the fence, again, it has been in its current location since time immemorial. Again, during his deposition, V. Leo Campbell testified that he "believes the fence was there before the Davises bought the property." They purchased the NE1/4 on March 3, 1919.

Notwithstanding his "belief," please note that the Plaintiffs do not know the following:

- a. The Plaintiffs do not know who constructed the fence.
- b. The Plaintiffs do not know when it was constructed.
- c. The Plaintiffs do not know why it was constructed.

The deposition of V. Leo Campbell is rife with hearsay, speculation, and allegations that lack proper foundation. The Defendants have quoted the deposition at length in order to evidence and confirm that the Plaintiffs do not know who constructed the fence, when it was constructed, or why it was constructed. Nonetheless, the Defendants hereby object to the statements and allegations that constitute hearsay, speculation, and/or that lack proper foundation because the foregoing statements and allegations are not relevant or admissible. See I.R.E. 103, 401, 402, 801, and 802.

In any event, the parties have "acquiesced to the location of the fence for a long period of time." In addition, the parties have "maintained of the fence for a long period of time."

Finally, the “conduct of the parties and their predecessors” evidences and confirms the following: On the one hand, the Plaintiffs and their predecessor in interest have never enclosed the real property that lies north of the fence; they have never cultivated it, improved it, used it, irrigated it, or put it in production; they have never received rental income from it; they have never received a share crop from it; they have never posted it for sale; and they have never notified any third party, whether by way of actual notice or constructive notice, that the fence allegedly does not sit on the boundary between the parties’ respective parcels of real property. On the other hand, the Defendants and their predecessor in interest have always enclosed the real property that lies north of the fence; they have always cultivated it, improved it, used it, irrigated it, and put it in production; and they have now installed a pivot, mainline, and motor on the N1/2 of the NE1/4, which further improved it.

III.

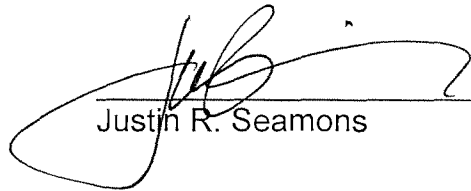
TRUE AND CORRECT LOCATION OF THE FENCE

The fence is exactly 3,960 feet from the SE corner of Section 17; in other words, the fence sits on the boundary between the Plaintiffs’ parcel of real property and the Defendants’ parcel of real property; it does not sit on the Plaintiffs’ parcel of real property, notwithstanding their allegation to the contrary, and it is not off by 15 feet. See AFFIDAVIT OF KIM H. LEAVITT.

CONCLUSION

The Defendants respectfully move the court to grant their MOTION FOR SUMMARY JUDGMENT. In this regard, "there is no genuine issue as to any material fact" and they are "entitled to a judgment as a matter of law." See I.R.C.P. 56(c).

Dated June 7, 2011.

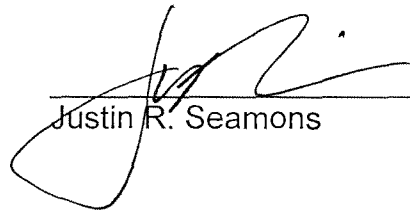


Justin R. Seamons

CERTIFICATE OF SERVICE

I served a copy of the foregoing MOTION FOR SUMMARY JUDGMENT on the following person on June 7, 2011:

Kipp L. Manwaring
P.O. Box 50271
Idaho Falls, ID 83405-0271



Justin R. Seamons

Justin R. Seamons
 414 Shoup Avenue
 Idaho Falls, ID 83402
 Telephone Number: (208) 542-0600
 Facsimile Number: (208) 529-4166
 Idaho State Bar Number: 3903

BONNEVILLE COUNTY
 11 JUN -7 7:14:53

Attorney for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

V. LEO CAMPBELL and KATHLEEN)
 CAMPBELL,)
)
 Plaintiffs,)
)
 vs.)
)
 JAMES C. KVAMME and DEBRA)
 KVAMME,)
)
 Defendants.)
 _____)

Case No. CV 10-3879

AFFIDAVIT OF JAMES C. KVAMME

State of Idaho)
) ss.
 County of Bonneville)

I, James C. Kvamme, state and declare the following under oath:

INTRODUCTION

1. I am over the age of 18.
2. I have personal knowledge of the facts in this case.
3. I am competent to testify to the matters stated herein.
4. V. Leo Campbell and Kathleen Campbell are the Plaintiffs in this case.
5. My wife and I are the Defendants in this case.

6. V. Leo Campbell and Kathleen Campbell filed the complaint in this case on June 30, 2010.

7. V. Leo Campbell and Kathleen Campbell own a parcel of real property, located in the NE1/4 of Section 17, Township 3 North, Range 38 East of the Boise Meridian, Bonneville County, Idaho.

8. In addition, my wife and I own a parcel of real property, located in the NE1/4 of Section 17, Township 3 North, Range 38 East of the Boise Meridian, Bonneville County, Idaho.

9. The foregoing parcels of real property are contiguous--to wit, the north boundary of the Plaintiffs' parcel of real property is contiguous with the south boundary of our parcel of real property.

10. Thus, the complaint in this case states, in pertinent part, the following:

On its northern boundary, the Subject Property abuts the Kvammes' real property . . . and the purpose of this action is to quiet title to the Subject Property in the name of the Campbells against any and all persons with adverse claims, interests, encumbrances, easements, liens, or rights.

See COMPLAINT, p. 2, Paragraph 5.

11. My wife and I acknowledge that the Plaintiffs' parcel of real property "abuts" our parcel of real property; however, we deny that the Plaintiffs have the right to "quiet title to the Subject Property" that lies north of the fence between our respective parcels of real property. See ANSWER, COUNTERCLAIM, AND DEMAND FOR JURY TRIAL, pp. 2-3, Paragraph 5.

12. In this regard, please note that a fence runs across the NE1/4 of Section 17.

13. The fence is approximately one-half mile long and runs across the entire NE1/4 of Section 17.

14. V. Leo Campbell and Kathleen Campbell allege that the fence does not sit on the boundary between our respective parcels of real property; instead, V. Leo Campbell and Kathleen Campbell allege that the fence sits on their parcel of real property and is off by 15 feet.

15. My wife and I deny that the fence sits on the Plaintiffs' parcel of real property.

16. In the alternative, if, and I repeat if, the Plaintiffs can carry their burden of proof and establish that the fence sits on their parcel of real property and is off by 15 feet, my wife and I claim that we now own the "Subject Property" that lies north of the fence between our respective parcels of real property, based on the following:

- a. The doctrine of adverse possession;
- b. The doctrine of boundary by agreement or acquiescence;

and/or

- c. The doctrine of quasi-estoppel.

See ANSWER, COUNTERCLAIM, AND DEMAND FOR JURY TRIAL, pp. 8-9, Paragraph 9(f), (g), and (h).

17. This MOTION FOR SUMMARY JUDGMENT only addresses the following three issues—namely, the location of the fence, the doctrine of adverse possession, and the doctrine of boundary by agreement or acquiescence.

18. This MOTION FOR SUMMARY JUDGMENT does not address the doctrine of quasi-estoppel.

19. Thus, if this MOTION FOR SUMMARY JUDGMENT is not dispositive—that is, if this MOTION FOR SUMMARY JUDGMENT does not dispose of the Plaintiffs' complaint, my wife and I will file a separate motion for summary judgment to address the doctrine of quasi-estoppel.

20. For purposes of this MOTION FOR SUMMARY JUDGMENT, I will address the foregoing issues in the following order:

- a. The doctrine of adverse possession.
- b. The doctrine of boundary by agreement or acquiescence.
- c. The location of the fence.

I.

ADVERSE POSSESSION

21. I have reviewed the provisions of Idaho Code Section 5-210:

For the purpose of constituting an adverse possession, by a person claiming title not founded upon a written instrument, judgment, or decree, land is deemed to have been possessed and occupied in the following cases only:

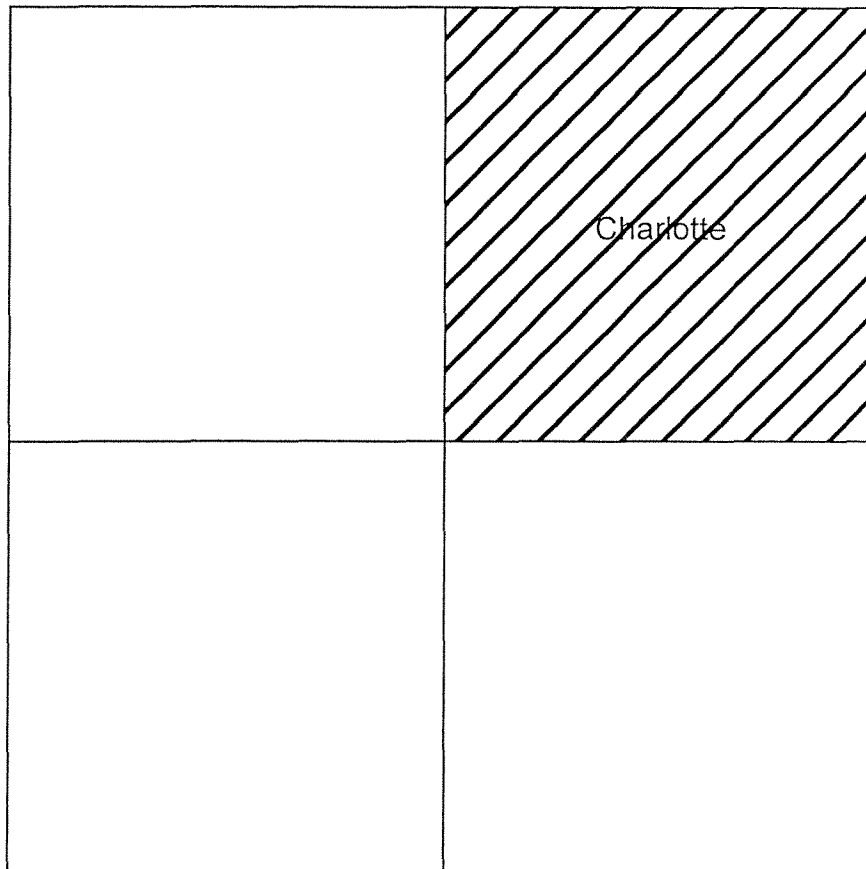
- (1) Where it has been protected by a substantial enclosure.
- (2) Where it has been usually cultivated or improved.

Provided, however, that in no case shall adverse possession be considered established under the provisions of any sections of this code unless it shall be shown that the land has been occupied and claimed for the period of 20 years continuously, and the party or persons, their predecessors and grantors, have paid all the taxes, state, county, or municipal, which have been levied and assessed upon such land according to law. Provided, further, that adverse possession shall not be considered established under the provisions of any sections of this code if a written instrument has been recorded in the real estate records kept by the county recorder of the county in which the property is located and such

written instrument declares that it was not the intent of a party to such instrument, by permitting possession or occupation of real property, to thereby define property boundaries or ownership.

NE1/4 OF SECTION 17

22. Hannah Davis transferred the NE1/4 of Section 17 to Charlotte Campbell in 1937:



See EXHIBIT A.

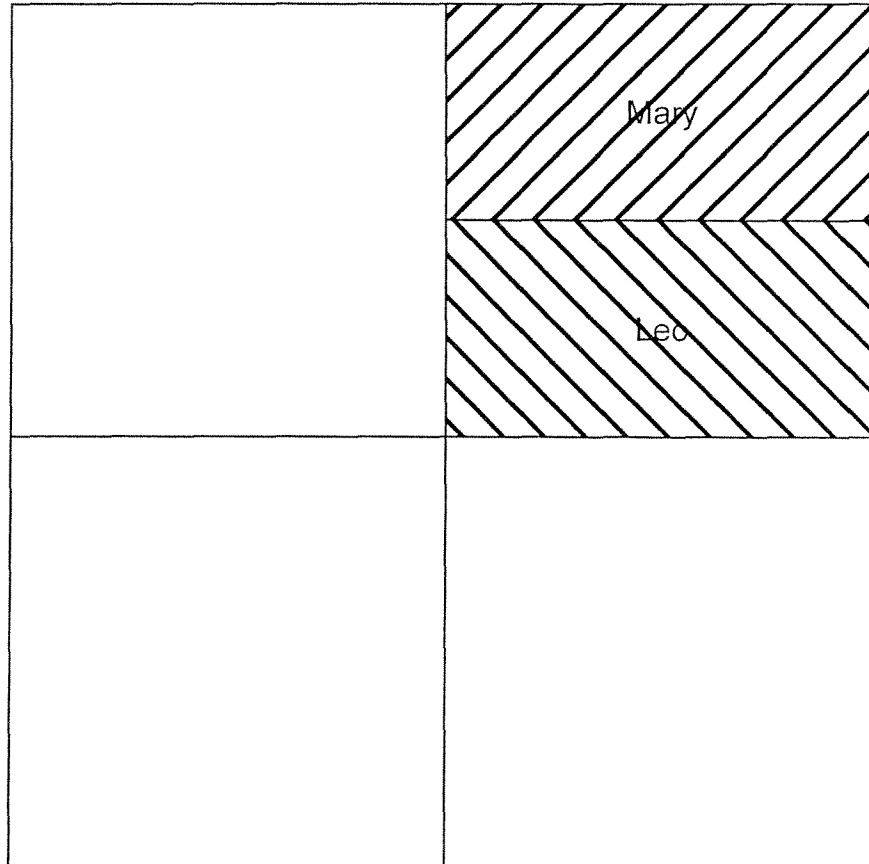
23. Hannah Davis has long since passed away.

24. Charlotte Campbell was thereafter "in actual possession of, farmed, and paid the taxes on the above-described real property"—that is, the NE1/4 of Section 17.

See EXHIBIT B.

25. Charlotte Campbell has also long since passed away.

26. In 1950, Charlotte Campbell transferred the N1/2 of the NE1/4 to her daughter, Mary Killian, and the S1/2 of the NE1/4 to her son, Leo H. Campbell:



See EXHIBIT C and EXHIBIT D.

27. Leo H. Campbell was the father of V. Leo Campbell, the Plaintiff in this case.

28. Mary Killian thereafter "possessed and occupied" the N1/2 of the NE1/4 and Leo H. Campbell thereafter "possessed and occupied" the S1/2 of the NE1/4.

29. Mary Killian and Leo H. Campbell have also long since passed away.

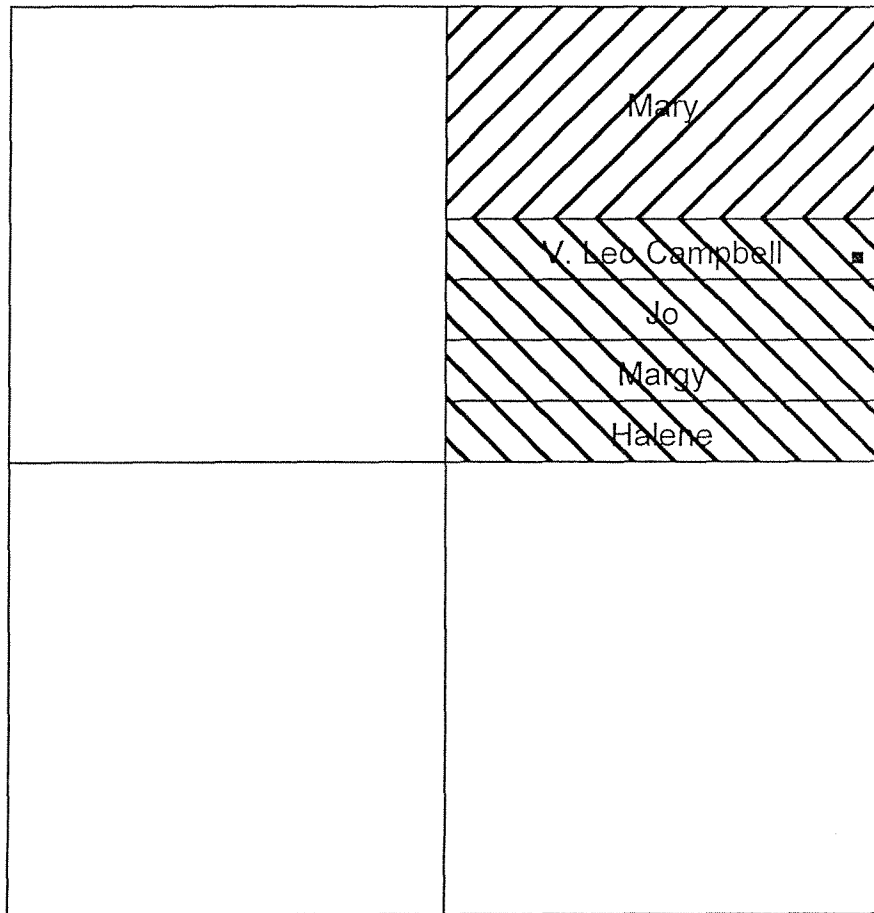
S1/2 OF THE NE1/4 OF SECTION 17

30. With respect to the S1/2 of the NE1/4, before he passed away, Leo H. Campbell transferred approximately 1.4 acres thereof to his son, V. Leo Campbell, in 1981.

31. V. Leo Campbell moved a home onto this acre in the same year—that is, in 1981—and he lives in that home to this day, 30 years later.

32. In addition, Leo H. Campbell split the S1/2 of the NE1/4 into four parcels of real property.

33. He then transferred one parcel of real property to each of his four children—to wit, V. Leo Campbell, Jo Campbell, Margy Spradling, and Halene Campbell:

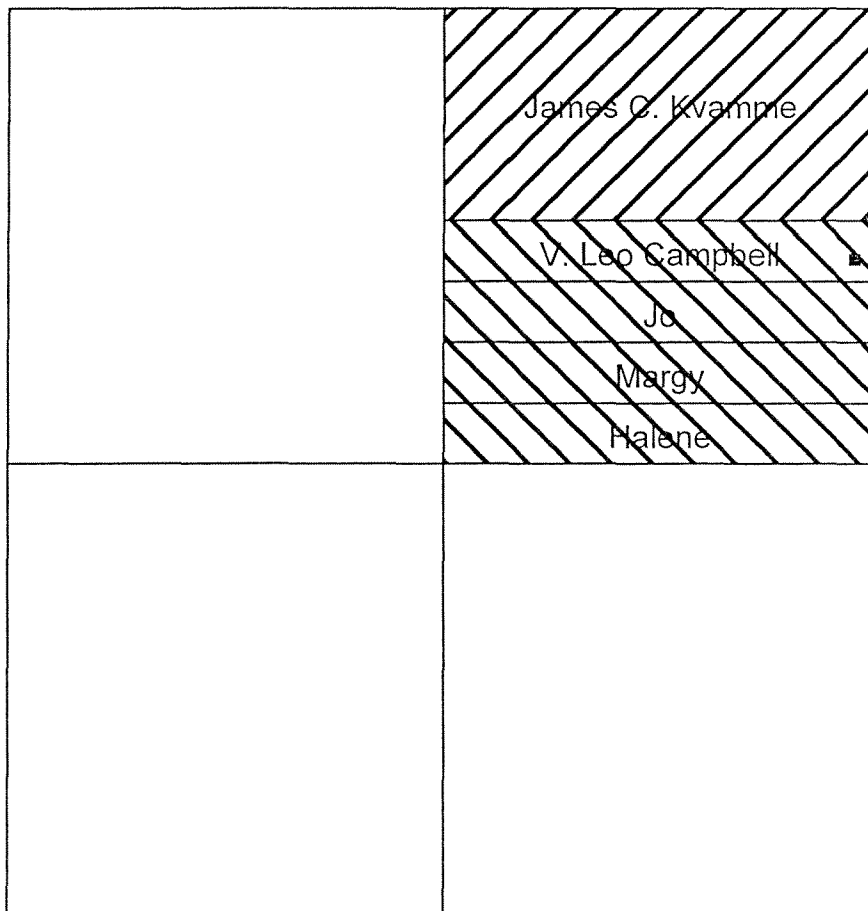


34. Leo H. Campbell transferred the foregoing parcels of real property to his children by DEED OF GIFT, **not** by warranty deed. See EXHIBITS E, F, G, and H.

N1/2 OF THE NE1/4 OF SECTION 17

35. With respect to the N1/2 of the NE1/4, the estate of Mary Killian transferred it to me and my wife on July 29, 2003. See EXHIBIT I.

36. Since then—that is, since July 29, 2003, my wife and I have continuously “possessed and occupied” it:



FENCE

37. With respect to the fence that runs across the NE1/4—that is, the fence that runs between the Plaintiffs' parcel of real property and our parcel of real property, again, the Plaintiffs allege that the fence does not sit on the boundary between our respective parcels of real property; instead, the Plaintiffs allege that the fence sits on their parcel of real property and is off by 15 feet.

38. Again, my wife and I deny that the fence sits on the Plaintiffs' parcel of real property.

39. In any event, the fence has been in its current location since time immemorial.

40. Of my own personal knowledge, the fence has been in its current location for at least 29 years.

41. In this regard, I have personally driven by the fence, farmed, and lived in the area since 1982.

42. During discovery, V. Leo Campbell stated that he “believes Hyrum Campbell erected the fence.” See ANSWER TO INTERROGATORY NO. 14, dated September 30, 2010.

43. Hyrum Campbell was the husband of Charlotte Campbell; again, Charlotte Campbell purchased the NE1/4 from Hannah Davis in 1937. See EXHIBIT A.

44. Hyrum Campbell passed away 12 years later on January 17, 1949. See EXHIBIT B.

45. However, at his deposition, V. Leo Campbell stated that he “believes the fence was there before the Davises bought the property.” See DEPOSITION OF V. LEO CAMPBELL, vol. III, p. 219, ll. 5-6.

46. Hannah Davis and her husband, Parley Davis, purchased the NE1/4 on March 3, 1919. See EXHIBIT J.

47. To my knowledge, no one—at least no one alive—knows whether the fence was there “before the Davises bought the property” in 1919.

48. For purposes of this motion, as well as convenience and common sense, V. Leo Campbell and I both acknowledge and agree that the fence has been in its current location since our predecessors in interest purchased their respective parcels of real property in 1950.

49. In this regard, please recall the following:

a. Charlotte Campbell transferred the N1/2 of the NE1/4 to her daughter, Mary Killian, in 1950; of course, Mary Killian was my predecessor in interest. See EXHIBIT C.

b. In addition, Charlotte Campbell transferred the S1/2 of the NE1/4 to her son, Leo H. Campbell, in 1950; of course, Leo H. Campbell was the Plaintiffs’ predecessor in interest. See EXHIBIT D.

ELEMENT NO 1: “PROTECTED BY A SUBSTANTIAL ENCLOSURE”

50. The estate of Mary Killian transferred the N1/2 of the NE1/4 to me and my wife on July 29, 2003. See EXHIBIT I.

51. The N1/2 of the NE1/4 used to have a fence around it, which fully enclosed it.¹

52. The fence around the N1/2 of the NE1/4 was a “substantial enclosure.”² In this regard, please note that this area is not open range.

53. Before 2003, and going back to at least 1950, my predecessor in interest—that is, Mary Killian and her husband, Delbert Killian—grazed cattle and pastured horses on the N1/2 of the NE1/4. See DEPOSITION OF V. LEO CAMPBELL, vol. II, p. 134, ll. 6-11, and p. 161, ll. 1-2.

54. Today, my wife and I farm the N1/2 of the NE1/4, and we have done so since 2003.

55. For purposes of farming, the fence is not necessary and my wife and I do not need it; again, we farm the N1/2 of the NE1/4; we do not graze cattle or pasture horses on it.

56. Thus, my wife and I have not maintained the fence on the east boundary, which runs along 15th East Street, or the north boundary, which runs along 113 North Street, and the fence is currently not there.

57. Nonetheless, with respect to the south boundary, the fence is still there.

58. Of course, that is the fence that runs between the Plaintiffs’ parcel of real property and our parcel of real property.

¹In fact, the entire NE1/4 used to have a fence around it. That fence—that is, the fence around the entire NE1/4—was a “substantial enclosure.” See DEPOSITION OF V. LEO CAMPBELL, vol. II, p. 136, l. 12 to p. 137, l. 18.

²See DEPOSITION OF V. LEO CAMPBELL, vol. III, p. 192, l. 18 to p. 195, l. 22.

59. Again, that fence has been in its current location since at least 1950.

60. More importantly, that fence was and still is a “substantial enclosure.” In this regard, please note the following:

a. Before 2003, and going back to at least 1950, my predecessor in interest—that is, Mary Killian—grazed cattle and pastured horses on the north side of the fence. The fence enclosed and protected the real property on the north side of the fence; for example, it contained the cattle and horses and stopped them from drifting or straying or roaming at large, including onto the Plaintiffs’ parcel of real property.

b. In addition, V. Leo Campbell and Kathleen Campbell pasture horses on the south side of the fence; so, too, did their predecessor in interest—that is, Leo H. Campbell. Again, the fence encloses and protects the real property on the south side of the fence; for example, it contains the Plaintiffs’ horses and stops them from drifting or straying or roaming at large, including onto our parcel of real property.

c. Thus, from at least 1950 to the present, the fence has protected the real property on the both sides of the fence; and, with specific reference to the north side of the fence, which is my side of the fence, the fence has protected the real property by stopping outside cattle and horses from drifting or straying or roaming at large onto the real property, as well as stopping trespassers and other third parties from coming onto the real property, including the Plaintiffs and their horses.

d. Again, the fence was and still is a substantial enclosure. In this regard, I took the following pictures of the fence on May 31, 2011:

1. EXHIBIT K is a picture of the fence, which I took from the southwest corner of my parcel of real property, facing east. It shows my pivot, which is on the north side of the fence. In addition, it shows the Plaintiffs' pasture, which is on the south side of the fence.

2. EXHIBIT L is a picture of the fence, which I took from the center of my real property, facing west. It shows the mainline riser and concrete pad of my pivot.

3. EXHIBIT M is a picture of the fence, which I took from the center of my real property, facing west. Again, it shows the mainline riser and concrete pad of my pivot.

4. EXHIBIT N is a picture of the fence, which I took from the center of my real property, facing east. It shows the Plaintiffs' pasture and horses on the south side of the fence.

e. The fence is sturdy and strong. It includes metal posts, solid steel T-bars, wooden posts, and five strands of barbed wire. It is approximately 4.5 feet high and the bottom wire is less than 20 inches above the ground. The posts are less than 24 feet apart, evenly spaced, and solidly set in the ground. The barbed wire is reasonably tight, well-stretched, and securely fastened to the posts.

f. Since 2003, I have personally maintained the fence; so, too, have the Plaintiffs. In addition, before 2003, and going back to at least 1950, my predecessor in interest—that is, Mary Killian—maintained the fence; so, too, did the Plaintiffs and their predecessor interest—that is, Leo H. Campbell. See DEPOSITION OF V. LEO CAMPBELL, vol. III, p. 195, l. 23 to p. 198, l. 7.

ELEMENT NO 2: “USUALLY CULTIVATED OR IMPROVED”

61. The N1/2 of the NE1/4 is not in native condition; it is not high plateau desert or growing indigenous plants, such as sagebrush and bitter brush.

62. The N1/2 of the NE1/4 has been “usually cultivated or improved” since time immemorial; for example, it has been farmed, used for pasture, in production, and under irrigation since at least 1927. See EXHIBIT O; see also DEPOSITION OF V. LEO CAMPBELL, vol. II, p. 145, l. 11 to p. 146, l. 15, and vol. III, p. 198, l. 15 to p. 199, l. 7.

63. For my part, my wife and I have cultivated or improved the N1/2 of the NE1/4 since 2003; for example, we have farmed it and installed a pivot on it, which further improved it.

64. Of course, before 2003, and going back to at least 1950, my predecessor in interest—that is, Mary Killian—cultivated or improved it; again, it has been farmed, used for pasture, in production, and under irrigation since at least 1927. See supra.

ELEMENT NO. 3: ADVERSE POSSESSION FOR “20 YEARS”

65. I have reviewed and understand the elements of adverse possession:

In the case of boundary disputes between contiguous landowners, where one landowner can establish continuous open, notorious and hostile possession of an adjoining strip of his neighbor’s land, and taxes are assessed by lot number or by government survey designation, rather than by metes and bounds description, payment of taxes on the lot within which the disputed tract is enclosed satisfies the tax payment requirement of the statute.

Standall v. Teater, 96 Idaho 152, 156, 525 P.2d 347, 351 (1974); see also Scott v. Gubler, 95 Idaho 441, 511 P.2d 258 (1973).

66. This is a “boundary dispute between contiguous landowners”; again, the north boundary of the Plaintiffs’ parcel of real property is contiguous with the south boundary of our parcel of real property.

67. Since 2003, my wife and I have allegedly “possessed an adjoining strip of [our] neighbor’s land”—to wit, the real property that lies north of the fence between our respective parcels of real property—and we have done so “continuously, openly, and notoriously and hostilely”—that is, we have done so against the right, title, and interest of the Plaintiffs and without the Plaintiffs’ permission, consent, or approval.

68. Of course, before 2003, and going back to at least 1950, our predecessor in interest—that is, Mary Killian—“possessed” the real property that lies north of the fence between our respective parcels of real property—and she did so “continuously, openly, and notoriously and hostilely”—that is, she did so against the right, title, and interest of the Plaintiffs and without the Plaintiffs’ permission, consent, or approval.

69. I personally attended the deposition of V. Leo Campbell on January 26 and 28, 2011.

70. V. Leo Campbell duly admitted to all of the elements of adverse possession:

Q. On Wednesday, we reviewed the chain of title on this property and learned that [Delbert H. Killian and Mary C. Killian] received the deed in 1950 to the north half of the northeast quarter, correct?

A. Correct.

Q. And, again, you don't dispute that they acquired the north half of the property, do you?

A. No.

Q. In terms of a chain of title, we also reviewed a deed to their mother – well, to Mary's mother, Charlotte, in 1937, correct?

A. Yes.

Q. And, again, you don't dispute that Charlotte acquired the property, all of the northeast quarter, in 1937, do you?

A. No.

Q. Since 2003, you acknowledge and admit that Craig has continuously occupied the north half of the northeast quarter, don't you?

A. Yes.

Q. And even with reference to the property north of the fence, you acknowledge and agree that he has continuously occupied even that land –

A. Yes.

Q. – since 2003, correct?

A. Yes.

Q. You don't allege that Craig has ever abandoned the property, true?

- A. True.
- Q. You don't allege that he's ever vacated the property, true?
- A. True.
- Q. You don't allege that his occupancy has otherwise been interrupted, there's been no seizure or forfeiture or eviction?
- A. Not to my knowledge, huh-uh.
- Q. With reference to his grantor and predecessor in title, and that is Delbert Henry Killian and Mary C. Killian, you acknowledge and agree that they continuously occupied the north half of the northeast quarter before Mr. Kvamme, don't you?
- A. Yes, I do.
- Q. And that would also include the ground north of the fence that is in dispute in this case, correct?
- A. Correct.
- Q. And, again, you don't allege that they abandoned any of the property?
- A. No.
- Q. You agree that they didn't vacate and their occupancy wasn't interrupted, true?
- A. True.
- Q. And there's no allegation here that they were evicted or that the property was seized and taken away from them at any time, correct?
- A. Correct.
- Q. With reference to Mr. Kvamme's use and occupancy since 2003, you likewise admit that it has been open and plainly visible, correct?
- A. Correct.

- Q. And that, again, would include all of the ground north of the fence?
- A. Correct.
- Q. In fact, he has installed a pivot, pump, and motor on that ground north of the fence, hasn't he?
- A. Yes, he has.
- Q. And, again, that was plainly and openly visible?
- A. Yup.
- Q. And you had knowledge of it and you've known about his open use since 2003?
- A. Yes.
- Q. And, again, with reference to his predecessors in title, that is Delbert Henry Killian and Mary C. Killian, again, their occupancy and use of the property was open and plainly visible?
- A. Yes.
- Q. And that would include the land north of the fence that's in dispute in this case?
- A. Yes.
- Q. And you knew about their use and occupancy of all of the land, didn't you?
- A. Yes, I did.
- Q. And prior to your coming onto the property in 1981, your father knew about their use and occupancy of the land north of the fence, didn't he?
- A. Yes, he did.
- Q. With reference to Craig's use, which, again, began in 2003, you acknowledge and agree that his occupancy of the property has been hostile and adverse to you, correct?

Mr. Manwaring: Objection, you can answer.

A. I don't know that it's been hostile and adverse.

Q. Well, with reference to the north half of the northeast quarter, you do agree that his occupancy of the north half of the northeast quarter has been against any interest you might have in the property and adverse to you, correct?

A. Correct.

Q. And that would include all of the land north of the fence that's in dispute in this case, correct?

Mr. Manwaring: Object to the form. You can answer.

A. I didn't follow you on that one.

Q. Well, with reference to all of the ground north of the fence –

A. Uh-huh.

Q. – Craig has continuously used it.

A. Yes.

Q. Continuously occupied it.

A. Yes.

Q. You've known about that.

A. Yes.

Q. And that has been against what you claim is your interest in the property, true?

Mr. Manwaring: Object to the form. You can answer.

A. I'm not real sure what you're asking me for here.

Q. Well, let me see if I can break it down a bit into simple parts. You've acknowledged and agreed that Craig has occupied the property, including all of the property north of the fence, correct?

A. Correct.

Q. You've agreed and acknowledged that you knew about his occupancy of the property, including all of the property north of the fence?

A. Correct.

Q. And yet you claim the property north of the fence, to some distance, is your property?

A. Correct.

Q. All right. So you would agree, then, that his occupancy and use of the property has been hostile to your claimed interest in that property?

Mr. Manwaring: Object to the form. You can answer.

A. Again, I don't see the hostile.

Q. Well, it's been adverse to your interest or your claimed interest in that property. Would you at least agree with that?

Mr. Manwaring: Objection, same. Go ahead.

A. I really don't know what you want. This is a rather long, convoluted situation that has developed to this point over the last few years.

...

Q. Do you allege or claim that you ever told Mr. Kvamme that you claimed an interest in the land north of the fence?

A. I attempted to.

Q. Do you allege or claim that you ever told Mr. Kvamme that you claim an interest in the land north of the fence, yes or no.

A. No.

Q. Okay.

A. He never gave me the opportunity to.

Q. All right. But you at least admit you didn't tell him that you claimed an interest in the land north of the fence?

A. I attempted to.

Q. That's fine, but you just told me that he didn't let you finish, and so you didn't.

A. Exactly.

Q. Now, let's go back to this common building block. If you never told him that you claimed an interest in the land north of the fence, isn't it equally true that you never gave him permission to use the land north of the fence?

Mr. Manwaring: Object to the form. Go ahead and answer.

A. No. I didn't give him permission to use the land.

Q. Okay. And isn't it also true that you never gave him consent to use the land north of the fence?

A. True.

Q. And you never gave him any other form of authorization to use the land north of the fence, correct?

Mr. Manwaring: Objection. Go ahead and answer.

A. No.

Q. And, furthermore, you never recorded a written instrument in the records of Bonneville County claiming that you had an interest in the land north of the fence, did you?

A. No.

Q. Or a written instrument that alleged he was occupying that land with your permission, did you?

A. No.

Q. Or a written instrument stating or declaring that you had an ownership interest in any of the land north of the fence, did you?

A. No.

Q. Again, with reference to his predecessor and grantor in title, and that is Delbert H. Killian and Mary C. Killian, you likewise never granted permission to them to use and occupy the land north of the fence, did you?

A. No.

Q. And you never gave them consent to use and occupy the land north of the fence?

A. No.

Q. You never gave them any other form of authorization to use and occupy the land north of the fence?

A. No.

Q. And, with reference their use and occupancy, again, you never recorded a written instrument in the records of Bonneville County stating that they were using it with your permission or that you had an interest in it or claim ownership in it, did you?

A. No.

Q. And, in light of the fact that your interest only began in 1981, your father likewise never recorded such an instrument, did he?

A. Not to my knowledge.

...

Q. You do not dispute or contend in this case that Mr. Kvamme has failed to pay all of the taxes that have been levied and assessed against the north half of the northeast quarter, do you?

A. No.

Q. And, in fact, you do not contend or allege in this case that his predecessor and grantor in title, Delbert H. Killian and Mary C. Killian, did not pay all of the taxes that were levied and assessed against the north half of the northeast quarter, do you?

A. No, I don't.

Q. And, in fact, you would concede and admit that both Mr. Kvamme and his predecessor in title have paid all of the taxes on the north half of the northeast quarter, whether state, county, municipal, or otherwise, correct?

Mr. Manwaring: Objection. Go ahead and answer.

A. Well, I'd have no personal knowledge of that.

Q. And you have no evidence to the contrary, do you?

A. No.

...

Q. We talked earlier about Mr. Kvamme, and I'll go through the list one by one, but, again, you never notified him that you claimed an ownership interest in any of the land north of the fence, did you?

A. No.

Q. Have you ever notified Flat Rock Ranches that you claim an ownership interest in any of the land north of the fence?

A. No.

Q. Have you ever notified Flat Rock Ranches that you allege the fence is not the true and correct boundary between the properties?

A. No.

Q. Did you ever notify Mike Smith?

A. No.

- Q. Did you ever notify Mark Berry?
- A. No.
- Q. Did you ever notify Don Mickelson?
- A. I did tell him that I thought the property line was on the far side of the fence.³
- Q. And that conversation is what precipitated his letter to my client right before this litigation began, correct?
- A. I don't know what that letter was.⁴
- Q. Oh, all right.
- A. So I can't tell you.
- Q. I guess a different point of reference, then, would be that conversation with Mr. Mickelson occurred after you got the survey from Kevin Thompson, correct?
- A. Yes.⁵
- Q. All right. Did you ever tell Rowdy Construction or notify them that you claimed an ownership interest in the property north of the fence?
- A. No.

³Don Mickelson is a "real estate agent." See DEPOSITION OF V. LEO CAMPBELL, vol. I, p. 13, ll.7-9. The Plaintiffs, Jo Campbell, and Margy Spradling retained the services of Mr. Mickelson in 2008 in an attempt to sell the S1/2 of the NE1/4 to Rowdy Construction. See DEPOSITION OF V. LEO CAMPBELL, vol. I, p. 11, l. 5 to p. 16, l. 5.

⁴Mr. Mickelson contacted me in April of 2010, stating that the Plaintiffs had recently received a survey. According to him, the fence was not on the boundary between our respective parcels of real property. He stated that I had to move the fence, as well as my pivot, mainline, and motor, or face legal action. My attorney, Justin R. Seamons, responded to Mr. Mickelson on April 16, 2010.

⁵Kevin L. Thompson prepared a RECORD OF SURVEY, dated October 5, 2009.

- Q. Or that, in your allegation in this case, that the fence does not mark the true and correct boundary between the properties?
- A. No. Never went that far.
- Q. Have you ever enrolled your property in any governmental programs such as CRP, Conservation Reserve Program, any program under the USDA?
- A. My pasture is.
- Q. What program?
- A. I don't remember.
- Q. Any other governmental programs of any kind or nature?
- A. No.
- Q. Do you claim that you have water rights that are appurtenant to your property?
- A. Yes, I do.
- Q. Are those through an irrigation company?
- A. Yes, they are.
- Q. Which one?
- A. I'm trying to think of what the canal company is. Drawing a blank.
- Q. That's okay. Did the canal company file a claim in the Snake River Basin Adjudication regarding those water rights, or did you file your own claim?
- A. No.
- Q. Did you ever remember filing a claim regarding water rights in the SRBA?
- A. No, I don't.

Q. Okay. That's fine. With reference to the governmental program in which you've got your pasture enrolled, did you ever notify that program that you claimed an interest in any of the land north of the fence?

A. No.

Q. Did you ever notify that program that you alleged that the fence does not mark the true and correct boundary between the properties?

A. No.

Q. How about the canal company? Did you ever notify them?

A. No.

Q. You acknowledge and admit that you have never enclosed the ground north of the fence that you allege is your property in this case, don't you?

A. Yes.

Q. And you likewise agree that you have never cultivated or otherwise improved that land north of the fence that you claim as your property, true?

A. True.

Q. And you likewise agree that you have never pastured or grazed livestock on that ground located north of the fence that you allege is yours, true?

A. True.

Q. Conversely, you admit that Mr. Kvamme and his predecessors in title have always enclosed the ground located north of the fence that you allege is your property in this case, correct?

Mr. Manwaring: Objection as to form on that question. Go ahead and answer.

A. Well, I don't know about the enclosed part.

- Q. Again, that goes to the fact that Mr. Kvamme has removed the fence on the far north boundary and a portion of the fence on the eastern boundary, correct?
- A. Correct.
- Q. All right. But you do acknowledge and admit that Mr. Kvamme and his predecessors in title have always cultivated and otherwise improved the land that you claim is your property north of the boundary, correct?
- A. Correct.
- Q. You likewise acknowledge and admit that you've never irrigated any of the land located north of the fence that you claim as your property?
- A. Well, that's debatable, but, okay, I'll agree.
- Q. You've never put that ground located north of the fence in production for your purposes, have you?
- A. No.
- Q. You also acknowledge and agree that you've never leased any of that ground located north of the fence to anybody?
- A. I leased it to Mr. Kvamme, I guess.
- Q. But you've already acknowledged that you never notified him –
- A. No.
- Q. – that you claim that ground was yours –
- A. No.
- Q. – correct?
- A. Correct.
- Q. All right. And you've never received any rental income from any of the ground located north of the fence that you claim as your property in this case, have you.

A. Nope.

Q. And you've never received any kind of a share crop for any of the ground located north of the fence that you claim is your property, correct?

A. Correct.

Q. I do understand that you listed your property for sale with Mr. Mickelson. Did you place a For Sale sign on your property?

A. I did.

Q. Did you place a For Sale sign next to the 15 feet of the property that you claim is your property in this case?

A. No.

See DEPOSITION OF V. LEO CAMPBELL, vol. III, p. 200, l. 15 to p. 206, l. 22, p. 208, l. 5 to p. 211, l. 2, p. 211, l. 2 to p. 212, l. 23, and p. 246, l. 17 to p. 252, l. 22.

ELEMENT NO. 4: "PAID ALL THE TAXES"

71. Since 2003, my wife and I have "paid all the taxes" that have been "levied and assessed" against our parcel of real property—that is, Parcel No. RP03N38E170008, whether state, county, or municipal.

72. The Plaintiffs agree. See supra.

73. Of course, before 2003, and going back to at least 1950, our predecessor in interest—that is, Mary Killian—"paid all the taxes" that were "levied and assessed" against our parcel of real property, whether state, county, or municipal.

74. Again, the Plaintiffs agree. See supra.

75. In other words, the taxes on Parcel No. RP03N38E170008 are current.

76. No taxes are outstanding, past due, or otherwise in default or arrears.

77. The legal description of our parcel of real property is the N1/2 of the NE1/4.

78. The legal description of our parcel of real property is not a legal description, based on metes and bounds—that is, a legal description, based on specific calls of directions and distances from a stated point of beginning; instead, it is a legal description, based on a standard section of land under the U.S. Public Land Survey System, which nominally contains 640 acres.

79. Thus, the “payment of taxes on the lot within which the disputed tract is enclosed satisfies the tax payment requirement of the statute.” See Standall v. Teater, 96 Idaho 152, 156, 525 P.2d 347, 351 (1974).

80. Of course, the “disputed tract” in this case is located “within” the real property that lies north of the fence, which is our parcel of real property.

ELEMENT NO. 5: NO “WRITTEN INSTRUMENT HAS BEEN RECORDED”

81. Finally, the Plaintiffs, including their predecessor in interest—that is, Leo H. Campbell, did not record a “written instrument” in the records of Bonneville County, Idaho, “declaring that it was not the intent of the party to such instrument, by permitting possession or occupancy of real property, to thereby define property boundaries or ownership.” See supra.

II.

BOUNDARY BY AGREEMENT OR ACQUIESCENCE

82. I have reviewed and understand the elements of boundary by agreement or acquiescence:

Boundary by agreement or acquiescence has two elements: (1) There must be an uncertain or disputed boundary, and (2) a subsequent agreement fixing the boundary. . . . A subsequent agreement may be inferred from the conduct of parties or their predecessors, including acquiescence to the location and maintenance of a fence for a long period of time.

Weitz v. Green, 148 Idaho 851, 860, 230 P.3d 743, 752 (2010).

ELEMENT NO. 1: "UNCERTAIN OR DISPUTED BOUNDARY"

83. My wife and I purchased the N1/2 of the NE1/4 on July 29, 2003. See EXHIBIT I.

84. We paid good and valuable consideration for it—specifically, \$150,000.00. See EXHIBIT P.

85. We did so upon the belief that our predecessor in interest—that is, Mary Killian—had good and marketable title to the N1/2 of the NE1/4 and that her title thereto was valid, including the real property that lies north of the fence; and, with specific reference to the real property that lies north of the fence, we did so upon the belief that it was part of the N1/2 of the NE1/4.

86. We did not have any notice, whether actual or constructive, that the Plaintiffs claimed any right, title, or interest in the real property that lies north of the fence; and, with specific reference to the real property that lies north of the fence, we

did not have any notice, whether actual or constructive, of any outstanding and/or adverse rights of another, including, without limitation, the Plaintiffs.

87. My wife and I farm the N1/2 of the NE1/4.

88. We are not professional land surveyors and we are not licensed to practice professional land surveying under Chapter 12, Title 54, of the Idaho Code.⁶

89. From that standpoint, we do not know the boundary between the Plaintiffs' parcel of real property and our parcel of real property; thus, the boundary is "uncertain or disputed."

90. Likewise, the Plaintiffs do not know the boundary between our respective parcels of real property; again, the boundary is "uncertain or disputed":

Q. Of your own personal knowledge, do you know the boundary, the actual boundary, the true and correct boundary, between the north half of the northeast quarter and the south half of the northeast quarter of Section 17?

A. Not the exact, no.

Q. And when you say not the exact boundary, no, by that you would also agree that you're uncertain as to the true and correct boundary between the north half and the south half of the northeast quarter of Section 17?

A. I agree. I would be uncertain, as would everybody else.

Q. Now, notwithstanding the fact that you are uncertain about that boundary, your contention in this case is that the boundary is in dispute, correct?

A. Correct.

See DEPOSITION OF V. LEO CAMPBELL, vol. III, p. 214, ll. 6-23.

⁶In addition, the Plaintiffs are not professional land surveyors and they are not licensed to practice professional land surveying.

91. Finally, ***all*** of our respective predecessors in interest, going back to at least 1919, did not know the legal boundary between our respective parcels of real property; they, too, were not professional land surveyors; they, too, simply farmed the land. *See supra*.

ELEMENT NO. 2: "SUBSEQUENT AGREEMENT FIXING THE BOUNDARY, WHICH MAY BE INFERRED FROM THE CONDUCT OF THE PARTIES OR THEIR PREDECESSORS, INCLUDING ACQUIESCENCE TO THE LOCATION AND MAINTENANCE OF A FENCE FOR A LONG PERIOD OF TIME"

92. With respect to the location of the fence, again, it has been in its current location since time immemorial.

93. During discovery, V. Leo Campbell stated that he "believes Hyrum Campbell erected the fence."

94. Again, Hyrum Campbell was the husband of Charlotte Campbell; she purchased the NE1/4 from Hannah Davis in 1937.

95. However, at his deposition, V. Leo Campbell stated that he "believes the fence was there before the Davises bought the property."

96. Again, Hannah Davis and her husband, Parley Davis, purchased the NE1/4 on March 3, 1919.

97. The Plaintiffs do ***not*** know the following; again, I personally attended the deposition of V. Leo Campbell:

- a. The Plaintiffs do ***not*** know who constructed the fence.
- b. The Plaintiffs do ***not*** know when it was constructed.
- c. The Plaintiffs do ***not*** know why it was constructed.

98. With respect to "who" constructed the fence, please note the following:

Q. During the discovery process in this case, Mr. Campbell, we served an interrogatory on you, Interrogatory No. 14 to be specific, that asked who built the fence. And you answer to that was you believed Hyrum Campbell built the fence. And so now I want to go into the next section here, and that is who built it, when they built it, and why they built it. We'll start with who. In light of the fact that your grandfather passed away, Hyrum passed away before you were born in 1946, why do you believe that he was the one who built this fence?

A. I don't think he was the one that built it. The fence, to my knowledge, was there when the property was first purchased.

Q. Any by first purchased, you mean in 1937?

A. 1937.

Q. By Charlotte?

A. No. That would have been Hannah.

Q. Hannah granted the property to Charlotte in 1937?

A. Well, I believe the fence was there before the Davises bought the property.

Q. Okay. Do you know in what year Hannah and her husband bought the property?

A. No, I don't.

Q. Why do you believe the fence was there even as early as that date?

A. It was the property itself that my grandfather and great grandfather and the Davises were all interested in because of the diversity of soils on that 160. Most of the farming in the area was done by horse drawn implement, and that's what made that property so attractive to them because of the diversity of soils across the property.

Q. Okay. So with reference, then, to your answer to Interrogatory No. 14 that you believe that Hyrum Cambell constructed the fence, your testimony today would be that you have no personal knowledge that's accurate, and it may have been, in fact, long before him?

A. Exactly.

Q. In simple terms, you don't know who constructed that fence, do you?

A. No, I don't.

Q. And a word we've used now several times would be speculative and that is, whether it was Hyrum or some person before him, long before him, would be raw speculation at this point?

A. Yes.

See DEPOSITION OF V. LEO CAMPBELL, vol. III, p. 218, l. 7 to p. 220, l. 9.

99. With respect to "when" the fence was constructed, please note the following:

Q. In Interrogatory No. 15, we asked when the fence was constructed, no matter who did it, when it was constructed. Your answer there was you didn't know.

A. No.

Q. And I take it you mean that at face value, that you simply don't know when that fence was constructed?

A. I don't.

Q. And you have no personal knowledge of it, and everything in that regard would be, again, just raw speculation?

A. Yup.

Q. That, in turn, would mean that of your knowledge, whoever constructed the fence and whenever they constructed it, may

or may not have known the boundaries of the northeast quarter, true?

A. I don't think that was a concern. They owned the entire 160 acres. What difference would it make where they put a fence if they owned it.

Q. Well, but if you don't know who constructed it and when they constructed it, you obviously don't know if they knew where the boundaries were for the northeast quarter, do you?

A. No.

Q. That, again, would be speculation.

A. Exactly.

Q. And we could even take that down one level and say that you don't know if they knew where the north half was located or where the south half was located of the northeast quarter, do you?

A. No.

Q. Again, that would be conjecture and speculation.

A. Uh-huh.

See DEPOSITION OF V. LEO CAMPBELL, vol. III, p. 220, l. 10 to p. 221, l. 21.

100. With respect to "why" the fence was constructed, please note the following:

Q. And conversely, then, since you don't know if they knew and were certain about the boundary, for all you know, based on your own personal knowledge, that fence may have fixed the boundary, true?

Mr. Manwaring: Objection.

A. No, I don't agree to that at all. My dad told me when I was 10, 12 years old that the fence wasn't the boundary.⁷

Q. Well, I understand that's your allegation –

A. Okay.

Q. – and we'll come back and talk about those conversations later.

A. Okay.

Q. But of your own personal knowledge, as far as you know, that fence, at the time the person built it, whenever it was and whoever it was, may have fixed the boundary of the south half and north half of the northeast quarter, right?

Mr. Manwaring: Object as to form. You can try to answer that.

A. I don't really think so.

Q. I know you may not think so, but based on your own personal knowledge, that a possibility, isn't it?

Mr. Manwaring: Object as to form. I think it's asked and answered.

Q. True?

A. You're asking me to agree to something that I can't agree to. I would have to assume that they were putting a fence for north and south boundary. Again, I'm assuming.

Q. It would be speculative?

⁷During his deposition, V. Leo Campbell also testified that his father told him so when he was "six, eight years old." See DEPOSITION OF V. LEO CAMPBELL, vol. I, p. 81, l. 20 to p. 82, l. 24. The Defendants object to the foregoing statements if and to the extent that the Plaintiffs want to offer or otherwise use them to "prove the truth of the matter asserted"—that is, that the fence is not the boundary. In this regard, the foregoing statements constitute hearsay and hearsay is not admissible. See I.R.E. 801 and 802. In the words of Mr. Campbell, it's "kind of hard to talk to a dead guy about the facts of a case."

A. Very much so. So I really don't. I didn't know those people. I don't know why the fence was put in there. I can't answer that.

Q. And I think that's the key. You admit you don't know why that person, whenever it was, put that fence where it is, do you?

A. All I can tell you is what my dad told me.

Q. And we'll go to those conversations later.

A. Okay.

Q. But, again, Mr. Campbell, of your own personal knowledge, of your own personal knowledge, whenever that fence was erected and whoever it was that constructed it, you don't know why they put that fence in the location where it stands to this day, do you?

A. No, I don't.

See DEPOSITION OF V. LEO CAMPBELL, vol. III, p. 224, l. 23 to p. 227, l. 4.

101. With respect to "acquiescence to the location of the fence for a long period of time," please note the following:

Q. You would agree with me that the fence has been there for a long period of time.

A. Correct.

See DEPOSITION OF V. LEO CAMPBELL, vol. III, p. 227, ll. 7-10.

102. With respect to "maintenance of the fence for a long period of time," please note the following:

Q. All right. Now, with reference to maintenance and repair, name for me every person, to your knowledge, that has ever maintained or otherwise repaired that fence. And by "that fence," I'm specifically talking about the fence that runs east and west across the property. I understand you allege the underlying dirt is yours –

- A. Uh-huh.
- Q. – but everybody to your knowledge that's maintained or repaired that fence.
- A. Well, there would have been my dad, my brother, Jo, and I, and Kurt Young and Keith Campbell, my other son. Probably all the Killian boys and Delbert Killian and Mary Killian.
- Q. Meaning Delbert, Jr.
- A. And Senior.
- Q. Right. That's who I assume you meant when you said Delbert. But Delbert, and also his son after Delbert, passed away.
- A. Yes. Well –
- Q. With reference to – I'm sorry, go ahead.
- A. I wouldn't bet Delbert, Jr., was down there working on the fence. He gained quite a bit of weight and was not into doing much fencing.
- Q. Okay.
- A. That's why my kids wound up over there because they were helping Aunt Mary.
- Q. With reference to your father, when did he maintain and repair this fence?
- A. When he lived there.
- Q. That would be between 1950 and when he passed away?
- A. Yes.
- Q. Have you yet remembered the year that he passed away?
- A. No.

- Q. Okay. For purposes of maintaining the fence over that long period of time, what did he do to maintain it?
- A. Replaced posts as needed, and installed wire as needed. He did have electrical wire at one time on it.
- Q. You previously referenced that sometime in the 1960's?
- A. Yes.
- Q. Anything else?
- A. Not right off the top of my head.
- Q. Did your father ever modify the fence?
- A. Not to my knowledge.
- Q. With reference to the period of time where you have been on this property – and that would be since 1981, correct?
- A. Correct.
- Q. What repairs and maintenance have you performed on this fence?
- A. I've replaced sections of wire. I've replaced posts. Repaired it as needed. Mr. Kvamme also put some time in on the fence.

See DEPOSITION OF V. LEO CAMPBELL, vol. III, p. 195, l. 23 to p. 198, l. 7.

103. Finally, with respect to the “conduct of the parties and their predecessors,” please note the following:

- Q. Why, then, do you think that the person, whoever it was, did not construct the fence on the true boundary as you allege in this case between the north half and south half?

Mr. Manwaring: Objection as to form. You can try to answer that.

A. It's a convenience fence.

Q. I understand that's your allegation.

A. Okay. It's also my allegation that the farming was done with livestock, with horses, horse drawn equipment. And in order to have horse drawn equipment, you have to have facilities for horses, which my dad's place, up until the fifties, late fifties, early 1960's was set up as a horse handling operation. All the fences on the farm were all substantial fences for controlling livestock.

Q. And even this fence would be a substantial fence –

A. Yes.

Q. – minus your concerns about the state of repair.

A. Yes, at that time it was.

Q. Now, I understand your answer there, but based on the survey that you have submitted in this case, what you claim to be the boundary between the north half and the south half is 15 feet north of the fence, true?

A. True.

Q. Which means we have literally hundreds of thousands of square feet north of that fence, true?

A. True.

Q. And hundreds of thousands of square feet south of the fence, true?

A. True.

Q. We also know that whoever it was and whenever it was incurred a substantial expense to buy the wire and the posts, true?

A. True.

Q. Incurred a substantial amount of time to construct the fence, true?

A. True.

...

Q. Okay. Why would a person incur that kind of expense, spend that kind of time, and diligently build that straight of a fence for the time, and build it 15 feet off the mark?

Mr. Manwaring: Objection as to form. Go ahead and try to answer.

A. My assumption it would be to try and control livestock. If you've never worked for some of those old farmers, and a lot of people didn't get the opportunity to, a lot of them would run a sight line and then they'd run a string line always with someone making sure the sight line and the string line agreed.

Q. Well, that was kind of a chance to, I guess, air ideas on why that person did what he did and when he did it, but, again, going back to the common building block, you simply don't know why they built it where they did, do you?

A. No.

Mr. Manwaring: I'm going to object.

Mr. Seamons: He said no.

Mr. Manwaring: I understand that, but –

Mr. Seamons: What's your objection.

Mr. Manwaring: If you're going to ask him to speculate as to why, then we can't keep coming back to say, "Well, you really don't know." If you're going ask him to speculate as to those things, let him speculate.

Q. He did speculate, and I'm just again referring, the end of the day, you don't know why that person built it where he did, do you?

A. If I had to make an educated guess, it would be for pasture, just to control livestock.

Q. But, again, with a simple yes or no, you don't know why they built it where they did, do you?

A. No.

Q. All right. Now, what we do know is there was time, that's been there for a very long period of time –

A. Yes.

Q. – there was time after that day of construction to move the fence.

A. Correct.

Q. And several people along the trail could have moved that fence to what you allege is the true and correct boundary between the north half and the south half, correct?

A. Correct.

Q. So, even though you don't know why that person built it where he did, what we do know is he or she never moved it, did he?

A. Nope.

Q. And in a simple phrase, that person thereafter acquiesced in this location for however long that person remained on earth, true?

Mr. Manwaring: Objection as to form.

A. Acquiesced?

Q. Let it stay right where it was.

Mr. Manwaring: Object as to form.

A. Well, it has been there a long time.

Q. And whoever that person was, he never recorded a document stating or declaring that it didn't mark the boundary, that he claimed the property north of the fence, or that there was an ownership interest in dispute in connection with it, did he?

A. No. Not to my knowledge. Again, I'm speculating.

Q. With reference to your father, he was one of those people that could have moved the fence, true?

A. True.

...

Q. Why didn't your father move the fence to what you claim is the true boundary between the north half and the south half of the northeast quarter?

Mr. Manwaring: Objection as to form.

A. Okay. This is the part where I might get a little bit heated, but you have to understand, we're talking family. Now, you have a one couple with four kids and another couple with six or seven kids. This is in the thirties and the forties and the fifties and the sixties, and –

Q. All the way up to 1989 when he deeded it to you.

A. Exactly.

Q. Okay.

A. Okay. No one was really in a position to financially undertake moving the fence.

Q. Now, that would be speculation on your part, true?

A. Yes. It would be true.

Q. Okay. But now –

A. But you yourself said there was a lot of time and money put into materials to build it.

Q. And you agreed with it.

A. Yes.

Q. Odd that a person would do that in the wrong location, isn't it?

Mr. Manwaring: Objection as to the form of that question.

A. If the person owned the entire 160 acres, why does it matter where he put the fence?

Q. Did your father ever own the entire 160 acres?

A. No.

Q. Okay.

A. He did –

Q. So back to my question.

...

Q. Since he never owned the entire 160, why didn't he move the fence to what you allege is the true and correct boundary in this case?

Mr. Manwaring: Objection as to form. You can try and answer that.

A. It wasn't cost effective. Couldn't afford it.

Q. And that would be speculation on your part?

A. Yes. That would be speculation on my part as the kid that grew up with hand-me-down clothes and having damn little.

Q. Also growing up with a father who owned 80 acres.

A. Exactly.

Q. Okay. What we do know is that he didn't move the fence ever, did he?

A. No, he didn't.

...

Q. We likewise know that Mary, Delbert, Delbert, Jr., and that entire side of the family never moved the fence to what you allege is the true and correct boundary, did they?

A. No, they didn't.

Q. Why?

Mr. Manwaring: Object as to form.

A. I'm pretty sure it had something to do with money.

Q. Again, speculation on your part.

A. Oh yeah. Yeah.

Q. You entered upon this property in 1981, correct?

A. Correct.

Q. And you allege that your father told you that the land actually extended some distance beyond the fence as early as the age of six, true?

A. True. Six to 10 years old, somewhere in there.

Q. Why didn't you move the fence to what you claim is the true and correct boundary?

A. I didn't perceive it as a problem where the fence and the property boundary was. It was family on the other side of the fence.

Q. What difference does that make?

A. Well, I guess your family is different than mine.

Q. What we do know is you never moved it, did you?

A. No, I didn't.

Q. And, in fact, you acquiesced in its location and left it right where it is, true?

Mr. Manwaring: Objection as to form. You can try and answer.

A. I left it where it is.

Q. When did you build or move your home onto that 1.41 acre parcel that your father gave to you in 1981?

A. In 1981.

Q. The same year?

A. Yes.

Q. How close to the fence does your home sit?

A. I don't know for sure. I'd have to go measure.

Q. Why didn't you move the fence at that time to what you allege is the true and correct boundary between the properties?

Mr. Manwaring: Object as to form.

A. Money.

Q. So your testimony is that – Did your father sell that land to you or give it to you?

A. He gave it to me.⁸

Q. So, notwithstanding the free land, you didn't have money –

A. No, I didn't.

Q. – to –

A. I married a woman with four kids. We added one more.

Q. Sometime after you acquired that one acre parcel and moved the home onto it, did you pay for that home, by the way?

A. It's in mortgage.

Q. Has that mortgage been there since 1981?

A. Yes.

⁸In addition, his father split the S1/2 of the NE1/4 into four parcels in 1989 and gave 20 acres to him by DEED OF GIFT.

Q. And you borrowed the money, I guess, to buy that home and move it onto the property?

A. Yes.

Q. And you did not otherwise have the money to move the fence to what you allege is the true and correct boundary?

Mr. Manwaring: Objection.

A. You're right. I didn't.

Q. After moving onto the property, it sounds like you began to run some horses on the property?

A. Correct.

Q. You now have corrals and pastures identified on the property?

A. I do.

Q. You've constructed other improvements and outbuildings on the property?

A. No.

Q. There are no other outbuildings, sheds, or barns of any kind?

A. There's a two-sided shed.

Q. Okay. So we do have some outbuildings that you've put onto the property, correct?

A. I don't think it qualifies as an outbuilding. More like a leanto.

Q. And you've planted lawns, gardens true?

A. True.

Q. And you have kept up with the pasture, true?

A. Tried to.

Q. Why over all those years didn't you move the fence to what you allege is the true and correct boundary between the properties?

Mr. Manwaring: Objection.

A. Didn't have the money.

...

Q With reference to your personal financial situation since 1981, did you ever price the cost of poles and wire and labor to move the fence?

A. No.

Q. Did you ever request or receive any bids from any third parties to move the fence for you?

Mr. Manwaring: Objection as to form.

A. No.

Q. Did you ever make any calculations or mathematical computations on what you thought would be the cost for labor and materials to move the fence?

Mr. Manwaring: Objection as to form.

A. No.

...

Q. With reference to your property now, and that is the property south of this fence, and if you would like, you could include the portion north of the fence that you claim as your property, I need a list of all of the people that you've ever rented your property to. Sounds like Mr. Kvamme at some point in time –

A. Yes.

Q. – was tenant, so Craig Kvamme. Who else?

A. Flat Rock Ranches, Mike Smith, Mark Berry.

- ...
- Q. Have there been any other people that you've allowed to use or occupy your property?
- A. No.
- Q. On the first day of your deposition, you testified that you listed the property with Don Mickelson.
- A. Yes.
- Q. Have ever listed your property with any other person?
- A. No.
- Q. And by "person," I would also include agencies.
- A. No.
- Q. Okay. You also mentioned that Rowdy Construction was a prospective buyer for your property. Have you ever had any other prospective buyers of your property?
- A. No.
- Q. We talked earlier about Mr. Kvamme, and I'll go through the list one by one, but, again, you never notified him that you claimed an ownership interest in any of the land north of the fence, did you?
- A. No.
- Q. Have you ever notified Flat Rock Ranches that you claim an ownership interest in any of the land north of the fence?
- A. No.
- Q. Have you ever notified Flat Rock Ranches that you allege the fence is not the true and correct boundary between the properties?
- A. No.
- Q. Did you ever notify Mike Smith?

- A. No.
- Q. Did you ever notify Mark Berry?
- A. No.
- Q. Did you ever notify Don Mickelson?
- A. I did tell him that I thought the property line was on the far side of the fence.
- Q. And that conversation is what precipitated his letter to my client right before this litigation began, correct?
- A. I don't know what that letter was.⁹
- Q. Oh, all right.
- A. So I can't tell you.
- Q. I guess a different point of reference, then, would be that conversation with Mr. Mickelson occurred after you got the survey from Kevin Thompson, correct?
- A. Yes.
- Q. All right. Did you ever tell Rowdy Construction or notify them that you claimed an ownership interest in the property north of the fence?
- A. No.
- Q. Or that, in your allegation in this case, that the fence does not mark the true and correct boundary between the properties?
- A. No. Never went that far.

⁹Again, Mr. Mickelson contacted me in April of 2010, stating that the Plaintiffs had recently received a survey. According to him, the fence was not on the boundary between our respective parcels of real property. He stated that I had to move the fence, as well as my pivot, mainline, and motor, or face legal action. My attorney, Justin R. Seamons, responded to Mr. Mickelson on April 16, 2010.

- Q. Have you ever enrolled your property in any governmental programs such as CRP, Conservation Reserve Program, any program under the USDA?
- A. My pasture is.
- Q. What program?
- A. I don't remember.
- Q. Any other governmental programs of any kind or nature?
- A. No.
- Q. Do you claim that you have water rights that are appurtenant to your property?
- A. Yes, I do.
- Q. Are those through an irrigation company?
- A. Yes, they are.
- Q. Which one?
- A. I'm trying to think of what the canal company is. Drawing a blank.
- Q. That's okay. Did the canal company file a claim in the Snake River Basin Adjudication regarding those water rights, or did you file your own claim?
- A. No.
- Q. Did you ever remember filing a claim regarding water rights in the SRBA?
- A. No, I don't.
- Q. Okay. That's fine. With reference to the governmental program in which you've got your pasture enrolled, did you ever notify that program that you claimed an interest in any of the land north of the fence?
- A. No.

Q. Did you ever notify that program that you alleged that the fence does not mark the true and correct boundary between the properties?

A. No.

Q. How about the canal company? Did you ever notify them?

A. No.

Q. You acknowledge and admit that you have never enclosed the ground north of the fence that you allege is your property in this case, don't you?

A. Yes.

Q. And you likewise agree that you have never cultivated or otherwise improved that land north of the fence that you claim as your property, true?

A. True.

Q. And you likewise agree that you have never pastured or grazed livestock on that ground located north of the fence that you allege is yours, true?

A. True.

Q. Conversely, you admit that Mr. Kvamme and his predecessors in title have always enclosed the ground located north of the fence that you allege is your property in this case, correct?

Mr. Manwaring: Objection as to form on that question. Go ahead and answer.

A. Well, I don't know about the enclosed part.

Q. Again, that goes to the fact that Mr. Kvamme has removed the fence on the far north boundary and a portion of the fence on the eastern boundary, correct?

A. Correct.

- Q. All right. But you do acknowledge and admit that Mr. Kvamme and his predecessors in title have always cultivated and otherwise improved the land that you claim is your property north of the boundary, correct?
- A. Correct.
- Q. You likewise acknowledge and admit that you've never irrigated any of the land located north of the fence that you claim as your property?
- A. Well, that's debatable, but, okay, I'll agree.
- Q. You've never put that ground located north of the fence in production for your purposes, have you?
- A. No.
- Q. You also acknowledge and agree that you've never leased any of that ground located north of the fence to anybody?
- A. I leased it to Mr. Kvamme, I guess.
- Q. But you've already acknowledged that you never notified him –
- A. No.
- Q. – that you claim that ground was yours –
- A. No.
- Q. – correct?
- A. Correct.
- Q. All right. And you've never received any rental income from any of the ground located north of the fence that you claim as your property in this case, have you.
- A. Nope.
- Q. And you've never received any kind of a share crop for any of the ground located north of the fence that you claim is your property, correct?

A. Correct.

Q. I do understand that you listed your property for sale with Mr. Mickelson. Did you place a For Sale sign on your property?

A. I did.

Q. Did you place a For Sale sign next to the 15 feet of the property that you claim is your property in this case?

A. No.

...

Q. In connection with Rowdy Construction and their one-time prospective purchase of the property, did you ever notify planning and zoning that you claimed any of the ground located north of the fence as your property?

A. No.

Q. Did you ever notify planning and zoning that you allege the fence does not mark the true and correct boundary?

A. No.

See DEPOSITION OF V. LEO CAMPBELL, vol. III, p. 229, l. 1 to p. 230, l. 19, p. 231, l. 16 to p. 234, l. 19, p. 235, l. 12 to p. 236, l. 25, p. 237, l. 15 to p. 238, l. 8, p. 240, l. 1 to p. 244, l. 8, p. 252, l. 23 to p. 253, l. 15, p. 244, ll. 9-21, p. 245, l. 23 to p. 252, l. 22, p. 253, l. 16 to p. 254, l. 1.

104. The bottom line in this case is simple and straightforward:

a. No one—at least no one alive—knows who constructed the fence, when it was constructed, or why it was constructed.

b. The Plaintiffs, including their predecessors in interest, and my wife and I, including our predecessors in interest, have acquiesced to the location of the fence “for a long period of time.”

c. In addition, the Plaintiffs, including their predecessors in interest, and my wife and I, including our predecessors in interest, have maintained the fence “for a long period of time.”

d. Finally, the “conduct of the parties and their predecessors” evidences and confirms the following: On the one hand, the Plaintiffs and their predecessor in interest have never enclosed the real property that lies north of the fence; they have never cultivated it, improved it, used it, irrigated it, or put it in production; they have never received rental income from it; they have never received a share crop from it; they have never posted it for sale; and they have never notified any third party, whether by way of actual notice or constructive notice, that the fence allegedly does not sit on the boundary between our respective parcels of real property. On the other hand, my wife and I and our predecessor in interest have always enclosed the real property that lies north of the fence; we have always cultivated it, improved it, used it, irrigated it, and put it in production; and we have now installed a pivot, mainline, and motor on the N1/2 of the NE1/4, which further improved it.

III.

THE TRUE LOCATION OF THE FENCE

105. Notwithstanding all of the foregoing, the Plaintiffs allege that the fence does not sit on the boundary between our respective parcels of real property; again, my wife and I deny that the fence sits on the Plaintiffs' parcel of real property.

106. The sole basis of the Plaintiffs' allegation is the RECORD OF SURVEY of Kevin L. Thompson, dated October 5, 2009:

Q. And your claim is that the fence that we have been discussing, the northernmost interior fence that runs east and west across the property, does not mark the boundary, correct?

A. Correct.

Q. That's your allegation. That it does not fix the boundary?

A. No [it does not].

Q. And your contention is that the true and correct boundary is somewhere north of that fence?

A. Correct.

Q. The basis or evidence that you would tender to me to support your allegation would be the survey from Mr. Kevin Thompson, correct?

A. Correct.

Q. And, with the exception of that survey, you have no other evidence of the boundary between the north half and the south half of the northeast quarter of Section 17, do you?

Mr. Manwaring: Object to the form. You can go ahead and answer.

A. There's the survey done when I first occupied the land. There was the survey done before that when my dad occupied the land.

Q. Yesterday, we talked about those surveys as having been a possibility, but my understanding of your testimony was, of your own personal knowledge, whether your father did or did not ever get such a survey was speculative, correct?

A. Correct.

Q. And, with reference to the one that you may have gotten in 1981, that, too, is speculative. You can't even remember, correct?

A. It has been a few days, yes, but I don't think my mortgage holder would have loaned on it had it have been speculative.

Q. But, whether they would or would not have loaned on it, that, too, is speculative. You're not the mortgage guy, are you?

A. No, I'm not the mortgage guy.

Q. All right. So, really, Mr. Campbell, when you boil this thing down, and we'll get to the who, why, and when in just a moment, but when you boil this case down to some simple propositions, with exception to the survey by Mr. Kevin Thompson, you have no other evidence that the fence does not mark the boundary, do you?

Mr. Manwaring: Object as to form. Go ahead and answer.

A. Well, in that light, I suppose not.

Q. And you have no other evidence that the fence does not fix the boundary, do you?

Mr. Manwaring: Object to form. You can answer.

A. I think we need to go off the record.

Mr. Manwaring: Okay.

Q. I'd like to have that question answered before we go off the record. That was a fair question.

A. And it was. If you wouldn't mind repeating.

Q. Yeah. And my question was, with the exception of the survey, you have no other evidence that the fence does not fix the boundary, correct?

A. Correct.

See DEPOSITION OF V. LEO CAMPBELL, vol. III, p. 214, l. 24 to p. 217, l. 19.

107. The AFFIDAVIT OF KIM H. LEAVITT evidences and confirms that the fence sits on the boundary between our respective parcels of real property—specifically, the AFFIDAVIT OF KIM H. LEAVITT shows that the fence is on the exact boundary between our respective parcels of real property.

CONCLUSION

108. The Plaintiffs, by and through their attorney, Kipp L. Manwaring, sent a letter to my attorney on August 16, 2010.

109. Again, the Plaintiffs filed the complaint in this case on June 30, 2010.

110. In their letter, the Plaintiffs threatened us, “demanding” that my wife and I “remove [our] wheel line and all other moveable personal property from the Campbells’ land.”

111. My attorney responded on August 18, 2010, specifically and expressly notifying them of the following in writing:

. . . Please notify Mr. and Mrs. Campbell ***not*** to “take action into their own hands,” but to follow the law and proceed through the court; otherwise, I will file an application against Mr. and Mrs. Campbell to maintain the 50-year-plus status quo pending the outcome of this case.

112. Notwithstanding the foregoing written notice, the Plaintiffs thereafter tore out and removed a small section of the fence that runs between our respective parcels of real property.

113. Thankfully, they did not damage our pivot, mainline, and motor.

114. In any event, my wife and I are aware of the law in this case:


This court strongly disfavors the resort to forceful self-help in resolving property disputes. See *Burke v. Prudential Ins. Co. Of Am.*, No. 02C5910, 2004 WL 784073, at 4 (N.D. Ill. Jan. 29, 2004) ("Self-help in litigation is not condoned by the court."); *Doles v. Doles*, No. 17462, 2000 WL 511693, at 2, (Va. Cir. Ct. Mar. 10, 2000) ("Public policy favors the settlement of disputes by litigation, rather than by self help force.") When parties have entered into a conflict over real property, the rights are usually fixed far in advance of the exchange of attorney's letters, or subsequent filing of a lawsuit, motions, depositions, and hearings. Making a bold physical attempt to gain, or regain, possession or control of a real property interest, by demolishing or erecting gates or fences, bulldozing land, etc., results in no strategic advantage. Instead, passions become inflamed, positions become entrenched, damages are exacerbated rather than mitigated, and the parties end up spending far more money in litigation than their supposed interest was worth to begin with. Attorneys who counsel their clients to engage in self-help, without being certain that the respective rights and responsibilities have been settled, do their clients a disservice. Clients who ignore the advice of counsel and take matters into their own hands do themselves a disservice. In short, parties who attempt to solve a property dispute through their own forceful action do so at their own peril.

See Weitz v. Green, 148 Idaho at 864, 230 P.3d at 756.

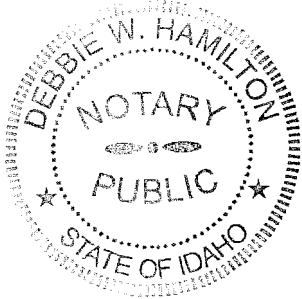
115. My wife and I respectfully ask the court to order the Plaintiffs to repair and/or restore the fence and not to take any further action into their own hands without the court's approval in advance.

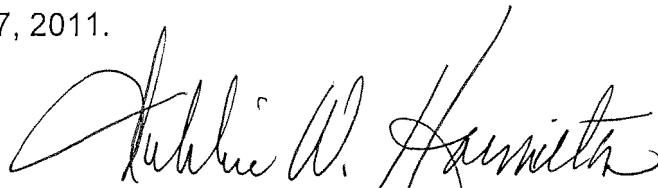
(END)

Dated June 7, 2011.


James C. Kvamme

Subscribed and sworn on June 7, 2011.

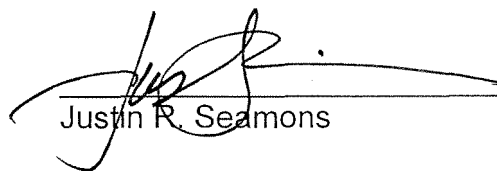



Notary Public
Commission expires: 04/11/17
Residing at: Idaho Falls, Idaho

CERTIFICATE OF SERVICE

I served a copy of the foregoing AFFIDAVIT OF JAMES C. KVAMME on the following person on June 7, 2011:

Kipp L. Manwaring
P.O. Box 50271
Idaho Falls, ID 83405-0271


Justin R. Seamons