

6-18-2008

Weitz v. Green Clerk's Record v. 9 Dckt. 33696

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"Weitz v. Green Clerk's Record v. 9 Dckt. 33696" (2008). *Idaho Supreme Court Records & Briefs*. 1913.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/1913

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

LAW CLERK

IN THE SUPREME COURT
OF THE
STATE OF IDAHO

Vol. 9 of 1

GERALD E. WEITZ and CONSUELO J. WEITZ

Plaintiffs/ Counter-defendants,
Appellants, Cross Respondents.

vs.

TODD A. GREEN and TONIA L. GREEN,

Defendants/ Counter-plaintiffs
Respondents/ Cross Appellants.

Appealed from the District Court of the Second
Judicial District of the State of Idaho, in
and for the County of Latah

HON. JOHN R. STEGNER, DISTRICT JUDGE

CHARLES A. BROWN

ATTORNEY FOR APPELLANT

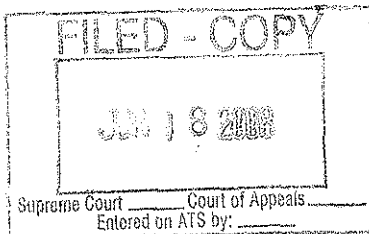
ROBERT M. MAYGAR

ATTORNEY FOR RESPONDENT

Filed this ___ day of _____, 2008.

STEPHEN W. KENYON, CLERK

By _____
Deputy



SUPREME COURT CASE NO. 33696
ADDENDUM TO CLERK'S RECORD

33696

MAGYAR LAW FIRM, PLLC
Robert M. Magyar #1667
201 N. Main St. - Suite 200
P.O. Box 8074
Moscow, Idaho 83843
(208) 882-1906 Telephone

CASE NO. CR-04-0080

2008 MAR 28 AM 10:16

CLERK OF DISTRICT COURT
LATAH COUNTY
BY DC DEPUTY

SCHWAM LAW FIRM
Andrew Schwam #1573
514 South Polk Street
Moscow, Idaho 83843
(208) 882-4190 Telephone

Attorneys for Cross-Appellants.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO)
J. WEITZ, husband and wife, and WEITZ)
& SONS, LLC, an Idaho limited liability)
company,)

Plaintiffs/)
Counterdefendants/)
Cross-Respondents,)

v.)

TODD A. GREEN and TONIA L. GREEN,)
husband and wife, STEVEN R. SHOOK)
and MARY E. SILVERNALE SHOOK,)
DANIAL T. CASTLE and CATHERINE)
C. CASTLE, and U.S. BANK N.A.,)

Defendants/)
Counterplaintiffs/)
Cross-Appellants.)

Case No. CV-2004-000080

ORDER SETTLING CLERK'S RECORD
AND REPORTER'S TRANSCRIPT
ON APPEAL

I.A.R. 29

ORIGINAL

Pursuant to Idaho Appellate Rule 29, the Objections to Clerk's Record and Reporter's Transcript filed by the parties, and the Stipulation filed by the parties,

IT IS HEREBY ORDERED THAT the Clerk's Record and Reporter's Transcript on appeal is settled by adding to and correcting the same as follows.

1. The deposition of Mr. Landeck and the two attachments read by the Court and considered as evidence in rendering its decision are added to the Clerk's Record as an Exhibit. The two specific attachments from that deposition are attached hereto as Exhibits A and B. All other attachments to that deposition are not included in the Record, and are to be removed from the Exhibit. When the Landeck deposition is in its corrected form with only the two attachments it shall be included as an Exhibit.

2. The specific portions of the depositions of Consuelo Weitz and of Gerald Weitz, which were read by the Court and considered as evidence in rendering its decision are added to the Clerk's Record as two (2) separate Exhibits. One Exhibit shall be labeled Excerpts from the Deposition of Consuelo Weitz, and one Exhibit shall be labeled Excerpts from the Deposition of Gerald Weitz. The specific excerpts are the following.

From the Consuelo Weitz deposition: page 11, line 24 through page 12, line 23; page 19, line 2 through page 20, line 6; page 50, line 14 through page 51, line 18; page 58, line 10 through page 59, line 16; page 65, line 2 through page 66, line 7; page 86, line 10 through page 87, line 18; page 89, line 11 through page 91, line 3. These Excerpts have been attached hereto as Exhibit C.

From the Gerald Weitz deposition: page 10, line 23 through page 12, line 5; page 24, line 5 through line 25; page 26, line 10 through page 27, line 6; page 47, line 1 through page 48, line 15. These excerpts have been attached hereto as Exhibit D.

The remaining portions of the Consuelo Weitz and Gerald Weitz depositions are not included in the Record. The Clerk is instructed to include these deposition excerpts as Exhibits, and to remove the complete depositions of Consuelo Weitz and Gerald Weitz from the Exhibits to be transmitted to the Supreme Court.

3. The deposition of Joshua Ritter, read by the Court and considered as evidence in rendering its decision is to be added to the Clerk's Record as an Exhibit.

4. The Todd Green deposition is not included in the Clerk's Record because it was not reviewed by the Court as trial testimony or evidence in rendering its decision. This deposition should be removed from the Exhibits transmitted to the Supreme Court and not included in the Record in any fashion.

5. On August 20, 2005, the Court, with counsel for the parties and the court reporter, personally viewed and inspected the general area and the land which was the subject of this lawsuit and the Court considered its observations during this view and inspection as evidence in rendering its decision. It was not necessary to return to Court later that day as indicated was the plan in the Transcript.

6. Plaintiffs' Trial Exhibit No. 9, a document entitled "Road and Boundary Agreement", which was offered and admitted into evidence, but which the Clerk's Record indicates otherwise, is added to the Clerk's Record as Plaintiff's Trial Exhibit No. 9. That document is attached hereto as Exhibit E. The Clerk shall include this in the trial Exhibits and mark it as Admitted.

7. Plaintiff's Supplemental Witness List, dated May 27, 2005, is added to the Clerk's Record. That document is attached hereto as Exhibit F. This Exhibit should be attached to the Clerk's record as an Addendum and dealt with accordingly.

8. To make the Record correct, the Clerk shall remove the Exhibit List that indicates the depositions that have been sent as Exhibits to the Supreme Court, and replace it with a corrected list that conforms to this Order. The Clerk shall also remove the Certificate Re: Exhibits Missing and replace it with a correct Certificate that reflects Plaintiff's Exhibit No. 9 is not missing.

9. This Order in its entirety shall be added to the Clerk's Record as an Addendum and dealt with accordingly.

10. To facilitate the correction of the Clerk's Record, the attorneys for the parties, within 7 days of the service of this Order, will return their copies of Volume Eight of the Clerk's Record, including the Clerk's Certificate Re: Exhibits Missing and the Clerk's Certificate Re: Exhibits to the Clerk of the Court. When the Clerk has received the entire Record, Transcript and Exhibits back from the Supreme Court, the Clerk will carry out the instructions in this Order.

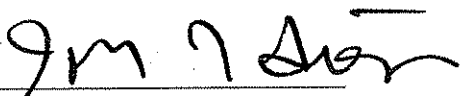
11. When the Clerk has corrected the Record, and the Exhibits to be included with the Record in conformance with this Order, copies of the Corrected Volume Eight shall again be served upon counsel for the parties, but nothing shall be transmitted to the Supreme Court at this time.

12. Counsel for the parties shall have 28 days from the date of service of the Corrected Record to notify the Court by Motion, coupled with a Notice of Hearing thereon, if counsel believes the corrections do not conform to this Order.

13. If a Motion is filed objecting to the Corrected Record, the Record, Transcript and Exhibits will be held by the Clerk until Hearing and resolution of the objections by the Court.

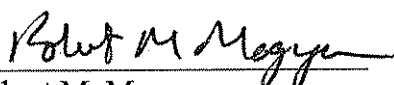
14. If no Motion is filed within 28 days objecting to the Corrected Record, the Clerk will transmit the Corrected Record, Transcript and Exhibits to the Supreme Court pursuant to I.A.R., Rule 29.

Dated this 27th day of March, 2008.




John R. Stegner
District Judge

APPROVED AS TO FORM:



Robert M. Magyar
Attorney for Cross-Appellants



Charles A. Brown
Attorney for Cross-Respondents

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of March, 2008, I caused a true and correct copy of the foregoing ORDER SETTling CLERK'S RECORD AND REPORTER'S TRANSCRIPT ON APPEAL to be served on the following in the manner indicated below:

Charles A. Brown
Attorney at Law
P.O. Box 1225
Lewiston, ID 83501

Overnight Mail
 U.S. Mail
 Facsimile
 Hand Delivery

Robert M. Magyar
Attorney at Law
P.O. Box 8074
Moscow, Idaho 83843

Overnight Mail
 U.S. Mail
 Facsimile
 Hand Delivery

Andrew Schwam
Attorney at Law
514 South Polk Street
Moscow, Idaho 83843

Overnight Mail
 U.S. Mail
 Facsimile
 Hand Delivery

Clerk of District Court

By Ranae Converse
Deputy

Walt
Green

Walt Green - 4/27

After the war in Korea - 300 Brown
no shots put back to arms
they saw 10000 - many withheld
purchase price of legal fees
from war to go away

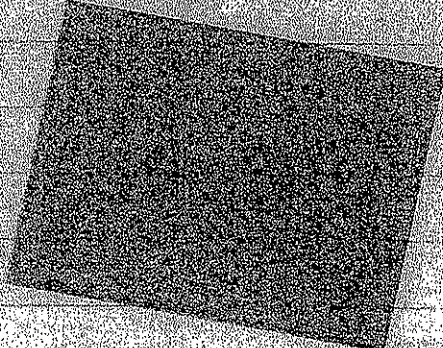


EXHIBIT "A"

LANDECK, WESTBERG, JUDGE & GRAHAM, P.A.
 Attorneys and Counselors at Law
 P.O. Box 9344 * Moscow, ID 83843
 (208) 883-1505

GERALD WEITZ
 1224 SADDLE RIDGE RD
 VIOLA ID 83872

Page: 1
 07/24/03
 ACCOUNT NO: 3127-10M
 STATEMENT NO: 6

Re: Real Estate - Green

	HOURS	
04/29/03		
RJL Phone call Jerry Weitz; review deed history; review legal research regarding boundary by agreement.	2.26	406.80
04/30/03		
RJL Draft letter to Mr. Magyar regarding boundary dispute.	1.25	225.00
06/17/03		
RJL Review file documents and legal research; prepare letter to Mr. Magyar regarding boundary issue.	4.25	765.00
06/18/03		
RJL Review and revise letter to Mr. Magyar.	0.50	90.00
06/19/03		
RJL Revise and send letter to Mr. Magyar; email to Consi Weitz regarding same.	0.60	108.00
07/16/03		
RJL Office conference with Consuelo Weitz regarding Green dispute, fence repair and logging plan.	0.25	45.00
	<hr/>	<hr/>
	9.11	1,639.80
	<hr/>	<hr/>
	9.11	1,639.80

FOR CURRENT SERVICES RENDERED

Pa 8/1/03

EXHIBIT "B"

IN THE DISTRICT COURT OF THE SECOND
JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF LATAH

GERALD W. WEITZ and CONSUELO)	
J. WEITZ, husband and wife,)	
and WEITZ & SONS, LLC, an)	
Idaho limited liability)	
company,)	Case No. CV-04-000080
)	
Plaintiffs/Counterdefendants,)	
)	
vs)	
)	
TODD A GREEN and TONIA L.)	
GREEN, husband and wife, STEVEN))	
R. SHOOK and MARY E. SILVERNALE))	
SHOOK, DANIAL T. CASTLE and)	
CATHERINE C. CASTLE, and U.S.)	
BANK N.A.,)	
)	
)	
Defendants/Counterplaintiffs.)	

Taken at 201 North Main Street

Moscow, Idaho

Thursday, September 8, 2005 - 1:18 p.m.

EXCERPTS FROM THE DEPOSITION

OF

CONSUELO J. WEITZ

A P P E A R A N C E S

CHARLES A. BROWN, Esq., law office of Charles Brown, 324
Main Street, Post Office Box 1225, Lewiston, Idaho
83501,

appearing on behalf of the
Plaintiffs/Counterdefendants.

ANDREW M. SCHWAM, Esq., Schwam Law office, 514 South
Polk Street, Moscow, Idaho 83843,

appearing on behalf of the
Defendants/Counterplaintiffs,

ROBERT M. MAGYAR, Esq., Magyar Law Firm, 201 North Main
Street, Suite 200, P.O. Box 8074, Moscow, Idaho 83843,

appearing on behalf of the
Defendants/Counterplaintiffs.

ALSO PRESENT: Steven Shook and Todd Green.

EXCERPTS FROM THE DEPOSITION
OF
CONSUELO J. WEITZ

Excerpt No. 1: Page 11, Line 24 Through Page 12, Line
23

Q. (BY MR. SCHWAM) Okay. I'll hand you what's
been marked as Deposition Exhibit No. 5. Could you tell
me what that is?

A. That is a check that I wrote when I bought wire
from Spence Hardware for the rebuilding of the fence.

Q. When you say the rebuilding of the fence, would
that be the fence that runs in a generally east-west
direction, or would that be the hog wire fence that's
near the blue gate?

A. It's the one that runs easterly-westerly.

Q. Not the hog wire near the blue gate?

A. No.

Q. And let me hand you what's been marked as
Deposition Exhibit 6.

A. Okay.

Q. And would you tell me what that is?

A. That represents the hours that our fence
builder turned in for building the fence.

Q. And who was the person you hired to build the

1 fence?

2 A: We had a contract with Dana Townsend to do that
3 work for us.

4 Q. Was that contract in writing?

5 A. No.

6 Excerpt No. 2: Page 19, Line 2 Through Page 20, Line 6

7 Q. To make it easier. From the answer I've
8 received so far, let me ask this question, do you ever
9 remember a time in your life when that portion of what
10 you call the perimeter road that's on the disputed
11 property was not there?

12 A. No.

13 Q. So, would I be right, then, that in fact you
14 don't have any firsthand knowledge, meaning that you
15 observed yourself, as to how it came into existence?

16 A. That is correct.

17 Q. Okay. Do you have any secondhand knowledge as
18 to how it came into existence? By that I mean, has
19 anyone ever told you how it came into existence?

20 A. No.

21 Q. Okay. Have you ever had occasion to hear
22 anyone else discussing, one or more or other people, how
23 that road came into existence?

24 A. As far as....

25 Q. That's a confusing question, I can see that.

1 A. Yeah.

2 Q. It's actually a very simple question. I just
3 didn't make it as simple as it should be. I had just
4 asked you whether or not anyone ever told you. Now I'm
5 trying to find out whether, even though someone wasn't
6 speaking directly to you, whether you on any occasion
7 ever overheard anyone talking about how it came into
8 existence?

9 A. I don't recall that.

10 Excerpt No. 3: Page 50, Line 14 Through Page 51, Line
11 18.

12 Q. Do you know why that hog wire fence ends at
13 that point?

14 A. Yeah. Because there was a, pretty much of a
15 thicket of little brush and trees and whatnot between
16 there and our fence corner that pretty much interfered
17 with motorcycles and things coming in, which was one
18 reason we put up the hog wire fence. We had motorcycles
19 coming in and doing damage in the spring.

20 Q. So, the fence -- well, let me ask this
21 question, was the blue gate put in at the same time?

22 A. Yes.

23 Q. Has the blue gate ever been locked?

24 A. It possibly might have been at one time or
25 another.

1 Q. I gather it wasn't a habit that it was --

2 A. No.

3 Q. -- routinely locked. How were you going to
4 keep motorcycles off the property if you didn't lock the
5 blue gate?

6 A. That's when it was locked was in the spring.
7 That's why I said from time to time it could have been
8 locked.

9 Q. Do you recall it being locked every spring?

10 A. No, I don't. And we had no trespassing signs
11 also right in front of the blue gate, and anyone coming
12 in would see them.

13 Q. Now that blue gate is north of the true
14 boundary line as surveyed by Mr. Monson, is it not?

15 A. It is.

16 Excerpt No 4: Page 58, Line 10 Through Page 59, Line 16

17 Q. On those occasions, without worrying about
18 specific occasions, when you went with your grandfather
19 and made repairs to the fences around the property, how
20 did you travel? What was the means of getting around
21 along those fences?

22 A. We would usually walk, but we would
23 occasionally take his pickup, his Chevy pickup.

24 Q. Now, were there roads capable of handling a
25 Chevy pickup that ran alongside all of the fences --

1 A. Not all of them.

2 Q. -- around the property?

3 A. No.

4 Q. So, how would you get to any repair that
5 required any kind of meaningful equipment? How was that
6 done if it wasn't right alongside a road, what was the
7 method you used?

8 A. Apparently you don't fix fences very often
9 because --

10 Q. Never.

11 A. The meaningful equipment that you use is a
12 hammer and some staples and some wire, you know, so you
13 carry a bucket of staples and you carry a hammer and
14 you've got your wire, so.... And actually there were a
15 lot -- there were roads that ran around a significant
16 number pretty close, but, yeah, we didn't have to take
17 any equipment in to repair fences. That's....

18 Q. Okay. So, these fence repairs that you were
19 involved with, involved light hand tools?

20 A. Yeah.

21 Q. Staples and nails?

22 A. Uh-huh.

23 Excerpt No. 5: Page 65, Line 2 Through Page 66, Line 7

24 Q. Did you look at all the portions that were
25 completed?

1 A. I didn't -- I didn't walk the entire thing, no.

2 Q. About how many feet of it did you observe?

3 A. I saw the west end, I saw -- I probably mostly
4 saw the west end.

5 Q. Was it done to your satisfaction?

6 A. Absolutely. Dana does great work.

7 Q. Okay.

8 A. He's a very good worker.

9 Q. So he carried out your instructions to your
10 satisfaction?

11 A. Well, it was a nice, tight fence. It wasn't
12 done exactly how I envisioned it was going to be done.
13 I thought it would look more like the original fence,
14 but he made these little wire baskets with rocks in them
15 and things which was, I thought rather innovative, but
16 it wasn't what, quite what I envisioned. But it was
17 fine. It made a good fence, a hog tight fence.

18 Q. So you were satisfied?

19 A. Yes.

20 Q. And you paid him?

21 A. I paid him after -- yeah. Even if I didn't
22 have a fence, I paid him, yes.

23 Q. Was there anything about his work that you were
24 dissatisfied with?

25 A. Not when I -- no, not when I looked at it. He

1 does very -- he does excellent work.

2 Q. Okay.

3 Excerpt No. 6: Page 86, Line 10 Through Page 87, Line
4 18?

5 Q. So I'd be correct, then, you've never done
6 anything to harm or damage this property, but you have
7 done things that you think make it better or at least
8 maintain it, is that right?

9 A. Right.

10 Q. Okay. Would that also be true of your father
11 and your grandfather?

12 A. Absolutely. They were very involved with their
13 land.

14 Q. Now, again I'd like to deal with your firsthand
15 knowledge, this is knowledge that you know from your own
16 eyes or ears. What actions, if any, did your father
17 take to keep people off this land; that is, the disputed
18 land here, did he take any actions to keep people off
19 it?

20 A. No, I don't think he did. I think he would --
21 he was pretty easy to get along with as a neighbor, and
22 if somebody wanted to hunt, he didn't have any problems
23 with that or....

24 Q. So, to the best of your knowledge, your father
25 never took actions to keep people off this property; is

1 that correct?

2 A. To my knowledge.

3 Q. Okay. Do you have any knowledge that your
4 grandfather ever took actions to keep people off this
5 property; this disputed property?

6 A. What kind of action are you talking about?

7 Q. Anything, absolutely anything designed to keep
8 people off it.

9 A. I don't think he took any actions to keep
10 people off, but I -- I also know that if people had been
11 coming onto his property and doing things that he
12 considered not to be appropriate, he would not have
13 tolerated that.

14 Excerpt No. 7: Page 89, Line 11 Through Page 91, Line
15 3

16 Q. Okay. And in fact the gate was not locked on
17 the day I was up there.

18 A. No.

19 Q. I gather you've not been keeping it locked?

20 A. We haven't been keeping it locked, and if we
21 ran into people up there, which we often did, we'd give
22 them permission to be on the land.

23 Q. So you were not in the habit of throwing people
24 off as long as they were not causing any harm or doing
25 it damage?

1 A. That's true.

2 Q. During your use of this land over the many,
3 many, many years, did you have occasion to come upon
4 people who were up there using it that you did not know?

5 A. Yes.

6 Q. And, I gather on those occasions you followed
7 the practice that you just described, you didn't throw
8 them off?

9 A. Yeah. We'd visit with them a while, and we'd
10 tell them they were welcome to use it.

11 Q. Okay. At any time have you ever asked the
12 assessors of Latah County to assess your property up to
13 the disputed fence line?

14 A. No.

15 Q. Okay. Do you know if the Weitz and Sons, LLC,
16 has ever made that request?

17 A. I'm sure they haven't.

18 Q. Okay. There came a time, I think, shortly
19 after you saw Mr. Townsend's fence building efforts that
20 what he put up was cut, pulled, use almost any word you
21 want, but destroyed or pulled down; is that correct?

22 A. Right.

23 Q. Other than pulling down or destroying what Mr.
24 Townsend built, was anything else pulled down or
25 destroyed up there on that occasion by someone?

1 A. As far as?

2 Q. Anything.

3 A. I don't think so.

4 Q. Okay. Basically someone did in Mr. Townsend's
5 work?

6 A. Right.

7 (This concludes the excerpts requested.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

STATE OF IDAHO)
) SS.
County of Nez Perce)

I, CHRISTINE ARMSTRONG, Notary Public for the State of Idaho, residing in Lewiston, Idaho, do hereby certify:

That I was duly authorized to and was provided the requested excerpts of CONSUELO J. WEITZ in the above-entitled cause;

That the foregoing pages of these excerpts constitute a true and accurate transcript of the materials provided to me.

I further certify that I am not an attorney nor counsel of any of the parties; nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this day of 2008.

CHRISTINE ARMSTRONG, NP
Notary Public, State of Idaho
Residing in Lewiston, Idaho
My Commission Expires: 08-28-2012

IN THE DISTRICT COURT OF THE SECOND
JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF LATAH

GERALD W. WEITZ, and CONSUELO)	
WEITZ, husband and wife, and)	
WEITZ & SONS, LLC, and Idaho)	
limited liability company,)	
)	Case No. CV-04-000080
)	
Plaintiffs/Counterdefedants,)	
)	
vs)	
)	
TODD A. GREEN and TONIA L.)	
GREEN, husband and wife,)	
STEVEN R. SHOOK and MARY E.)	
SILVERNALE SHOOK, DANIAL T.)	
CASTLE and CATHERINE C.)	
CASTLE, and U.S. BANK N.A.,)	
)	
)	
Defendants/Counterplaintiffs.)	

Taken at 201 North Main Street

Moscow, Idaho

Friday, September 9, 2005 - 4:18 p.m.

EXCERPTS FROM THE DEPOSITION

OF

GERALD E. WEITZ

A P P E A R A N C E S

CHARLES A. BROWN, Esq., law office of Charles Brown, 324
Main Street, Post Office Box 1225, Lewiston, Idaho
83501,

appearing on behalf of the
Plaintiffs/Counterdefendants.

ANDREW M. SCHWAM, Esq., Schwam Law office, 514 South
Polk Street, [!ADDRESS-B2], Moscow, Idaho 83843,

appearing on behalf of the
Defendants/Counterplaintiffs.

ROBERT M. MAGYAR, Esq., of the Magyar Law Firm, 201
North Main Street, Suite 200, P.O. Box 8074, Moscow,
Idaho 83843,

appearing on behalf of the
Defendants/Counterplaintiffs.

ALSO PRESENT: Steven Shook and Todd Green and
Consuelo Weitz.

1 EXCERPTS FROM THE DEPOSITION

2 OF

3 GERALD E. WEITZ
4

5 Excerpt No. 1: Page 10, Line 23 Through Page 12, Line 5

6 Q. Okay. Let's see, I'll hand you what's been
7 marked as Deposition Exhibit No. 14. That's a
8 photograph. Have you ever seen what that photograph
9 depicts?10 A. That's the -- that's where we were putting in
11 the fence.12 Q. People have referred to that fence that's shown
13 in that picture as a hog wire fence?

14 A. That's correct.

15 Q. Okay. And that, from my tour of the property,
16 is the south end of the hog wire fence. Are we talking
17 about the same thing?

18 A. We are.

19 Q. Okay. Do you -- did you play any part in the
20 decision to put in that fence?

21 A. I did.

22 Q. And who built that fence?

23 A. My two nephews.

24 Q. And did you give them any instructions as to
25 how you wanted it built and where you wanted it built?

1 A. I said to follow the old fence.

2 Q. Okay. And that is the south end of that fence.
3 Do you know why it ends there? Do you know how the
4 decision was made to end it there?

5 A. We ran out of wire.

6 Q. Okay. That fence continues up to the now
7 famous blue gate; is that correct?

8 A. That's correct.

9 Q. And I believe that same type of hog wire fence
10 then continues north of the blue gate, is that correct?

11 A. A short distance.

12 Excerpt No. 2: Page 24, Line 5 Through Page 24, Line
13 25.

14 Q. Okay. I'd like to call your attention to 2002.
15 Did there come a time in 2002 that you went upon the
16 disputed area to remove windfall?

17 A. Sure.

18 Q. And on one of those -- I'm not saying there's
19 more than one, but there was at least one, because
20 you've now so testified, did you or your wife ever
21 receive a telephone call from Mr. Green after one of
22 those occasions?

23 A. My wife did.

24 Q. Okay. And did she communicate that to you that
25 she'd had a conversation with Mr. Green?

1 A. I believe she did.

2 Q. Okay. Now, sometime after that was
3 communicated to you, did you return to the disputed area
4 and do some blading?

5 A. I did.

6 Q. And how long after that call did -- that you
7 learned of the call from your wife -- did you return to
8 the disputed area and do some blading?

9 A. Well, I think it was within a week or two.

10 Excerpt No. 3: Page 26, Line 10 Through Page 27, Line
11 6.

12 Q. Okay. Have you ever done anything on the
13 disputed property, and I'm talking about you personally
14 now, have you ever done anything on the disputed
15 property that permanently damaged it?

16 A. What would you consider permanent damage, if I
17 may ask?

18 Q. Whatever you would consider.

19 A. No.

20 Q. In other words, I'll accept your definition of
21 permanent damage.

22 A. No.

23 Q. Have you ever, because I think we all have some
24 general idea, and I'm not looking to nitpick here --

25 A. Okay.

1 Q. -- certainly not looking to trick you.

2 A. Okay.

3 Q. Just want to get information.

4 A. Sure.

5 Q. Have you ever done anything on that disputed
6 property that in your view harmed it?

7 A. No.

8 Excerpt No. 4: Page 47, Line 1 Through Page 48, Line
9 15.

10 Q. Yeah. Well, sometimes an effort to be precise
11 doesn't communicate information. I, for example,
12 learned what those bearing markers do in the last two
13 years, but I gather you've known for a much longer
14 period of time?

15 A. Well, I'm sure I have.

16 Q. Okay. Would you have known for at least ten or
17 fifteen years what those types of signs do?

18 A. Well, I'm sure I have.

19 Q. Okay.

20 A. Yeah.

21 Q. When's the first time that you saw this pink
22 post?

23 A. Well, it was in the latter '80s.

24 Q. Okay. And what did you understand it to
25 demarcate?

1 A. It was between the university ground and ours.

2 Q. Uh-huh.

3 A. The -- I talked with the surveyors or, well,
4 they came to our place and told us that -- asked us if
5 they could go onto our land, and I can't remember who
6 did the survey, but I remember a couple guys. And I
7 remember going up there and just out of general
8 interest, but I think it was, had to do with the
9 university ground and our separation between university
10 ground, which is now Bennetts' ground, because they
11 traded fro it.

12 Q. Uh-huh.

13 A. And our ground.

14 Q. So you were aware that the survey was taking
15 place when that pink marker was put in, is that correct?

16 A. Oh, yeah.

17 Q. And you actually apparently conversed with some
18 of the people doing the survey?

19 A. I did.

20 Q. Did you ask anyone what that marker was, what
21 it signified?

22 A. No.

23

24

25

1 C E R T I F I C A T E.

2 STATE OF IDAHO)
) SS.
3 County of Nez Perce)
4
5

6 I, CHRISTINE ARMSTRONG, Notary Public for the
State of Idaho, residing in Lewiston, Idaho, do hereby
7 certify:
8

9 That I was duly authorized to and was
provided the requested excerpts of GERALD E. WEITZ in
10 the above-entitled cause;
11

12 That the foregoing pages of these excerpts
constitute a true and accurate transcript of the
13 materials provided to me.
14

15 I further certify that I am not an attorney
nor counsel of any of the parties; nor a relative or
16 employee of any attorney or counsel connected with the
action, nor financially interested in the action.
17

18 IN WITNESS WHEREOF, I have hereunto set my
hand and seal on this day of 2008.
19
20
21
22

23 CHRISTINE ARMSTRONG, NP
Notary Public, State of Idaho
Residing in Lewiston, Idaho
24 My Commission Expires: 08-28-2012
25

ROAD AND BOUNDARY AGREEMENT

This agreement is entered into on 5-13, 2003, by TODD GREEN and TONIA GREEN, husband and wife, on behalf of themselves and STEVEN R. SHOOK and MARY E. SILVERNALE SHOOK, owners of the real property described herein as Tract 2.

RECITALS

1. The Greens have acquired a tract of land consisting of 160 acres, more or less, in Latah County, Idaho, described as follows:

The Southwest Quarter of Section 8, Township 40 North, Range 5 West Boise Meridian.

They have divided it into four tracts, referred to herein as Tract 1 through Tract 4, whose specific legal descriptions are set forth in the record of survey under catalog number 472606 (dated January 22, 2003), records of Latah County, State of Idaho.

2. Now, therefore, the parties hereby agree as follows:

ROAD CONSTRUCTION COMPLETION AGREEMENT

3. By this agreement the Greens will complete the construction of the private road servicing the Green Addition. To insure funds are available to complete paving, the Greens have secured a Money Market Certificate in the amount of the Poe Asphalt's bid (bid copy attached) with a maturation date of July 2004 (bank record attached), which Money Market Certificate shall be deemed irrevocable by the parties until such a time as the paving improvements and road work have been fully completed. All road construction and paving will be completed by September 1, 2004.

AGREEMENT IN THE EVENT OF A BOUNDARY DISPUTE

4. In accordance with the covenants of the title that the Shooks will receive with the warranty deed, the Greens represent and warrant that they shall continue to legally defend the title and surveyed amount of the 31.08 acres (record 472606) after the Shooks take title ownership. By this agreement, the Greens will take the following action regarding the WEITZ's potential adverse possession claim. Should Dr. and Mrs. Weitz proceed with a legal action that results in the loss of any portion of Tract 2 (sum total equaling 31.08 acres), the Greens shall defend that legal action at their sole cost and expense and will further compensate the Shooks in the amount of \$4,745.82 per acre, in cash for said losses within seven [7] business days of the final judgment. Notwithstanding anything to the contrary, the Greens shall, not later than three [3] years from date, by appropriate legal action, agreement, or otherwise, proceed with Action to Quiet Title [Idaho Code Title 6, Chapter 4] to Tract 2 from any and all Weitz potential adverse possession claim[s].

EXHIBIT "E"



ATTORNEY FEES

5. If the Greens or the Shooks institute a suit concerning this agreement, the prevailing party is entitled to reasonable attorney's fees and expenses. In the event of a trial, the amount of the attorneys' fees shall be fixed by the court. The venue of the suit shall be Latah County, Idaho. This agreement shall be governed by the laws of the State of Idaho.

Todd Green Date: 5-13-03
Todd Green

Tonia Green Date: 5-13-03
Tonia Green

Steven R. Shook Date: 5-15-2003
Steven R. Shook

Mary E. Silvernale Shook Date: 5-15-2003
Mary E. Silvernale Shook

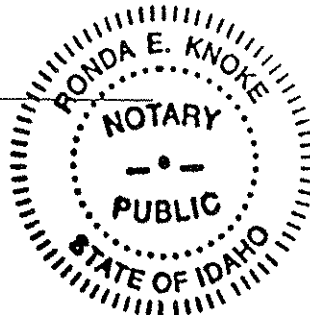
ACKNOWLEDGEMENT AND NOTARY

In the State of Idaho, County of Latah:

This Road and Boundary Agreement was sworn to and subscribed before me this day, 13 May, 2003, by the above-named parties: Todd Green, Tonia Green, Steven R. Shook, and Mary E. Silvernale Shook.

Ronda E. Knoke Date: 13 May 2003
Notary Public

Ronda E. Knoke
[Printed Name]

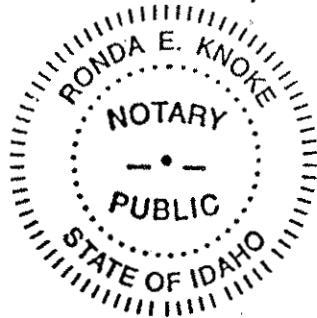


STATE OF Idaho, COUNTY OF Latah

- On this 15 day of May, 2003
before me, a notary public in and for the said State, personally appeared

Steven R Shook and Mary E. Silvernale Shook

known or identified to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.



Ronda E. Knoke
Notary Public

Residing at: Moscow, ID
Commission Expiration: 12/28/14

RONALD J. LANDECK
 TRAPPER STEWART
 LANDECK, WESTBERG, JUDGE & GRAHAM, P.A.
 414 S. Jefferson
 P.O. Box 9344
 Moscow, ID 83843
 (208) 883-1505
 FAX (208) 883-4593
 Landeck ISB No. 3001; Stewart ISB No. 6369
 Attorneys for Plaintiffs/Counterdefendants

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO)	
J. WEITZ, husband and wife,)	Case No. CV2004-000080
and WEITZ & SONS, LLC, an)	
Idaho limited liability)	
company,)	PLAINTIFFS' SUPPLEMENTAL
)	WITNESS LIST
Plaintiffs/Counterdefendants,)	
)	
vs.)	
)	
TODD A. GREEN and TONIA L.)	
GREEN, husband and wife,)	
STEVEN R. SHOOK and MARY E.)	
SILVERNALE SHOOK, DANIAL T.)	
CASTLE and CATHERINE C.)	
CASTLE, and U.S. BANK N.A.,)	
)	
Defendants/Counterplaintiffs.)	

Plaintiffs/Counterdefendants (hereafter collectively "Weitz"), by and through their attorneys Landeck, Westberg, Judge & Graham, P.A., respectfully submit the following supplemental list of people the Plaintiffs/Counterdefendants may call as lay witnesses at trial:

COPY

Jack and Mary Smetana; 1140 Saddle Ridge Road, Viola, ID 83872. The Smetanas can testify regarding the existence of the radio station, fence, and perimeter road, logging practices in the 30-foot right-of-way, and their understanding that the fence was the property boundary. They can also testify regarding their lease of the Rogers land from the Rogers in 1980, 1981, and 1982, their gathering of firewood on the Rogers' land, and the general condition of fences bordering and near the disputed property.

Robert Bowles; 1161 Flannigan Creek Road, Viola, ID 83872. Mr. Bowles can testify regarding logging on and near the disputed property in approximately 1964, the existence of the perimeter road, the radio station, and the fence.

Nancy Flisher; 632 N. Garfield, Moscow, ID 83843. Mrs. Flisher can testify regarding the existence of the radio station, fence, and perimeter road, logging practices in the 30-foot right-of-way, and her understanding the fence was the property boundary.

Michael A. Smetana; 11927 East 40th Court, Spokane Valley, WA 99206. Mr. Smetana can testify regarding the existence of the radio station, fence, and perimeter road, logging practices in the 30-foot right-of-way, and his understanding the fence was the property boundary.

Jack A. (John) Smetana; 3601 Canyon Drive, Coeur d'Alene, ID 83814. Mr. Smetana can testify regarding the existence of the radio station, fence, and perimeter road, logging practices in the 30-foot right-of-way, and his understanding the fence was the property boundary.

Norm and Pat Clark; 201 S. Galaxy Drive, Chandler, AZ 85224. The Clarks spent significant time on and around the disputed property, and they can testify regarding the existence of the radio station, fence, and general condition of the disputed property.

Joe Ginter; E. 810 Miles Avenue, Hayden, ID 83835. Mr. Ginter logged on the Rogers property for the Rogers and can testify regarding his logging practices as they related to his and

the Rogers' understanding that the fence was the boundary between the properties.

Homer Ferguson; Orofino, ID; 208-476-4274. Mr. Ferguson leased the Rogers property from the Rogers for cattle pasturing. He believed the fence at issue in this litigation was the property line, and the Rogers instructed him to maintain the fence while leasing their property. He can generally testify regarding use practices on the northern and southern sides of the fence.

Ron Landeck, Landeck, Westberg, Judge & Graham, P.A., 414 S. Jefferson St., Moscow, ID. Mr. Landeck may be able to testify generally regarding the Plaintiffs' knowledge and understanding about Defendants' communications with the Rogers, Defendants' cash settlement with the Rogers regarding this boundary dispute, and communications from representatives of the Defendants to Mr. Landeck regarding the same.

DATED this 27th day of May, 2005.

LANDECK, WESTBERG, JUDGE
& GRAHAM, P.A.

By: 

Trapper Stewart
Attorneys for
Plaintiffs-Counterdefendants

CERTIFICATE OF SERVICE

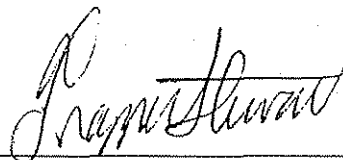
I hereby certify that on this 27th day of May, 2005, I caused a true and correct copy of this document to be served on the following in the manner indicated below:

ROBERT M. MAGYAR
MAGYAR LAW FIRM
530 SOUTH ASBURY STREET, SUITE 2
P.O. BOX 8074
MOSCOW, ID 83843

U.S. Mail
 Overnight Mail
 FAX
 Hand Delivery

ANDREW M. SCHWAM
SCHWAM LAW FIRM
514 SOUTH POLK STREET #6
MOSCOW, ID 83843

U.S. Mail
 Overnight Mail
 FAX
 Hand Delivery



Trapper Stewart