

1-11-2010

Coward v. Hadley Clerk's Record Dckt. 36981

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

Recommended Citation

"Coward v. Hadley Clerk's Record Dckt. 36981" (2010). *Idaho Supreme Court Records & Briefs*. 2412.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/2412

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

CHARLES COWARD and ANNE COWARD,
Husband and wife,

Plaintiffs/Appellants,

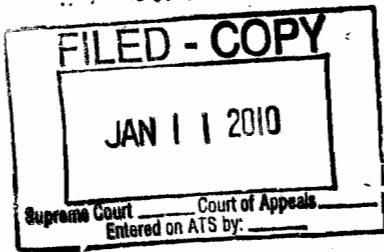
vs.

CRYSTAL HADLEY,
An Individual

Defendant/Respondent.

Appealed from the District Court of the First Judicial
District of the State of Idaho, in and for Bonner County

HONORABLE STEVE VERBY
District Judge



ARTHUR M. BISTLINE
Attorney for Appellant

GARY A. FINNEY
Attorney for Respondent

36981

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

CHARLES COWARD and ANNE	)	SUPREME COURT NO. 36981
COWARD, husband and wife,)	
	)	CLERK'S RECORD ON APPEAL
Plaintiffs-Respondents,)	
vs.)	
)	
CRYSTAL HADLEY,)	
an individual,)	
)	
Defendant-Appellant.)	
_____)	

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the First Judicial District of the State of Idaho, in and for
the County of Bonner.

HON. STEVE VERBY
District Judge

ARTHUR M. BISTLINE
1423 Government Way
Coeur d'Alene, ID. 83814

GARY A. FINNEY
Old Power House Building
120 E. Lake St., Ste. 317
Sandpoint, ID 83864

ATTORNEY FOR PLAINTIFFS

ATTORNEY FOR APPELLANT

COPY

TABLE OF CONTENTS

ROA'S 1-5

Complaint filed November 29, 2007..... 6-8

Answer and Counterclaim filed December 18, 2007..... 9-13

Defendant's Objection to Plaintiff's Demand for Jury Trial filed
December 21, 2007..... 14-15

Answer to Counterclaim filed January 16, 2008 16-17

Scheduling Order filed January 31, 2008 18-21

Order for Mediation filed March 11, 2008 22-24

Answer to Counterclaim filed March 19, 2008 25-26

Acknowledgment Pursuant to rule 16(k) I.R.C.P. Regarding Case Status/
Mediation filed May 14, 2008 27-28

Additional Defendant's Exhibit Q filed September 17, 2008 29-33

Motion to Amend Complaint filed September 25, 2008..... 34-39

Defendant's Motion In Limine as to "New" Theories and Evidence and Objection to
New Allegations and New Theories and to Plaintiff's Motion to Amend Complaint
and Defendant's Pretrial Rebuttal Memorandum filed September 25, 2008.... 40-43

Court Minutes * Court Trial* held September 29, 2008 44-58

Order Granting Defendant's Motion to Dismiss and Dismissing Plaintiff's
Cause of Action for Prescriptive Easement filed October 9, 2008..... 59-62

Amended Complaint filed October 14, 2008 63-74

Special Appearance and Answer to Amended Complaint and Counterclaim
filed November 5, 2008..... 75-78

Memorandum Decision filed February 13, 2009 79-86

Defendant's Motion to Reconsider, Motion to Alter and Amend Findings and
Conclusions, for the Purpose of Stating that Plaintiff's Crossing, Digging & Dirt
Work on Defendant's Lot was a Trespass, Nominal damages and Attorney Fees
Idaho Code 6-202 filed February 20, 2009 87-89

Plaintiff's Motion to Reconsider filed February 27, 2009 90-91

Plaintiff's Motion to Disallow Costs filed March 6, 2009 92-96

TABLE OF CONTENTS

Court Minutes *Motion to Reconsider* held May 6, 2009..... 97-98

Amended Memorandum Decision and Orders on Post Trial Motions filed
July 15, 2009 99-117

Judgment in Favor of Defendant and Against Plaintiffs filed August 4,
2009..... 118-120

Defendant’s Motion to Alter, Amend, Reconsider, and to Make Additional Findings
and Conclusions Awarding Attorney Fees to the Defendant and Notice of Hearing
and Oral Argument (September 9, 2009 at 2 pm) filed August 18, 2009. 121-131

Plaintiffs’ Response to Defendant’s Motion to Alter or Amend the Judgment
filed September 2, 2009..... .132-134

Court Minutes *Motion* held September 9, 2009135-136

Notice of Appeal filed September 15, 2009137-139

Notice of Cross-Appeal filed September 22, 2009140-143

Order Denying Defendant Hadley’s Motion to Alter, Amend, Reconsider, and to
Make Additional Findings and Conclusions Awarding Attorney Fees to the
Defendant filed September 25, 2009144-146

Acknowledgment Pursuant to rule 16(k) I.R.C.P. Regarding Case Status/
Mediation filed May 14, 2008 27-28

Additional Defendant’s Exhibit Q filed September 17, 2008 29-33

Amended Complaint filed October 14, 2008 63-74

Amended Memorandum Decision and Orders on Post Trial Motions filed
July 15, 2009 99-117

Answer and Counterclaim filed December 18, 2007..... 9-13

Answer to Counterclaim filed January 16, 2008..... 16-17

Answer to Counterclaim filed March 19, 2008 25-26

Complaint filed November 29, 2007..... 6-8

Court Minutes * Court Trial* held September 29, 2008 44-58

Court Minutes *Motion to Reconsider* held May 6, 2009..... 97-98

Court Minutes *Motion* held September 9, 2009..... 135-136

Defendant’s Motion In Limine as to “New” Theories and Evidence and Objection to
New Allegations and New Theories and to Plaintiff’s Motion to Amend Complaint
and Defendant’s Pretrial Rebuttal Memorandum filed September 25, 2008.... 40-43

Defendant’s Motion to Alter, Amend, Reconsider, and to Make Additional Findings
and Conclusions Awarding Attorney Fees to the Defendant and Notice of Hearing
and Oral Argument (September 9, 2009 at 2 pm) filed August 18, 2009. 121-131

Defendant’s Motion to Reconsider, Motion to Alter and Amend Findings and
Conclusions, for the Purpose of Stating that Plaintiff’s Crossing, Digging & Dirt
Work on Defendant’s Lot was a Trespass, Nominal damages and Attorney Fees
Idaho Code 6-202 filed February 20, 2009 87-89

Defendant’s Objection to Plaintiff’s Demand for Jury Trial filed
December 21, 2007..... 14-15

Judgment in Favor of Defendant and Against Plaintiffs filed August 4,
2009..... 118-120

Memorandum Decision filed February 13, 2009 79-86

Motion to Amend Complaint filed September 25, 2008..... 34-39

Notice of Appeal filed September 15, 2009 137-139

Notice of Cross-Appeal filed September 22, 2009 140-143

Order Denying Defendant Hadley’s Motion to Alter, Amend, Reconsider, and to
Make Additional Findings and Conclusions Awarding Attorney Fees to the
Defendant filed September 25, 2009..... 144-146

Order for Mediation filed March 11, 2008..... 22-24

INDEX

Order Granting Defendant's Motion to Dismiss and Dismissing Plaintiff's Cause of Action for Prescriptive Easement filed October 9, 2008..... 59-62

Plaintiff's Motion to Disallow Costs filed March 6, 2009 92-96

Plaintiff's Motion to Reconsider filed February 27, 2009 90-91

Plaintiffs' Response to Defendant's Motion to Alter or Amend the Judgment filed September 2, 2009..... 132-134

ROA'S 1-5

Scheduling Order filed January 31, 2008 18-21

Special Appearance and Answer to Amended Complaint and Counterclaim filed November 5, 2008..... 75-78

Charles Coward, Anne Coward vs. Crystal Hadley

Date	Code	User	Judge
11/29/2007	NCOC	MORELAND	New Case Filed - Other Claims
	APER	MORELAND	Plaintiff: Coward, Charles Appearance Arthur M. Bistline
	APER	MORELAND	Plaintiff: Coward, Anne Appearance Arthur M. Bistline
		MORELAND	Filing: A1 - Civil Complaint, More Than \$1000 No Prior Appearance Paid by: Arthur Bistline Receipt number: 0384689 Dated: 11/30/2007 Amount: \$88.00 (Check) For: [NONE]
	COMP	MORELAND	Complaint Filed
11/30/2007	SMIS	MORELAND	Summons Issued
12/18/2007		MORELAND	Filing: I1A - Civil Answer Or Appear. More Than \$1000 No Prior Appearance Paid by: Finney, Finney, Finney Receipt number: 0385693 Dated: 12/18/2007 Amount: \$58.00 (Check) For: [NONE]
		MORELAND	Filing: J8B - Special Motions Counterclaim With Prior Appearance Paid by: Finney, Finney, Finney Receipt number: 0385693 Dated: 12/18/2007 Amount: \$14.00 (Check) For: [NONE]
	ANSW	MORELAND	Answer & Counterclaim
	APER	MORELAND	Defendant: Hadley, Crystal Appearance Gary A. Finney
12/21/2007	MISC	JACKSON	Defendant's Objection to Plaintiff's Demand for Jury Trial
1/16/2008	ANSW	MORELAND	Answer to Counterclaim
1/31/2008	SCHE	MORELAND	Scheduling Order
2/5/2008	SCHF	PHILLIPS	Scheduling Form - Arthur Bistline
3/11/2008	ORDR	MORELAND	Order for Mediation
	NOTL	MORELAND	Notice of Trial/Pretrial Order
3/12/2008	HRSC	MORELAND	Hearing Scheduled (Court Trial - 2 Days 09/29/2008 09:00 AM)
3/19/2008	ANSW	PHILLIPS	Answer to Counterclaim - Bistline
4/10/2008	NOTC	MORELAND	Notice of Address Change (Art Bistline)
5/14/2008	MISC	PHILLIPS	Acknowledgment Pursuant to Rule 16(k)(7) IRCP Regarding Case Status/Mediation
8/27/2008	NOTC	OPPELT	Notice to Counsel
9/15/2008	DEFE	PHILLIPS	Defendant's Exhibit List
	MISC	PHILLIPS	Defendant's Pretrial Submissions
	WITN	PHILLIPS	Defendant's Witness List
	NOFG	PHILLIPS	Notice Of Filing Plaintiffs' Exhibit List
	WITN	PHILLIPS	Plaintiffs' Witness List

Charles Coward, Anne Coward vs. Crystal Hadley

Date	Code	User		Judge
9/16/2008	NOTC	MORELAND	Notice to Plaintiffs	Steve Verby
	CESV	MORELAND	Certificate Of Service	Steve Verby
	MEMO	MORELAND	Hadley's Trial Memorandum & Proposed Findings & Conclusions	Steve Verby
9/17/2008	EXHI	MORELAND	Additional Def's Exhibit	Steve Verby
9/24/2008	LETT	PHILLIPS	Letter from Bistline	Steve Verby
	BREF	PHILLIPS	Trial Brief	Steve Verby
	NOSV	OPPELT	Notice Of Service of Plaintiffs' Cited Case Law Outside Idaho	Steve Verby
9/25/2008	MOTN	OPPELT	Motion to Amend Complaint	Steve Verby
	MISC	OPPELT	Proposed Findings of Fact and Conclusion of Law	Steve Verby
	MEMO	OPPELT	Memorandum in Support of Motion to Amend Complaint and in Opposition of Motion to Dismiss	Steve Verby
	AFFD	OPPELT	Affidavit of Arthur M. Bistline in Support of Motion to Amend Complaint	Steve Verby
	LETT	OPPELT	Letter from Arthur Bistline to Judge Verby	Steve Verby
	MOTN	PHILLIPS	Defendant's Motion in Limine as to "New" Theories and Evidence and Objection to New Allegations and New Theories and to Plaintiff's motion to amend Complaint and Defendant's Pretrial Rebuttal Memorandum	Steve Verby
9/26/2008	MISC	PHILLIPS	Plaintiff's Supplement to Exhibit List	Steve Verby
9/29/2008	CTST	PHILLIPS	Hearing result for Court Trial - 2 Days held on 09/29/2008 09:00 AM: Court Trial Started	Steve Verby
	CTLG	PHILLIPS	Hearing result for Court Trial - 2 Days held on 09/29/2008 09:00 AM: Court Log- CD no 08-159	Steve Verby
	DCHH	PHILLIPS	Hearing result for Court Trial - 2 Days held on 09/29/2008 09:00 AM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated:	Steve Verby
10/9/2008	ORDR	PHILLIPS	Order Granting Defendant's Motion to Dismiss and Dismissing Plaintiff's Cause of Action for Prescriptive Easement	Steve Verby
	CDIS	PHILLIPS	Civil Disposition entered for: Hadley, Crystal, Defendant; Coward, Anne, Plaintiff; Coward, Charles, Plaintiff. Filing date: 10/9/2008	Steve Verby
	CINF	PHILLIPS	Clerk Information - remaining issues reserved for further determination	Steve Verby
10/14/2008	MISC	PHILLIPS	Closing Argument - Bistline	Steve Verby
	AMCO	PHILLIPS	Amended Complaint Filed	Steve Verby
11/4/2008	BREF	PHILLIPS	Hadley's Post Trial Brief	Steve Verby
11/5/2008	APER	PHILLIPS	Special Appearance and Answer to Amended Complaint and Counterclaim - Finney	Steve Verby

Charles Coward, Anne Coward vs. Crystal Hadley

Date	Code	User	Judge
11/10/2008	REPL	PHILLIPS	Plaintiff's Reply to Defendant's Closing Statement Steve Verby
12/31/2008	REQU	CMOORE	Requests for Additional Briefing and Submission of Proposed Findings of Fact and Conclusions of Law Steve Verby
1/20/2009	MISC	OPPELT	Defendant Hadley's Additional Memorandum and Proposed Findings of Fact and Conclusions of Law Steve Verby
	MISC	OPPELT	Proposed Findings of Fact and Conclusions of Law Steve Verby
	MISC	OPPELT	Plaintiffs Additional Briefing Steve Verby
2/13/2009	ORDR	CMOORE	Memorandum Decision Steve Verby
	CDIS	PHILLIPS	Civil Disposition entered for: Hadley, Crystal, Defendant; Coward, Anne, Plaintiff; Coward, Charles, Plaintiff. Filing date: 2/13/2009 Steve Verby
	STAT	PHILLIPS	STATUS CHANGED: Closed Steve Verby
2/20/2009	MEMO	OPPELT	Defendant's Memorandum of Attorney Fees and Costs I.R.C.P. 54 (d) (5) Steve Verby
	MOTN	OPPELT	Defendant's Motion to Reconsider, Motion to Alter & Amend Findings and Conclusions, for the Purpose of Stating that Plaintiff's Crossing, Digging & Dirt Work on Defendant's Lot was a Trespass, Nominal Damages and Attorney Fees Idaho Code §6-202 Steve Verby
2/27/2009	MOTN	OPPELT	Plaintiff's Motion to Reconsider Steve Verby
	MEMO	OPPELT	Plaintiff's Memorandum in Support of Motion to Reconsider Steve Verby
3/6/2009	MOTN	OPPELT	Plaintiff's Motion to Disallow Costs Steve Verby
4/21/2009	NOFH	OPPELT	Notice Of Hearing Steve Verby
	HRSC	OPPELT	Hearing Scheduled (Motion 05/06/2009 11:30 AM) to Reconsider Steve Verby
4/22/2009	STAT	OPPELT	STATUS CHANGED: Closed pending clerk action Steve Verby
5/6/2009	CTLG	PHILLIPS	Hearing result for Motion held on 05/06/2009 11:30 AM: Court Log- 09-115 to Reconsider Steve Verby
	DCHH	PHILLIPS	Hearing result for Motion held on 05/06/2009 11:30 AM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: none given to Reconsider Steve Verby
	ADVS	PHILLIPS	Hearing result for Motion held on 05/06/2009 11:30 AM: Case Taken Under Advisement to Reconsider Steve Verby
7/15/2009	ORDR	PHILLIPS	Amended Memorandum Decision and Orders on Post Trial Motions Steve Verby
	MISC	PHILLIPS	Defendant's Counsel to provide Judgment Steve Verby

Charles Coward, Anne Coward vs. Crystal Hadley

Date	Code	User		Judge
7/15/2009	AFFD	PHILLIPS	Affidavit of Computation of Judgment Amount IRCP 55(b)(1)	Steve Verby
8/4/2009	JDMT	PHILLIPS	Judgment in Favor of Defendant and Against Plaintiffs	Steve Verby
	CDIS	PHILLIPS	Civil Disposition entered for: Hadley, Crystal, Defendant; Coward, Anne, Plaintiff; Coward, Charles, Plaintiff. Filing date: 8/4/2009	Steve Verby
	STAT	PHILLIPS	STATUS CHANGED: Closed	Steve Verby
8/7/2009		PHILLIPS	Miscellaneous Payment: For Comparing And Conforming A Prepared Record, Per Page Paid by: Finney Finney Finney Receipt number: 0420357 Dated: 8/7/2009 Amount: \$1.50 (Check)	Steve Verby
		PHILLIPS	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Finney Finney Finney Receipt number: 0420357 Dated: 8/7/2009 Amount: \$1.00 (Check)	Steve Verby
8/18/2009	MOTN	OPPELT	Defendant's Motion to Alter, Amend, Reconsider, and to Make Additional Findings and Conclusions Awarding Attorney Fees to the Defendant and Notice of Hearing and Oral Argument (September 9, 2009 at 2:00 p.m.)	Steve Verby
	HRSC	OPPELT	Hearing Scheduled (Motion 09/09/2009 02:00 PM) to Alter, Amend, Reconsider, and to Make Additional Findings and Conclusions Awarding Attorney Fees to the Defendant	Steve Verby
	STAT	OPPELT	STATUS CHANGED: Closed pending clerk action	Steve Verby
9/2/2009	MISC	OPPELT	Plaintiffs' Response to Defendant's Motion to Alter or Amend the Judgment	Steve Verby
9/9/2009	CTLG	PHILLIPS	Hearing result for Motion held on 09/09/2009 02:00 PM: Court Log- CD no 09-222 to Alter, Amend, Reconsider, and to Make Additional Findings and Conclusions Awarding Attorney Fees to the Defendant	Steve Verby
	DCHH	PHILLIPS	Hearing result for Motion held on 09/09/2009 02:00 PM: District Court Hearing Held Court Reporter:Val Larson Number of Transcript Pages for this hearing estimated: none given to Alter, Amend, Reconsider, and to Make Additional Findings and Conclusions Awarding Attorney Fees to the Defendant	Steve Verby
	DENY	PHILLIPS	Hearing result for Motion held on 09/09/2009 02:00 PM: Motion Denied to Alter, Amend, Reconsider, and to Make Additional Findings and Conclusions Awarding Attorney Fees to the Defendant	Steve Verby
	MISC	PHILLIPS	Finney to present order	Steve Verby

Charles Coward, Anne Coward vs. Crystal Hadley

Date	Code	User	Judge
9/9/2009	APER	MUELLER	Plaintiff: Coward, Charles Appearance Amy C. Bistline Steve Verby
	APER	MUELLER	Plaintiff: Coward, Anne Appearance Amy C. Bistline Steve Verby
9/10/2009	CMIN	RASOR	Court Minutes Hearing type: Motion Hearing date: 9/9/2009 Time: 2:00 pm Courtroom: Court reporter: Valerie Larson Minutes Clerk: Sandra Rasor Tape Number: 09-222 Steve Verby
9/15/2009	BONT	BOWERS	Bond Posted for Transcript (Receipt 422802 Dated 9/15/2009 for 432.00) Steve Verby
		BOWERS	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Coward, Anne (plaintiff) Receipt number: 0422803 Dated: 9/15/2009 Amount: \$101.00 (Check) For: Coward, Anne (plaintiff) Steve Verby
	NTOA	MUELLER	Notice Of Appeal Steve Verby
	APSC	MUELLER	Appealed To The Supreme Court Steve Verby
	CHJG	MUELLER	Change Assigned Judge Idaho Supreme Court
9/16/2009	BNDC	MUELLER	Bond Posted - Cash (Receipt 422939 Dated 9/16/2009 for 200.00) Idaho Supreme Court
9/22/2009		BOWERS	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Finney, Gary A. (attorney for Hadley, Crystal) Receipt number: 0423305 Dated: 9/22/2009 Amount: \$101.00 (Check) For: Hadley, Crystal (defendant) Idaho Supreme Court
	NOTC	MUELLER	Notice of Cross-Appeal filed by Defendant Idaho Supreme Court
9/25/2009	ORDR	MUELLER	Order Denying Defendant Hadley's Motion to Alter, Amend, Reconsider, and to Make Additional Findings and Conclusions Awarding Attorney Fees to the Defendant Steve Verby
9/28/2009	CCOA	MUELLER	Clerk's Certificate Of Appeal Idaho Supreme Court
10/8/2009	NOTC	MUELLER	Notice of Appeal Filed w/ISC-Docket No. assigned-due dates set Idaho Supreme Court
	MISC	MUELLER	Clerk's Cert filed w/ISC Idaho Supreme Court
12/9/2009	TRAN	MUELLER	Transcript Filed by Val Larson on appeal to ISC Idaho Supreme Court
12/10/2009	LETT	MUELLER	Balance due Letter sent to appellants re payment of \$49 on transcripts Idaho Supreme Court

ARTHUR M. BISTLINE
LAW OFFICE OF ARTHUR M. BISTLINE
110 Wallace Ave.
Coeur d'Alene, ID 83814
(208) 665-7270
(208) 665-7290 (fax)

Attorney for Plaintiff

CLERK OF DISTRICT COURT
2007 NOV 29 P 12:36

CLERK OF DISTRICT COURT
ylm

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

CHARLES COWARD and ANNE COWARD,
husband and wife,

Plaintiff,

vs.

CRYSTAL HADLEY, an individual,

Defendant

Case No.: No. CV-2007-01997
COMPLAINT

For a cause of action, Plaintiffs allege as follows:

- 1) Plaintiffs are husband and wife who reside in Bonner County, Idaho, at 309 S. Boyer, Sandpoint, Idaho.
- 2) Defendant is a single woman residing in Bonner County at 307 S. Boyer, Sandpoint, Idaho, which is the real property that is the subject of this suit and jurisdiction is proper before this Court.
- 3) Plaintiffs and their predecessors in interest have used a portion of Defendant's property to access their property and have done so in an open notorious and hostile manner for a period of time which establishes Plaintiffs' right to continue to use that property to access their property.

ASSIGNED TO STEVE VERBY
DISTRICT JUDGE

COMPLAINT


-1-
-6-

 ORIGINAL

- 4) Plaintiffs' are entitled to judgment that they have the right to utilize a portion of Defendant's property to access their property as may be proved at trial.
- 5) Because of Defendant's unreasonable refusal to acknowledge the rights of Plaintiffs' Plaintiffs have had to acquire the services of an attorney and are entitle to an award of fees and costs incurred in this action with a reasonable sum being \$2,000 in the event this mater is uncontested.

Wherefor, Plaintiffs pray that this Court enter judgment declaring that Plaintiffs, and their successors an assigns, have the right to continue to use Defendant's property to access their property and are entitled to an award of reasonable attorney's fees and cost incurred in this action.

DATED this 22 day of November, 2007.



ARTHUR M. BISTLINE

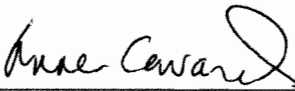
VERIFICATION

STATE OF IDAHO)
) ss.
County of Kootenai)

ANNE COWARD, being first duly sworn, upon oath, deposes and says:

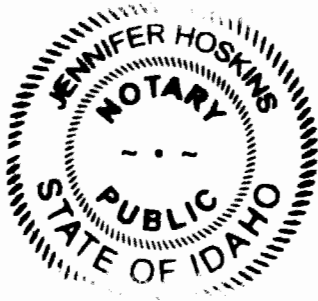
I am the Plaintiff in the above-entitled action and named in the foregoing instrument, and have read the contents thereof, and believe the same to be accurate and complete to the best of my knowledge, information and belief.

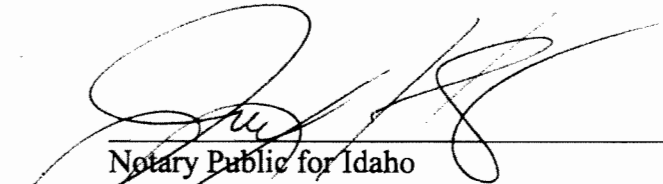
DATED this 19 day of November, 2007.



ANNE COWARD

SUBSCRIBED AND SWORN to before me this 19 day of November, 2007.





Notary Public for Idaho
Residing at Hayden, ID.
Commission Expires:

GARY A. FINNEY
 FINNEY FINNEY & FINNEY, P.A.
 Attorneys at Law
 Old Power House Building
 120 East Lake Street, Suite 317
 Sandpoint, Idaho 83864
 Phone: (208) 263-7712
 Fax: (208) 263-8211
 ISB No. 1356

2007 DEC 18 P 3:49

[Handwritten signature]

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

CHARLES COWARD and ANNE	)	Case No. CV-2007-1997
COWARD, husband and wife,)	
	)	ANSWER and COUNTERCLAIM
Plaintiff,)	
	)	Category & Fee:
v.	)	I (1) (a) \$58.00
	)	J (8) (b) \$14.00
CRYSTAL HADLEY, an individual,	)	Total \$72.00
)	
Defendant.)	

COME NOW the Defendant, CRYSTAL HADLEY, and by and through her attorney GARY A. FINNEY of Finney Finney & Finney, P.A and makes this Answer and Counterclaim alleging as follows:

I. ANSWER

1. The Defendant admits paragraph 1 & 2 of the Complaint, except the Defendants address is 303 S. Boyer.
2. The Defendant denies paragraph 3, 4 & 5 of the Complaint.
3. The Plaintiff's Complaint fails to state a cause of

action upon which relief may be granted and should be dismissed by the Court.

4. The Plaintiff has failed to allege any beneficial interest in any dominant real estate, nor have they alleged any beneficial interest of the Defendant in any servient real estate.

5. The Complaint fails to comply with Rule 9 (j).

6. The Plaintiff has not been vested or seized of any real estate for any time period sufficient to establish a right to any continued use of the Defendant's real estate.

7. The Complaint and Plaintiff's action is frivolous, unreasonable and without merit. The Defendant is entitled to recover her attorney fees against the Plaintiff.

8. The Complaint is too vague and is not a definite and certain statement of the facts giving the Plaintiff the alleged "...right to continue to use that property to access their property".

9. The Plaintiff has no express easement, easement by necessity, easement by implication, easement by prescription or any other easement, to use the Defendant's real estate.

II. ANSWER CONTINUED and COUNTERCLAIM BY THE DEFENDANT AGAINST THE PLAINTIFFS.

10. The Defendant is the vested owner of record title to Lot 1, Block JJ of Law Second Addition in Sandpoint, Idaho.

11. By an Agreement as to Boundary Line recorded February 26, 2007, Instrument No. 723577 records of Bonner County, Idaho, the Plaintiff extinguished any right, title, claim, interest, use for access, or other legal or equitable doctrine as to the use of the Defendant's real estate.

12. Any use or occupancy by the Plaintiff of the Defendant's real estate is consensual by permission of the Defendant.

13. The Plaintiff has trespassed on the Defendant's real estate which caused damaged thereto, and which caused remediation and restoration damages to the Defendant. The trespass money damages should be awarded against the Plaintiff in favor of the Defendant, a monetary sum that is within jurisdiction of the District Court.

14. By letter from Defendant's attorney, dated September 6, 2007, the Plaintiffs were notified of their trespass on the Defendant's real estate.

15. The Plaintiffs trespass is willful and intentional and the Defendant is entitled to treble damages against the Plaintiff.

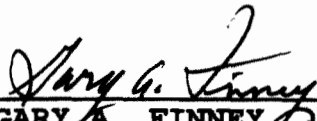
16. The Defendant is entitled to a quiet title judgment for the Defendant's real estate against the Plaintiff.

17. As and for further damages the Defendant incurs attorney fees to quiet title against the Plaintiff and the Court

should award Defendant's attorney fees and costs against the Plaintiff for said damages.

WHEREFORE, the Defendant prays that the Court enter a judgment denying any relief to the Plaintiff and dismissing the Plaintiff Complaint, and for judgment in favor of the Defendant and against the Plaintiff for money damages for the Plaintiff's trespass upon the Defendant's real estate, for treble damages and for quiet title in the Defendant's real estate against the Plaintiff and for money damages, and for attorney fees and costs.

DATED this 18 day of December, 2007.



GARY A. FINNEY
Attorney at Law

VERIFICATION

STATE OF IDAHO)
) s.s.
COUNTY OF BONNER)


I, Crystal Hadley, first being duly sworn upon oath depose and say the following:

I am named Defendant and Counterclaimant in this case and I have read the foregoing ANSWER and COUNTERCLAIM and know the contents therein stated and believe the same to be true.



CRYSTAL HADELY

SUBSCRIBED AND SWORN to before me this 18 day of December, 2007.


Shirley M. Hickey
Notary Public-State of Idaho
Residing at: *Kootenai County*
My Commission Expires: *5-31-2012*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by first class U.S. Mail, postage prepaid, this 18 day of December, 2007, and was addressed as follows:

Arthur A. Bistline
Law Office of Arthur Bistline
110 Wallace Ave
Coeur d'Alene, Idaho 83814

Shirley M. Hickey

GARY A. FINNEY
 FINNEY FINNEY & FINNEY, P.A.
 Attorneys at Law
 Old Power House Building
 120 East Lake Street, Suite 317
 Sandpoint, Idaho 83864
 Phone: (208) 263-7712
 Fax: (208) 263-8211
 ISB No. 1356

2007 DEC 21 PM 11:02

CLERK OF DISTRICT COURT
 Jdy

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

CHARLES COWARD and ANNE	)	Case No. CV-2007-1997
COWARD, husband and wife,)	
	)	DEFENDANT'S OBJECTION TO
Plaintiff,	)	PLAINTIFF'S DEMAND FOR JURY
	)	TRIAL
v.)	
)	
CRYSTAL HADLEY, an individual,)	
)	
Defendant.)	

COMES NOW, the Defendant and pursuant to I.R.C.P. 39(a)
 objects to Plaintiff's demand for a jury trial, as a right of
 trial by jury of some or all of the issues does not exist.

DATED this 21ST day of December, 2007.

Gary A. Finney

 GARY A. FINNEY
 Attorney at law

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by deposit in First Class U.S. Mail, postage prepaid, this 21 day of December, 2007, and addressed as follows:

Arthur M. Bistline
110 W. Wallace
Coeur d'Alene, ID 83814



ARTHUR M. BISTLINE
LAW OFFICE OF ARTHUR M. BISTLINE
110 Wallace Ave.
Coeur d'Alene, ID 83814
(208) 665-7270
(208) 665-7290 (fax)

Attorney for Plaintiff

JAN 16 10:50
JAN 16 2008
JAN 16 2008

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

CHARLES COWARD and ANNE COWARD,

husband and wife,

Plaintiff,

vs.

CRYSTAL HADLEY, an individual,

Defendant

Case No.: No. CV-07-01997

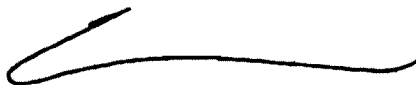
ANSWER TO COUNTERCLAIM

The Plaintiffs, Charles and Anne Coward, by and through their undersigned counsel,
hereby answers Defendant's Counterclaim as follows:

Plaintiffs admit paragraph 10 and 14 of Defendant's Counterclaim.

Plaintiffs deny paragraphs 11,12,13,15,16 and 17.

DATED this 15th day of January, 2008.



ARTHUR M. BISTLINE

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of January, 2008, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Gary Finney
120 E Lake St., Ste. 317
Sandpoint, ID 83864
Fax: 208-263-8211

- Hand-delivered
- Regular mail
- Certified mail
- Overnight mail
- Facsimile
- Interoffice Mail

BY:


JENNIFER HOSKINS

2007 JUN 11
JUDGE VERBY

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


CHARLES COWARD and ANNE)
COWARD, husband and wife,)
)
)
 Plaintiffs,)
)
 vs.)
)
 CRYSTAL HADLEY, an individual,)
)
)
 Defendant.)
_____)

CASE NO: CV-2007-0001997
SCHEDULING ORDER

IT IS HEREBY ORDERED that each party shall complete and file with the Clerk of Court the attached Scheduling Form. A copy of the Scheduling Form filed with the court shall be served on all parties and one copy shall be submitted to Judge Verby at his chambers in Sandpoint, 215 S. First Avenue, Sandpoint, ID 83864. In the alternative, a written stipulation containing the requested information may be submitted.

The Scheduling Form or stipulation must be completed and filed within fourteen (14) days from the date of this Order. If not returned, this matter will be set for trial at the Court's discretion.

DATED this 31st day of January, 2008.



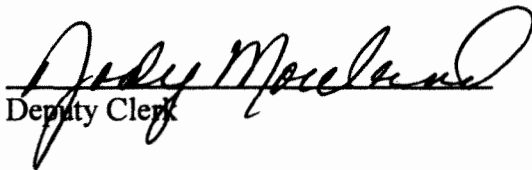
Steve Verby
District Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, U.S. postage prepaid, this 1st day of ~~January~~, 2008, to the following:
FEBRUARY

Arthur M. Bistline
Attorney at Law
110 Wallace Ave.
Coeur d'Alene, ID 83814

Gary A. Finney
Finney, Finney & Finney, P.A.
120 E. Lake Street, Suite 317
Sandpoint, ID 83864


Deputy Clerk

SCHEDULING FORM

In response to the Scheduling Order, please complete this form and file it within 14 days, with service of copies to all parties and one copy to Judge Verby's chambers in Sandpoint.

1. Case Title: Charles Coward, etal. v. Crystal Hadley
2. Case Number: CV-2007-0001997 (Bonner County)
3. Nature of Claims: _____
4. Court or Jury Case: _____
5. Number of Days Needed for Trial: _____
(If requesting more than five (5) days, please explain the reasons below.)
6. Should the court order mediation? Yes _____ No _____
7. Will you schedule a motion for summary judgment? Yes _____ No _____
Note: If you wish to schedule a motion for summary judgment, please contact Cherie Moore, (208) 265-1445, as soon as possible for scheduling.
8. The undersigned agrees to the following pretrial schedule unless specifically noted otherwise:
 - a. Plaintiffs disclose expert witnesses by **90** days before trial.
 - b. Defendants disclose expert witnesses by **60** days before trial.
 - c. **Last day** for hearing motions for summary judgment is **60 days** before trial.
 - d. The other deadlines in the court's standard pre-trial order.
9. Comments: _____

Dated this _____ day of _____, 2008.

Sign and Print or Type Attorney's Name

Attorney for _____
Print or Type Client's Name

11/11/07
11:23:54
JLM

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

CHARLES COWARD and ANNE)
COWARD, husband and wife,)
)
Plaintiffs,)
)
vs.)
)
CRYSTAL HADLEY, an individual,)
)
Defendant.)
_____)

Case No. CV 2007-0001997

ORDER FOR MEDIATION

A review of the file in this matter indicates that pursuant to *I.R.C.P. 16(k)*, it is an appropriate case for mediation.

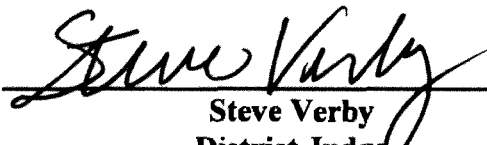
IT IS THEREFORE ORDERED that:

1. The parties and counsel shall in good faith mediate this matter.
2. The parties shall, within 28 days, select a mediator and file written notification with the Court, and if the parties cannot agree, they shall each nominate one or more mediators in a writing filed with the Court within 28 days.

ORDER FOR MEDIATION - 1.

3. The parties shall provide to the mediator such information, position statements or settlement materials as requested by the mediator.
4. The mediation must be completed not later than August 29, 2008.
5. Each counsel shall have his or her client (or a representative of such client having full settlement authority) present at the scheduled mediation so that the possibility of settlement may be fully explored.
6. All parties are under an obligation to advise the Court of any other party's failure to comply with this Order.
7. Failure to comply with this Order for Mediation may result in the imposition of sanctions, including without limitation those identified in *I.R.C.P. 16(i)*.

DATED this 11th day of March, 2008.



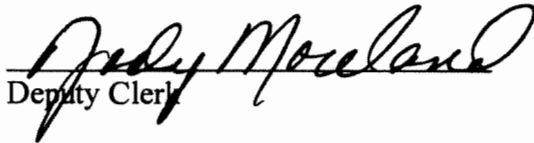
Steve Verby
District Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this 12 day of March, 2008, to:

Arthur M. Bistline
Law Office of Arthur M. Bistline
110 Wallace Avenue
Coeur d'Alene, ID 83814

Gary A. Finney
Finney Finney & Finney
120 East Lake Street, Suite 317
Sandpoint, ID 83864


Deputy Clerk

ARTHUR M. BISTLINE
LAW OFFICE OF ARTHUR M. BISTLINE
110 Wallace Ave.
Coeur d'Alene, ID 83814
(208) 665-7270
(208) 665-7290 (fax)

Attorney for Plaintiff

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2008 MAR 19 A 9 37

MARIE SCOTT
CLERK DISTRICT COURT
MS
DEPUTY

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

CHARLES COWARD and ANNE COWARD,

husband and wife,

Plaintiff,

vs.

CRYSTAL HADLEY, an individual,

Defendant

Case No.: No. CV-07-01997

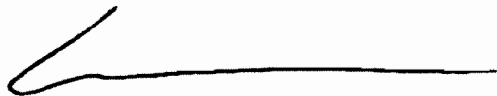
ANSWER TO COUNTERCLAIM

The Plaintiffs, Charles and Anne Coward, by and through their undersigned counsel,
hereby answers Defendant's Counterclaim as follows:

Plaintiffs admit paragraph 10 and 14 of Defendant's Counterclaim.

Plaintiffs deny paragraphs 11,12,13,15,16 and 17.

DATED this 18th day of March, 2008.



ARTHUR M. BISTLINE

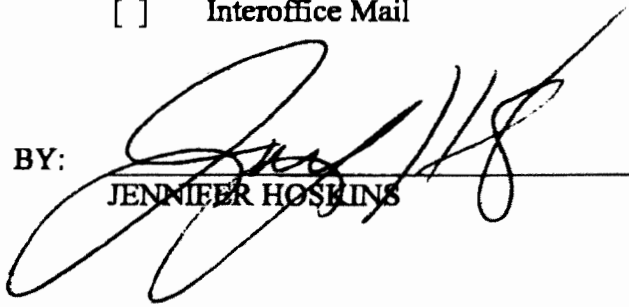
CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of ~~January~~ March, 2008, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Gary Finney
120 E Lake St., Ste. 317
Sandpoint, ID 83864
Fax: 208-263-8211

- Hand-delivered
- Regular mail
- Certified mail
- Overnight mail
- Facsimile
- Interoffice Mail

BY:



JENNIFER HOSKINS

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2008 MAY 14 P 3:46

CLERK DISTRICT COURT

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

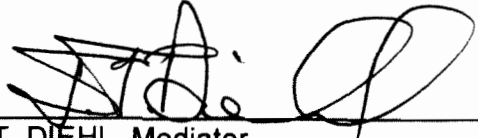
CHARLES COWARD and ANNE)
COWARD, husband and wife,)
)
Plaintiffs,)
)
vs.)
CRYSTAL HADLEY, an individual,)
)
Defendant.)

Case No. CV-2007-01997

ACKNOWLEDGMENT PURSUANT
TO RULE 16(k)(7) I.R.C.P.
REGARDING CASE STATUS/
MEDIATION

COMES NOW, J. T. DIEHL, and reports to the Court, pursuant to Rule 16(k)(7) of the Idaho Rules of Civil Procedure, that the mediation of the above captioned matter was held on the 13th day of May, 2008, and conducted by Attorney J. T. DIEHL, and that said mediation did not result in a mediated agreement; however, the parties will continue to pursue a resolution of the matter. I have offered my services should the need for additional mediation be necessary to reach a settlement agreement.

DATED this 13 day of May, 2008.



J. T. DIEHL, Mediator

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing document was served this 14th day of May, 2008, by:

- United States Mail
- Hand Delivery
- Facsimile

to: GARY FINNEY
FINNEY, FINNEY & FINNEY
120 E. Lake Street, #317
Sandpoint, ID 83864
Fax 263-8211

ARTHUR M. BISTLINE
Attorney at Law
110 Wallace Avenue
Coeur d'Alene, ID 83814
Fax 208-665-7290

Doreen L Anderson

GARY A. FINNEY
FINNEY FINNEY & FINNEY, P.A.
Attorneys at Law
Old Power House Building
120 East Lake Street, Suite 317
Sandpoint, Idaho 83864
Phone: (208) 263-7712
Fax: (208) 263-8211
ISB No. 1356

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2008 SEP 17 P 3:56

MARIE BOO
CLERK DISTRICT COURT
[Signature]
DEPUTY

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

CHARLES COWARD and ANNE	)	Case No. CV-2007-1997
COWARD, husband and wife,)	
	)	ADDITIONAL DEFENDANT'S EXHIBIT
Plaintiff,	)	Q
)	
v.)	
)	
CRYSTAL HADLEY, an individual,)	
)	
Defendant.)	
)	

COMES NOW, the Defendant, by and through counsel, GARY A. FINNEY, of Finney Finney & Finney, P.A., and submits a Defendant's Exhibit Q, the Amended Plat of Law's Second Addition to Sandpoint, Idaho, recorded in 1904, Book 1 of Plats, Page 58, records of Bonner County, Idaho.

DATED this 17 day of September, 2008.

[Signature]

GARY A. FINNEY
Attorney At Law

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by delivery as indicated, this 17 day of September, 2008, and was addressed as follows:

Arthur M. Bistline
Law Office of Arthur M. Bistline
5431 n. Government Way, Suite 101A
Coeur d'Alene, Idaho 83815
VIA U.S. MAIL AND VIA FACSIMILE: (208) 665-7290

Honorable Judge Steve Verby
VIA HAND DELIVERY



DEFENDANT'S AMENDED EXHIBIT LIST

(to add Exhibit Q)

CASE NO: CV-2007-1997 DEFENDANT'S COUNSEL: Gary A. Finney

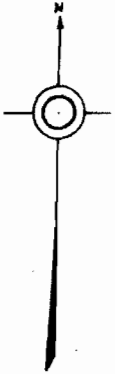
DATE: September 17, 2008 PLAINTIFF'S COUNSEL: Arthur M. Bistline

PLAINTIFF: Charles Coward and Anne Coward, husband and wife

DEFENDANT: Crystal Hadley, an individual

STATE	PLAINTIFF	DEFENDANT	DESCRIPTION	MARKED	OFFERED	REJECTED	ADMITTED	ADMITTED BY	UNDER ADVISEMENT
		A	Warranty Deed, Bandelin to Hadley, Instrument No. 34964						
		B	Decree Vesting Estate in Surviving Spouse, recorded January 11, 1999, Instrument No. 538011						
		C	Record of Survey (Lance Miller), recorded May 20, 2000, Instrument No. 564398						
		D	Agreement as to Boundary Line, recorded February 26, 2007, Instrument No. 723577, between Hadley and Coward						
		E	Attorney Finney's letter to Coward of September 6, 2007						
		F	Drawing (August 18, 2008) on graph paper, by Cole Thompson, depicting the real estate, garage, bus, property lines						
		G	Picture (Cole Thompson) of his "school bus" parked in the claimed access						
		H	Pictures (2) taken from Superior Street showing physical area and Coward's trespass						
		I	Pictures (2) taken from Superior Street showing physical area and Coward's trespass						
		J	Picture (1) taken from Superior Street showing physical area and Coward's trespass						

STATE	PLAINTIFF	DEFENDANT	DESCRIPTION	MARKED	OFFERED	REJECTED	ADMITTED	ADMITTED BY STIP	UNDER ADVISEMENT
		K	Picture from Hadleys looking north across Superior Street to area where witnesses No. 5 and 6 lived						
		L	Picture (8x10) taken recently from Boyer of the original house and Coward's second "new" house behind it (Coward's new second house on the same property)						
		M	Picture (8x10) taken recently from Boyer of Coward's second "new" house						
		N	Picture (8x10) taken from Superior Street, shows Hadley's garage, rocks, sink, and new chain link fence in access area, also showing Coward's "new" house and "garage" door						
		O	Building Permit Application (9 pages) Coward - City of Sandpoint						
		P	Quitclaim Deed, No. 34908, Collins, 1958						
		Q	Amended Plat of Law's Second Addition to Sandpoint, Idaho						

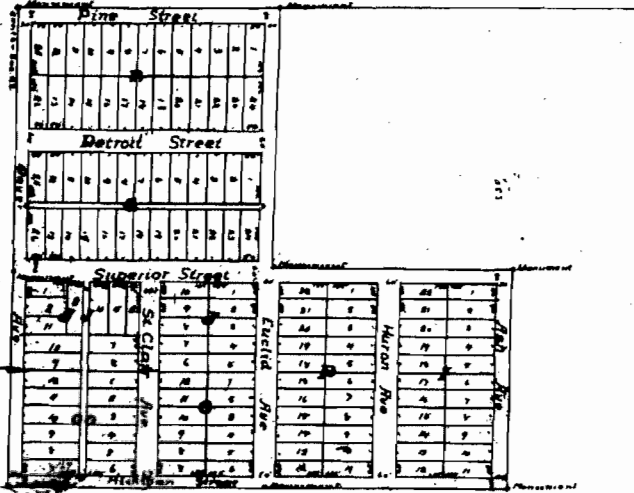


Amended Plat of
LAW'S SECOND ADDITION

Sandpoint, Idaho.

Scale: One inch equals 40 feet

From center point of north line to center of south line, distance between east and west lines of lot 10, 40 feet.



John R. Law
 May 4, 1904
 Plate 94
 P. L. Edwards

Dedication.

Know all men by these presents, That this Amended plat is dedicated and filed for the purpose of subdividing the above second addition to Sandpoint, Idaho, Lots 10 and 11, Block 13 and Lots 12 and 13, Block 14, into lots in west half of Block 13, to wit: lots 14 and 15, and to give effect to Blocks 13 and 14, all of said lots being in the S.W. 1/4 of Sec. 29, T. 47 N. R. 12 E. B. 20 Township and John R. Law and Mary Ann Law, his wife, and W. L. Bigelow and Maria M. Bigelow (his wife) owners of said lots above described and particularly referred to, and the land adjoining said lots above so divided and others in this amended plat have had and do hereby give and grant to the public by these presents the above described lots, with all the rights and easements and burdens and appurtenances thereto in and to the same, and together with all the streets, alleys and ways therein or thereunto, to be known as Laws Second Addition to Sandpoint, Idaho, and in the hands of the public and to be known as the said streets, alleys and ways, as hereinafter, remaining to ourselves, however the same may hereafter be divided or otherwise disposed of.

John R. Law (Grant) Mary Ann (Grant)
 W. L. Bigelow (Grant) Maria M. Bigelow (Grant)

Description of Amended plat of Laws Second Addition to Sandpoint, Idaho.

That certain tract of land bounded and described as follows: Beginning at the center of Section 29, T. 47 N. R. 12 E. B. 20, thence East 710 feet thence South 720 feet thence East 560 feet thence South 100 feet thence East 1070 feet thence North to place of beginning. All of above described land being in the S.W. 1/4 of the S.E. 1/4 of Sec. 29, T. 47 N. R. 12 E. B. 20.

Surveyor's Certificate

I, J. H. Ashley, do hereby certify that a correct copy of the amended plat of Laws second addition to Sandpoint, Idaho, as annexed by me on May 1904 and correctly described above, with monuments at station upon plat.

John J. Ashley, L. S.
 Sandpoint, Idaho

Acknowledgment

Sub of Idaho
 County of Blaine

On this 17th day of May 1904 before me, a Notary Public in and for the State of Idaho, personally appeared John R. Law and Mary Ann (his wife) and W. L. Bigelow and Maria M. Bigelow (his wife) to me known to be the identical persons who executed the instrument, and upon separate examination acknowledged to me they signed and read the same freely and voluntarily for the uses and purposes therein set forth.

(Seal)
 J. H. Ashley, Notary Public
 in and for the State of Idaho.


BK 1 Page 58
 of PLATS 1904

ARTHUR M. BISTLINE
LAW OFFICE OF ARTHUR M. BISTLINE
110 Wallace Ave.
Coeur d'Alene, ID 83814
(208) 665-7270
(208) 665-7290 (fax)

Attorney for Plaintiff

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2008 SEP 25 A 8:15

MARK E. BISHOP
CLERK DISTRICT COURT

DEPUTY

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

CHARLES COWARD and ANNE COWARD,

husband and wife,

Plaintiff,

vs.

CRYSTAL HADLEY, an individual,

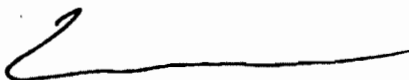
Defendant

Case No.: No. CV-07-1997

MOTION TO AMEND COMPLAINT

COMES NOW, Plaintiffs, and move this Court for an Order allowing them to amend their complaint as set forth in attached exhibit A. This motion is based on IRCP 15, the memorandum, and affidavit filed herewith.

Dated this 24th day of September, 2008.



ARTHUR M. BISTLINE

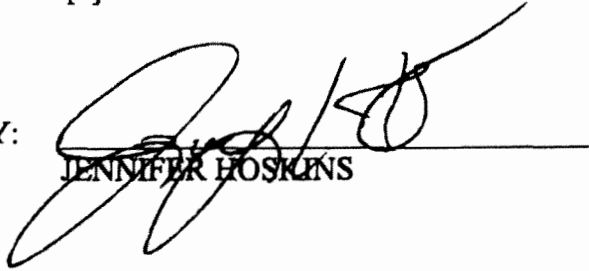
CERTIFICATE OF SERVICE

I hereby certify that on the 04 day of September, 2008, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Gary Finney
120 E Lake St., Ste. 317
Sandpoint, ID 83864
Fax: 208-263-8211

- Hand-delivered
- Regular mail
- Certified mail
- Overnight mail
- Facsimile
- Interoffice Mail

BY:



JENNIFER HOSKINS

ARTHUR M. BISTLINE
LAW OFFICE OF ARTHUR M. BISTLINE
110 Wallace Ave.
Coeur d'Alene, ID 83814
(208) 665-7270
(208) 665-7290 (fax)

Attorney for Plaintiff

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

CHARLES COWARD and ANNE COWARD,

husband and wife,

Plaintiff,

vs.

CRYSTAL HADLEY, an individual,

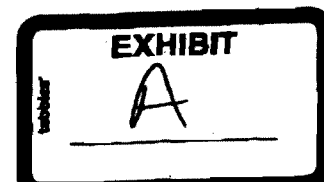
Defendant

Case No.: No. CV-07-1997

AMENDED COMPLAINT

For a cause of action, Plaintiffs allege as follows:

- 1) Plaintiffs are husband and wife who reside in Bonner County, Idaho, at 309 S. Boyer, Sandpoint, Idaho.
- 2) Defendant is a single woman residing in Bonner County at 307 S. Boyer, Sandpoint, Idaho, which is the real property that is the subject of this suit and jurisdiction is proper before this Court.
- 3) Plaintiffs and their predecessors in interest have used a portion of Defendant's property to access their property and have done so in an open notorious and hostile manner for a period of time which establishes Plaintiffs' right to continue to use that property to access their property.



- 4) Plaintiffs are entitled to use the east twelve feet of Defendants property to access their property based on instrument number 53126 records of Bonner County, either by the express terms of that instrument or by an implied right to utilize the alley which is created by that instrument.
- 5) Plaintiffs' are entitled to judgment that they have the right to utilize a portion of Defendant's property to access their property as may be proved at trial.
- 6) Because of Defendant's unreasonable refusal to acknowledge the rights of Plaintiffs' Plaintiffs have had to acquire the services of an attorney and are entitle to an award of fees and costs incurred in this action with a reasonable sum being \$2,000 in the event this mater is uncontested.

Wherefor, Plaintiffs pray that this Court enter judgment declaring that Plaintiffs, and their successors an assigns, have the right to continue to use Defendant's property to access their property and are entitled to an award of reasonable attorney's fees and cost incurred in this action.

DATED this 24th day of September, 2008.

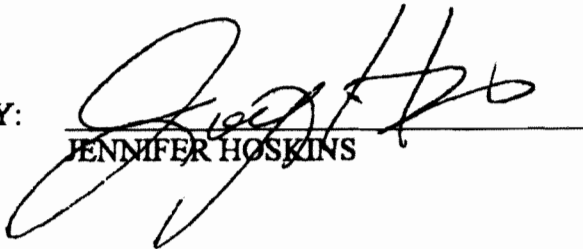

ARTHUR M. BISTLINE

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of September, 2008, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Gary Finney
120 E Lake St., Ste. 317
Sandpoint, ID 83864
Fax: 208-263-8211

- Hand-delivered
- Regular mail
- Certified mail
- Overnight mail
- Facsimile
- Interoffice Mail

BY: 
JENNIFER HOSKINS

GARY A. FINNEY
FINNEY FINNEY & FINNEY, P.A.
Attorneys at Law
Old Power House Building
120 East Lake Street, Suite 317
Sandpoint, Idaho 83864
Phone: (208) 263-7712
Fax: (208) 263-8211
ISB No. 1356

STATE OF IDAHO
COUNTY OF BONNER
2008 SEP 25 P 3:45

JEREMY [unclear]
[Signature]

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

CHARLES COWARD and ANNE	)	Case No. CV-2007-1997
COWARD, husband and wife,)	
	)	DEFENDANT'S MOTION IN LIMINE
Plaintiff,	)	AS TO "NEW" THEORIES AND
	)	EVIDENCE
v.	)	AND
	)	OBJECTION TO NEW ALLEGATIONS
CRYSTAL HADLEY, an individual,	)	AND NEW THEORIES AND TO
	)	PLAINTIFF'S MOTION TO AMEND
Defendant.	)	COMPLAINT
	)	AND
	)	DEFENDANT'S PRETRIAL REBUTTAL
	)	MEMORANDUM
)	

COMES NOW, the Defendant CRYSTAL HADLEY, and moves the
Court and objects, as follows:

I. BACKGROUND FACTS

1. The Complaint, filed November 29, 2007, alleged that
Plaintiffs had an easement by use of Defendant's property, which
is clearly the theory of a prescriptive easement. The Complaint
describes no real estate of either Plaintiffs or Defendant, nor

do the Plaintiffs in any way allege title or ownership to any real estate or seek quiet title to any real estate.

2. The Defendant's Answer and Counterclaim, filed December 18, 2007, points out the deficiencies of the Complaint, failing to state a cause of action, because Plaintiffs allege no beneficial interest in any real estate as the dominant estate, nor any beneficial interest in any real estate of the Defendant as the servient estate. The Defendant's Counterclaim alleges ownership and title to Defendant's real estate and seeks to quiet title against the Plaintiffs.

3. In spite of the Answer and Counterclaim, the Plaintiff does nothing to amend the Complaint, and as a jurisdictional matter the Plaintiffs have no standing and the Complaint should be dismissed. (See Hadley's Trial Memorandum, page 4, Tungsten Holdings, Inc. v. Drake 143 Idaho 69 (2006).

4. The Court's Notice of Trial Setting and Pretrial Order was filed March 11, 2008.

5. The Court's Notice to Counsel, filed August 27, 2008, points out that pursuant to the Pretrial Order the Court may refuse to allow claims or defenses, and may prohibit evidence, strike portions of pleadings, enter judgment by default, or dismissal of the action.

6. Finally, on or about the 24th of September, 2008, only 2 working days before Trial (September 29, 2008), the Plaintiffs filed a Motion to Amend Complaint.

II. DEFENDANT'S MOTION IN LIMINE AND OBJECTION TO AMENDMENT

Two (2) working days before trial the Plaintiffs are still not pleading jurisdictional elements.

The Court is moved to rule, in advance, that the Plaintiffs can not submit nor is any evidence admissible on the Plaintiffs' new theories of express easement and easement by implication.

Further, the Defendant objects and moves the Court to deny the Plaintiffs' Motion To Amend Complaint because,

a) this case was set for the upcoming trial by Notice of Trial, dated March 11, 2008, and over six (6) months have expired without Plaintiffs seeking to amend its Complaint;

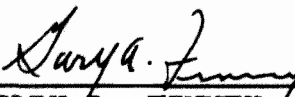
b) since the Defendant's Answer and Counterclaim, filed December 18, 2007, the Plaintiff was well aware of the deficiencies of their Complaint, and ten (10) months expired before they sought to amend;

c) the motion to amend comes within two (2) working days of the trial, which is a severe prejudice to the Defendant. Had these new theories been added earlier the Defendant would have prepared witnesses and exhibits and researched the law on these issues. At this late date it is prejudicially unfair to permit these amendments and then give the Defendant two (2) days

to prepare its witnesses, exhibits, documents, research the chain of title on all of the real estate, and research and prepare the law applicable.

WHEREFORE, evidence on express easement and easement by implication should be inadmissible, and the Plaintiffs' Motion To Amend Complaint should be denied.

DATED this 25th day of September, 2008.



GARY A. FINNEY
Attorney at law

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served as indicated below, this 25th day of September, 2008, and addressed as follows:

Arthur M. Bistline
Law Office of Arthur M. Bistline
5431 n. Government Way, Suite 101A
Coeur d'Alene, Idaho 83815
VIA FACSIMILE: (208) 665-7290

District Judge Steve Verby
Chamber's copy
Via Hand Delivery



Heather Schubarth

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

COURT MINUTES

JUDGE:	STEVE VERBY	CASE NO.:	CV-2007-1997	TIME:	9:00 AM
REPORTER:	VAL LARSON	DATE:	09/29/08		
CLERK:	SANDRA RASOR	CD:	08-159		
DIVISION:	DISTRICT				

CHARLES COWARD AND ANNE COWARD	vs	CRYSTAL HADLEY
_____		_____
Plaintiff / Petitioner		Defendant / Respondent
Atty: ARTHUR BISTLINE		Atty: GARY FINNEY

**SUBJECT OF PROCEEDINGS COURT TRIAL
CHARGE**

INDEX	SPEAKER	PHASE OF CASE
		Present: PLAINTIFF WITH ARTHUR BISTLINE/ DEFENDANT WITH GARY FINNEY

Time	Speaker	Note
<u>9:06:48 AM</u>	J	ISSUE AT THIS POINT IS WETHER OR NOT COMPLAINT SHOULD BE ALLOWED TO BE AMENDED, MR. FINNEY HOW MUCH TIME PREPARING
<u>9:07:19 AM</u>	GF	CAN'T TELL YOU EXACTLY, BUT HAVE SPENT TIME, THE WAY PLED NOT USING A LOT OF IDAHO LAW, HE SAID HE WOULD GET ME THE CASES HE WAS RELYING ON TO AMEND AND THAT DIDN'T HAPPEN UNITL LATE LAST FRIDAY, HAVE NOT BEEN ABLE TO REVIEW, IF HE IS DROPPING PRESCRIPTIVE EASEMENT I THINK A MATTER OF LAW COULD AFTER TRIAL, NOT 100% READY.
<u>9:08:48 AM</u>	J	MR. BISTLINE MAKE ARGUMENT AS TO AMENDMENT
<u>9:09:00 AM</u>	AB	SHOULD BE GRANTED, DON'T NEED TO AMEND IN FIRST PLACE TO DISCUSS EXPRESS EASEMENT, (STATES OTHER CASE) FILED MOTION, DON'T REALLY NEED TO, BOTH MATTERS OF LAW, DON'T SEE ANY PREJUDICE, AGREE TO CLOSING BRIEF IN WHICH HE COULD ARGUE THAT, I SPENT A DAY DEVELOPING THE THEORY AND THAT IS ALL I HAVE DONE WITH IT, NOT LEGAL THEORY
<u>9:10:39 AM</u>	J	MR. FINNEY NEED MORE TIME?
<u>9:10:50 AM</u>	GF	DEPENDS ON WHAT WE WILL APPLY
<u>9:11:04 AM</u>	AB	ALWAYS HAS BEEN THE THEORY WAS PRESCRIPTION IT IS THE NEW ONE
<u>9:11:18 AM</u>	J	YES COURT CAN DECIDE UPON NEW THEORYS BUT THIS IS DIFFERENT , MR FINNEY PREPARING FOR PRESCRIPTIVE THEORY AND NOW NEW THEORY, LOOKING AT GI VING MR. FINNEY MORE TIME BUT I REALIZE I HAVE THE ABILITY TO SUSTAIN ME DENYING THE AMENDMENT BUT AM LOOKING AT ALLOWING AMENDMENT AND GIVE HIM MORE TIME, HOW LONG MR. FINNEY?
<u>9:12:36 AM</u>	GF	GO AHEAD AND TRY THE CASE AND TO EXTENT NEED MORE BE GIVING TIME TO DO THAT, TAKE IN TWO SESSIONS, IF DON'T NEED OTHER WITNESS
<u>9:13:00 AM</u>	J	PROCEED WITH TRIAL ALLOW AMENDMENT, AS TO WHETHER OR NOT ADDITIONAL TIME YOU WILL NEED TO TELL ME MR. FINNEY
<u>9:13:31 AM</u>	AB	NO OPENING STATEMENT

Time	Speaker	Note
<u>9:13:36 AM</u>	GF	JUST ONE TO PROTECT THE RECORD, COVENANTS ON PRESCRIPTIVE EASEMENTS IS SO VAGUE, HADLEYS HAVE LIVED THERE SINCE 1950 TO THEIR KNOWLEDGE NO ONE HAS BEEN COMING AND GOING, AS TO EASEMENT REFERRING TO DEED BACK IN EARLY DAYS THREE LOTS, OWNER OF 3RD LOT DEEDED 1 AND 2 AND KEPT THE EASEMENT TO GET TO THEIR LOT TO GET TO LOT 11. NO EXPRESS EASEMENT TO OTHER PARTIES, (DISCUSSED EASEMENT) THESE LOTS ALL FRONT BOYER AVENUE, HAVE HOUSES AND DRIVEWAY FROM BOYER RIGHT ON TO THEIR OWN DRIVEWAY, EASEMENT BY NECESSITY DOES NOT APPLY, SEVERED A LONG TIME AGO, THEY HAVE BUILT A SECOND HOME IN THE BACK THAT MUST HAVE SOME LESS FEATURES BECAUSE OF WHAT CITY QUALIFIED IT AS, NEW GARAGE DID NOT EXIST WHEN OLD EASEMENT WAS GIVEN. THEY HAVE NEVER SHOWN WHO OWNS WHAT, CITES TUNGSTEN AGREEMENT,
<u>9:19:58 AM</u>	J	CALL FIRST WITNESS
<u>9:20:05 AM</u>	J	ANY DOCUMENTS TO STIP
<u>9:20:41 AM</u>	GF	2,3,5 AND 27 NO OBJECTION TO
<u>9:21:37 AM</u>	J	PL 2,3,5, AND 27 ADMITTED
<u>9:21:46 AM</u>	AB	CALL CRY S HADLEY
<u>9:21:52 AM</u>	CLERK	CRY S HADLEY SWORN
<u>9:22:36 AM</u>	AB	DIRECT
<u>9:22:40 AM</u>	CH	CHRYSTAL HADLEY, 303 SOUTH BOYER, ANNE AND BUDDY COWARD IMMEDIATELY TO SOUTH OF ME, MOVED IN JUNE OF 1950, HOUSE ALREADY CONSTRUCTED, THERE WAS AN OLD GARAGE LIKE A SHED,
<u>9:24:58 AM</u>	AB	MOVE TO ADMIT 40
<u>9:25:16 AM</u>	J	PL 40 ADMITTED
<u>9:25:34 AM</u>	CH	MR. DONAHO USED GARAGE BEFORE STROKE, USED IT TO PARK HIS CAR, WE ALLOWED HIM TO DRIVE ACROSS OUR PROPERTY AND WE ALLOWED IT BECAUSE THEY WERE VERY NICE,
<u>9:26:26 AM</u>	AB	OBJECT HEARSAY
<u>9:26:34 AM</u>	CH	NO USE OF GARAGE AFTER HE HAD A STROKE, THEY HAVE AN OIL STOVE, NO ONE EVER USED THAT LOT TO GET TO THE COWARDS
<u>9:27:18 AM</u>	GF	CROSS

Time	Speaker	Note
<u>9:27:23 AM</u>	CH	LEO HADLEY WAS MY HUSBAND, MARRIED AT TIME OF BUYING PROPERTY, LEO DIED OCTOBER OF 1998, OUR HOUSE AND GARAGE ARE CONCRETE BLOCK, WE EXIT FROM SUPERIOR TO OUR GARAGE, LEO PARKED HIS ON RIGHT OF WAY AND I PARKED IN THE GARAGE, LEO HAD A PICKUP, HE WAS PART OWNER OF SANDPOINT MARINA, HAD BOATS HOME ONCE IN A WHILE AND WOULD LEAVE IN THE SPOT, NEVER SAW ANYONE CROSSING BACK OF LOT TO ACCESS COWARDS LOT, MY SON AND DAUGHTERS PATSY AND NANCY, ALL THREE RAISED AT THAT PROPERTY,
<u>9:30:31 AM</u>	AB	OBJECT
<u>9:30:44 AM</u>	J	NOT GOING TO CONSIDER LAST STATEMENT, SUSTAIN OBJECTION,
<u>9:31:26 AM</u>	AB	REDIRECT
<u>9:31:31 AM</u>	CH	ABOUT 25 FEET BETWEEN HOUSE AND PROPERTY LINE, HUSBAND PARKED RIGHT NEXT TO GARAGE, A PICKUP, NEVER MOVED STUFF OUT OF THE WAY FOR PEOPLE TO USE, MY GRANDSON HAD A BUS PARKED THERE FOR ABOUT 10 YEARS, REMEMBER MARY DAW, SHE WAS MY NEIGHBOR, DON'T RECALL HER PARKING IN THE GARAGE,
<u>9:33:33 AM</u>	AB	CALL MARY GOFF
<u>9:34:04 AM</u>		SWORN
<u>9:34:07 AM</u>	MF	MARY GOFF, PURCHASED LOT IN 1978 OR 79, I PURCHASED LOT THROUGH A REALTOR, HAD ACCESS FROM SUPERIOR BUT WAS GRASS, COULD DRIVE INTO GARAGE THAT WAY, DOOR OF GARAGE WAS TOWARD SUPERIOR STREET, SOLD IN 1994, LIVED THERE AND THEN RENTED AND THEN MOVED BACK ON AND OFF, MADE USE OF THE GARAGE, PARKED CAR THERE FOR YEARS I OWNED, HAD A SPORTS CAR, TOO SMALL FOR OTHER CARS TO USE, ACCESSED FROM SUPERIOR STREET, HAD TO ASK LEO A COUPLE TIMES TO MOVE HIS TRUCK SO I COULD GET IN THERE,
<u>9:36:49 AM</u>	GF	NO OB TO PL 42
<u>9:36:56 AM</u>	AB	MOVE TO ADMIT PL 42
<u>9:37:02 AM</u>	J	PL 42 ADMITTED
<u>9:37:41 AM</u>	MF	NO ONE EVER TOLD ME I COULD NOT USE RIGHT OF WAY
<u>9:37:57 AM</u>	AB	NO FURTHER
<u>9:38:03 AM</u>	GF	CROSS
<u>9:38:07 AM</u>	MF	LEFT FIAT IN GARAGE WHEN I WAS GONE TO ALASKA, ASKED LEO TO MOVE TRUCK AND HE WOULD MOVE IT,
<u>9:39:42 AM</u>	GF	OBJECT

Time	Speaker	Note
<u>9:40:02 AM</u>	AB	EXPLAINS
<u>9:40:14 AM</u>	J	HER OPINION AS TO WHETHER SHE THOUGHT AN ALLEY, HELP ME OUT HERE
<u>9:40:44 AM</u>	AB	WITHDRAW
<u>9:40:47 AM</u>	J	QUESTIONS WITNESS
<u>9:40:57 AM</u>	MF	NO TRACKS IT WAS GRASS, NOTHING TO INDICATE USED AS ACCESS, LEO MOWED, NOT USED AS ACCESS ON DAILY BASIS, BROUGHT WOOD IN ONCE A YEAR
<u>9:41:52 AM</u>	AB	REDIRECT
<u>9:42:06 AM</u>	MF	ANSWERS
<u>9:42:09 AM</u>	GF	RECROSS
<u>9:42:14 AM</u>	MG	USED FOR STORAGE OCCASIONALLY AND WOOD ONCE A YEAR,
<u>9:42:30 AM</u>	AB	REDIRECT
<u>9:42:35 AM</u>	MF	IF I HAD TO GET TO BACK OF PROPERTY USED THE STRIP
<u>9:42:58 AM</u>	J	YOU MAY STEP DOWN
<u>9:43:03 AM</u>	AB	CALL ANNE COWARD
<u>9:43:20 AM</u>	CLERK	ANNE COWARD SWORN
<u>9:43:26 AM</u>	AB	DIRECT
<u>9:43:30 AM</u>	AC	LIVE ON BOYER, CHRYSTAL HADLEY TO THE LEFT, PURCHASED IN 1994, GARAGE ON PROPERTY WHEN PURCHASED, GARAGE WAS ACCESSED OFF OF SUPERIOR, ACCESS WAS CLEAR WHEN WE BOUGHT, CLEAR STRIP WAS USED TO ACCESS GARAGE, REALTOR TOLD ME, OUR WHOLE BACK YARD WAS FENCED, ONLY WAY TO GET TO GARAGE, AT THE TIME COULD WALK INTO HADLEYS YARD, 25 TO 30 FEET BETWEEN YARD AND STRIP, LEO WAS ALIVE WHEN I WAS THERE AND HE USED TO PARK HIS PICKUP TRUCK BUT I COULD GET AROUND WHEN I NEEDED IT, LIVED ON PROPERTY FOR A YEAR, I MADE USE OF GARAGE FOR STORAGE, ACCESSED REAR TO DO REMODEL AT THE TIME, TO DO A REMODEL YOU HAVE TO USE BACK DOOR, AFTER A YEAR WE MOVED BACK TO CALIFORNIA, WE RENTED HOME,
<u>9:46:43 AM</u>	GF	OBJECT NO FOUNDATION
<u>9:47:00 AM</u>	J	SUSTAIN
<u>9:47:07 AM</u>	AB	EXPLAINS
<u>9:47:16 AM</u>	J	SUSTAIN AS TO LACK OF FOUNDATION
<u>9:47:23 AM</u>	AB	CONTINUES

Time	Speaker	Note
9:47:32 AM	AC	I TOLD RENTERS THE COULD USE THE GARAGE AND HAD ACCESS THROUGH SUPERIOR, WE CAME BACK UP IN 1995, EVERY TIME I CAME TO SDPT I VISITED CH WE WERE VERY GOOD FRIENDS, I MADE SURE OUR RENTERS WERE BEING GOOD NEIGHBORS, IN 2000 CHRYS H'S SON PUT A BUS AND MOVED ON IT TEMPORARILY, SON BROKE BACK AND NEEDED TO LEAVE BUS FOR A PERIOD OF TIME SHE ASKED IF IT COULD BE THERE, WE PAID FOR THE BUS TO BE MOVED, I CONTACTED NANCY HADLEY TO SAY PLEASE COULD I HAVE THE BUS MOVED, HAD PLANS TO REBUILD GARAGE, DID NOT WANT TO CHANGE THE WAY OUR PROPERTY IS, LOTS OF TREES, GARDEN WAS THERE FOR 70 YEARS, 309 NORTH BOYER, NOT ROOM FOR GARAGE IN YARD, HAD TOLD CHRYS AND NANCEY AND COLE AS WELL, WE HAD BUS MOVED, RENTER MOVED OUT JUNE OF 2006, WE WANTED TO ASSEMBLE AND BUILD NEW GARAGE, WENT TO CITY, ALLEY IS DEEDED TO CITY OF SDPT, WANTED TO MAKE SURE DOCUMENTATION CLEARED UP, WAS TOLD THAT THE LAST 12 FEET DEEDED TO THE CITY, (EXPLAINS HOW EASEMENT USED) BUS MOVED IN AUGUST OF 2007 SO WE COULD EXCAVATE, GOT PERMIT, WAS GETTING READY TO BUILD GARAGE, HAD CLEANED UP AREA, AT THE TIME I WAS PLANNING ON MOVING MY MOM UP, IT WAS WINTER AND WE WERE ANXIOUS TO GET DONE, IN 1998 ISSUE THE NORTH FENCE OF PROPERTY LINE GOING EAST TO WEST WAS FALLING IN AND WE REPLACE THE FENCE AND THEY SAID WE MOVED FENCE ONTO THEIR PROPERTY LINE, CHRYS SAID THAT NANCY WAS CONCERNED THAT WE PUT FENCE IN CROOKED, MADE A DOCUMENT SAYING I BUILT FENCE CROOKED BUT DID NOT HAVE OWNERSHIP OF THEIR PROPERTY,
9:57:37 AM	AB	MOVE TO ADMIT PL 31
9:57:45 AM	GF	NO OBJECTION
9:57:48 AM	J	PL 31 ADMITTED

Time	Speaker	Note
9:58:05 AM	AC	DOCUMENT WAS DRAFTED UP 9 YEARS LATER I GUESS BECAUSE NEVER FILED AT THE TIME, FIRST HEARD NOT ALLOWED TO UTILIZE STIP AFTER WE HAD FORMED UP OUR GARAGE NANCY HADLEY CHRYS'TALS DAUGHTER, HER BROTHER IN LAW BEGAN GETTING INVOLVED AND THEN I WAS TOLD BY CHRYS THAT THERE WAS A LETTER COMING SAYING WE DID NOT HAVE ACCESS, WE DID NOT GET LETTER THEN NANCY HADLEY DELIVERED LETTER, FOUNDATION WAS GETTING READY TO BE POURED BUT HAD PROBLEMS BECAUSE OUR WATER LINE WAS UNDER CHRYS'S GARAGE, NONE OF OUR UTILITIES CAME OFF BOYER BUT OFF SUPERIOR AND ST. CLAIR.
10:00:55 AM	GF	ASK ABOUT EXHIBITS, OBJECT TO ANY
10:01:08 AM	AB	DON'T OBJECT
10:01:14 AM	GF	OFFER A THROUGH P
10:01:23 AM	J	DEFENDANT'S A THROUGH P ADMITTED
10:01:55 AM	AC	MOVED AWAY FEB OF 95 PURCHASED IN 94, IN MARCH OF 98 MOVED BACK IN, LIVED THERE UNTIL DEC OF 2000 THEN WENT BACK TO CALIFORNIA LIVED THERE UNTIL JUNE OF 2007, HAVE SEEN SURVEY DEF EXHIBIT C
10:10:52 AM	AC	IDENTIFIES EXHIBIT C, IN ADDITION TO OUR GARAGE WAS A STAND ALONE ROOM THAT WE PUT ON TOP OF GARAGE, ONE CAR GARAGE ON GROUND FLOOR A BATHROOM AND A GARDEN ROOM, STAIRS GO UP. NEW GARAGE IN SAME LOCATION AS ORIGINAL GARAGE WITH EXCEPTION HAD TO TAKE INTO CONSIDERATION CURRENT CODE OF 5 FEET OFF PROPERTY LINE, (DESCRIBES), WATER SERVICE AND ELECTRICAL SERVICE, OLD GARAGE HAD ELECTRICAL AND STAND ALONE ROOM HAD PLUMBING, BATHROOM IN NEW ONE, SINK, TOILET AND SHOWER, STAND ALONE ROOM DID NOT HAVE BUT WAS SET UP FOR THAT, IT HAD A HEATER, DESCRIBES PICTURES OF GARAGE, DIRT PILE WAS PARTIALLY ON THEIRS AND PARTIALLY ON OURS, WE PUT IT THERE, DESCRIBE EXHIBITS, WE CUT CURB IN IN THE SPRING, TREES AND GARDEN AREA AND THE STAND ALONE ROOM, I TOOK IT TO CHRYS HADLEY AND TOOK TO ALL INVOLVED TO SEE WHAT WAS BEST,
10:24:44 AM	GF	NOTICED PROBLEM BUT SHOULD BE ABLE TO TELL ORIGINALS FROM COPIES,
10:25:02 AM	J	TAKE A MORNING BREAK RECESS UNTIL 20 TO 11:00 SEE YOU BACK IN 15 MINUTES
10:25:29 AM		OFF RECORD

Time	Speaker	Note
10:41:38 AM		ON RECORD
10:41:41 AM	GF	DEFENDANT'S EXHIBIT Q WE CANNOT FIND, COURT SHOULD HAVE ONE AT THE COURTHOUSE
10:44:20 AM	J	BACK ON RECORD STIP Q IS ADMITTED
10:44:54 AM	GF	CONTINUES CROSS
10:45:02 AM	AC	DON'T RECALL HADLEYS PLOWING SNOW, WE NEVER PLOWED SNOW, BEGAN DIRT WORK END OF JULY 2007, FIRST BROUGHT DIRT WITH REGARDS TO CONSTRUCTION BROUGHT SMALL TRACTOR DO HAUL OUT OLD GARAGE,
10:46:37 AM	AB	REDIRECT
10:46:42 AM	AC	UNDERWOOD WAS MY LAST NAME WHEN I BOUGHT LOT, TRUSTEE OF COWARD
10:47:01 AM	AB	DONE
10:47:32 AM	GF	STIP TO ADMIT ALL OF PLAINTIFFS EXHIBITS
10:47:49 AM	J	I HAVE ADMITTED BY STIP 2,3,5, 27, 31 40 AND 42 ALL OF PLS ADMITTED BY STIP
10:48:33 AM	AB	CORRECT
10:48:38 AM	GF	CORRECT
10:48:43 AM	J	ALL PLAINTIFFS EXHIBITS ADMITTED
10:49:02 AM	GF	MAKE MOTION TO DISMISS AS RELATED TO PRESCRIPTIVE EASEMENT/ ARGUMENT
10:51:35 AM	AB	ARGUMENT
10:53:39 AM	J	AT THIS POINT NO TESTIMONY FROM 1947, ONLY TESTIMONY ABOUT GOOD NEIGHBORS ALLOWING USE,
10:54:15 AM	AB	EXPLAINS
10:55:55 AM	J	GO BACK TO PRESCRIPTIVE ISSUE
10:56:43 AM	AB	NO EVIDENCE HOSTILE, EXPLAINS
10:57:56 AM	J	MR. FINNEY?
10:58:01 AM	GF	ARGUMENT
10:59:34 AM	J	TAKE THE MOTION UNDER ADVISEMENT, MR. FINNEY ALLOW YOU TO BEGIN YOUR CASE
10:59:49 AM	GF	CALL COLE THOMPSON
10:59:54 AM	CLERK	COLE THOMPSON SWORN
11:00:17 AM	GF	DIRECT

Time	Speaker	Note
11:00:21 AM	CT	COLE DAVID THOMPSON, CHRYSTAL IS MY GRANDMOTHER, LIVE ON 317 2ND AVENUE, HAVE LIVED HERE ALL MY LIFE, 33 YEARS, THROUGHOUT MY WHOLE CHILDHOOD HAVE BEEN PARTIALLY RAISED BY MY GRANDMOTHER, I HAVE MEMORIES OF WHEN I WAS 5 OR 6 YEARS OLD, RECALL WHEN GRANDFATHER LEO DIED, 1998, AT THAT TIME STAYING WITH MY GRANDPARENTS OFF AND ON, FREQUENTLY STAYED WITH THEM WHILE I WAS WORKING AND CONTINUING COLLEGE, FROM 95 THROUGH 2005 AFTER GRADUATING AND LEAVING FOR A SHORT TIME, BUS WAS USED AS A RESIDENCE FOR MYSELF, NO BATHROOM FACILITIES USED HOUSE FOR THAT, COOKING ETC. SLEPT IN THE BUS, HAD A 94 FORD PICKUP, PARKED IN STREET OR IN THE GRASS NEXT TO BUS, IDENTIFIES DEF F, DRAWING I MADE, STORED RIVER ROCK ON THE PROPERTY, NEVER SAW ANYONE DRIVE ACROSS MY GRANDMOTHERS PROPERTY, IN 2005 MOVED INTO OAK STREET APT. BUS STAYED ON PROP UNTIL SUMMER 2007. HAD MY POSSESSIONS STILL INSIDE BUS, WENT THERE ON A WEEKELY BASIS AND VISITING MY GRANDMOTHER AS WELL, VISITED HER ALMOST ON A DAILY BASIS. ONLY SAW ANYONE USING IT WAS WHEN BUS WAS REMOVED AND I SAW EVIDENCE WHEN COWARDS WERE USING THEIR GARAGEL END OF SUMMER 2007 I BELIEVE, FAMILIAR WITH THEIR REMOVAL OF THE FENCE, RIGHT AFTER COWARDS BOUGHT PROPERTY, FOR SOME REASON TORE DOWN THE OLD FENCE AND PUT UP NEW, I SAW THE NEW FENCE PUT UP AND REALIZED THEY HAD MOVED THE FENCE OVER, I COULD TELL IT HAD BEEN MOVED, ORIGINAL WAS WOODEN CEDAR FENCE, REPLACED WITH SAME TYPE OF FENCE,
11:09:44 AM	AB	CROSS
11:09:47 AM	CT	WAS EASY TO SEE WHERE OLD POSTS WERE, THEY COULD HAVE SEEN WHERE THE OLD FENCE WAS, I WAS MOWING LESS LAWN THAN I USED TO MOW, NEVER SAW ANYONE ON THE STRIP OF LAND IN QUESTIONS
11:10:46 AM	J	YOU MAY STEP DOWN
11:10:51 AM	GF	CALL NANCY HADLEY
11:11:08 AM	CLERK	NANCY HADLEY SWORN
11:11:16 AM	GF	DIRECT

Time	Speaker	Note
11:11:20 AM	NH	DAUGHTER OF CHRYSAL, LIVED IN SDPT WHOLE LIFE, 49 YEARS OLD, LIVED AT 303 SOUTH BOYER WITH PARENTS, GRADUATED IN 1977, MARRIED IN 98 LIVED ELSEWHERE, FIRST HUSBAN PASSED SO LIVED WITH PARENTS AGAIN 81 TO 82, FAMILIAR WITH CEMENT GARAGE, MOM PARKED IN GARAGE AT FIRST, FATHER PARKED BESIDE GARAGE TO THE EAST, PICKUP TRUCK YOU COULD HAUL BOATS WITH, I GOT A VEHICLE SENIOR YEAR OR AFTER GRADUATION, I PARKED ON SUPERIOR, WITH MOM IN FRONT OF GARAGE AND FATHER EAST OF GARAGE SO NOT ENOUGH ROOM THERE, COULD NOT DRIVE THERE ALSO RASPBERRY PATCH BESIDE GARAGE, NEVER SAW ANYONE USE THE AREA BY VEHICLE, LIVED IN SDPT, MOVED TO KOOTENAI, I STILL CONSIDER THAT SDPT, VISITED PARENTS AT LEAST 4 OR 5 TIMES PER WEEK MAYBE MORE, VERY CLOSE TO MY GRANDMOTHER ALMOST DAILY OCCURANCE, HER APT WAS ACROSS SUPERIOR, NEVER SAW ANYONE USE THE GRASS AREA, GRANDMA WAS THERE UNTIL 1996, VERY CLOSE WITH FAMILY WOULD GO THERE FOR LUNCH, NEVER SAW ANYONE USE BACK OF PROPERTY, CONTINUED TO VISIT EVEN MORE WITH THE DEATH OF MY FATHER, I WAS THE ONLY CHILD STILL LIVING IN SDPT, I CHECK ON HER OFTEN, MOM CALLED DUST WAS BOTHERING HER ASTHMA, I BECAME VERY INVOLVED, I WENT OVER AND LOOKED, I HAD BEEN TALKING ABOUT MY BROTHER IN LAW ABOUT USAGE ISSUES AS WELL, THERE MAILING ADDRESS WAS A CALIFORNIA ADDRESS, HAND DELIVERED LETTER TO BUDDY, ANNE WAS NOT THERE SHE WAS IN CALIFORNIA, I BELIEVE I TALKED TO HER ON THE PHONE MAYBE ONCE, AT THAT TIME WE WERE TRYING TO HAVE THE FAMILY HAVE ONE SPOKESPERSON SO BROTHER IN LAW HAD MOST OF THE COMMUNICATIONS, THEN REALIZED NEEDED SOMEONE LOCAL, SHE ACTUALLY CALLED ONE NIGHT BUT I DID NOT WANT TO DISCUSS, I DID NOT SEE HER IN BONNER COUNTY AT THAT TIME AT ALL, TOM MCDUGAL MARRIED TO MY SISTER PATSY, THEY LIVE IN CANADA,
11:20:41 AM	AB	CROSS
11:20:44 AM	NH	I STARTED LOOKING INTO EASEMENT WHEN I SAW THE CONSTRUCTION, NO REASON UNTIL THEN,
11:21:17 AM	AB	NOTHING FURTHER
11:21:23 AM	GF	CONTINUES
11:21:27 AM	NH	DID NOT APPEAR THE COWARDS HAD EASEMENT
11:21:38 AM	AB	CONTINUES

Time	Speaker	Note
11:21:43 AM	NH	LOOKED AT TITLE TO MY MOM'S PROPERTY, I BELIEVE THAT IS THE VERBAGE ON MY MOM'S TITLE, THAT WAS IN THE LETTER THAT I HAND DELIVERED TO MR. COWARD
11:22:27 AM	J	YOU MAY STEP DOWN
11:22:51 AM	GF	CALL TOM MCDUGAL
11:23:01 AM	CLERK	TM SWORN
11:23:08 AM	GF	DIRECT
11:23:15 AM	TM	LIVE IN CRANBROOK CANADA, MARRIED TO PATSY MCDUGAL, SON IN LAW TO CRYSTAL HADLEY, WEEKENDS HERE A LOT, SUMMER AND WINTER, NEVER SAW ANYONE USE THE BACK OF LOT, NO USE AT ALL, MARRIED IN 1990, WE WENT THERE ALL THE TIME, STAYED THERE IN WINTER WHEN WE CAME TO SKI, COLE WAS LIVING THERE A LOT SO CAME TO SEE HIM OF COURSE, FIRST USE WAS WHEN BUS WAS PARKED THERE NO OTHER USE UNTIL 2007, AFTER BUS TOWED AWAY WORK WENT ON IN THE BACK, THEY HAD TO BUS MOVED, EXCAVATION GOING ON, BEGAN TALKING ABOUT ISSUE AT THAT TIME, TALKED WITH CHARLES, ANNE'S HUSBAND, NEVER TALKED TO ANNE BEFORE, HE SAID THEY WERE GOING TO PUT THE DRIVEWAY AND DOOR THROUGH CHRYSTAL'S PROPERTY, I SAID NOT SURE THERE WAS AN EASEMENT, CHECK ON BEFORE SPEND A BUNCH OF MONEY, FOUND NO EASEMENT AND TOLD BUDDY AND ASKED IF HE CHECKED ON EASEMENT, I SAID DON'T THINK THERE IS WAS AND TOLD TO WAIT UNTIL WE KNEW FOR SURE, HE SAID HE WOULD WAIT, HE ASKED MY MOTHER IN LAW TO PUT GAS LINE ACROSS HER BACK YARD, HE SAID NO ACCESS ON BOYER FOR GAS, I ASKED IF HE TALKED ANYMORE ABOUT EASEMENT HE SAID NO BUT HIS WIFE WAS SURE THERE WAS ONE, WE SAID NO TO GAS LINE, THEY ENDED UP PUTTING GAS ANOTHER WAY, THEY SUED MRS. HADLEY IN DECEMBER OF 2007, DO NOT KNOW ANNE, ONLY TIME I SAW BUDDY WAS FIRST TIME ABOUT EASEMENT,
11:29:38 AM	AB	NO QUESTIONS
11:29:41 AM	J	QUESTION OF COUNSEL AND WITNESS, I HAVE NOT REVIEWED ALL PHOTOS BUT DOES PLACEMENT OF NEW GARAGE PRECLUDE USE OF THE EASEMENT FROM LOT 11 TO SUPERIOR,
11:30:12 AM	AB	YES IT DOES, SO DOES THE ORIGINAL GARAGE
11:30:24 AM	GF	EXHIBIT P IN 1950 EASEMENT TO LOT 11 WAS GIVEN UP
11:31:17 AM	AB	ALSO IN DEED THAT CREATED ALLEY ANOTHER STATEMENT THAT REFERS TO A GARAGE,

Time	Speaker	Note
11:32:26 AM	GF	CALL PATSY MCDUGAL
11:32:51 AM	CLERK	PM SWORN
11:32:55 AM	GF	DIRECT
11:33:02 AM	PM	EARLIEST MEMORY 1956, NEVER SAW ANYONE MAKE USE OF PARENTS PROPERTY TO ACCESS LOT, GRADUATED IN 1971, MARRIED IN 71 AND MOVED TO CEDAR STREET, LIVED THERE UNTIL 1990 WHEN I MARRIED TOM MCDUGAL, NEVER SAW ANYONE USE AREA, I WAS THERE AT LEAST 5 OR 6 TIMES PER WEEK, VISITED OFTEN, HAD LUNCH THERE WHEN WORKING, FAMILIAR WITH NEIGHBORS WHO HAD PROP BEFORE THE COWARDS, WE WERE CLOSE TO THEM, GEORGE DONAHUE USED TO WORK AND HE ALWAYS PARKED ON BOYER UNTIL HE HAD A STROKE THEN PARKED IN THE GARAGE, REMEMBER PLAYING ON IT, IT WAS OLD AND DUSTY, DIDNT SEE HOW HE GOT IT THERE, NEXT OWNERES OTIS CHIPMAN, THEY PARKED ON BOYER STREET, AFTER CHIPMAN WAS MARY ODONALD GOFF, DON'T REALLY KNOW I THINK SHE PARKED ON BOYER, I WAS NOT AWARE SHE PARKED A FIAT IN THERE, NO CURB CUT OFF THE SIDE OF BUS, IT WOULD NOT HAVE BEEN EASY TO GET AROUND CURB, FAMILIAR WITH ROCKS, IN LATE AUGUST OF 2007 SAW EXCAVATION
11:38:17 AM	AB	CROSS
11:38:23 AM	PM	BORN 1953
11:38:39 AM	GF	ONE OTHER WITNESS WOULD TAKE ABOUT A HALF HOUR, RECESS AND CALL HER BY 1
11:39:00 AM	J	COME IN AT 1:30 RECESS UNTIL THEN
11:39:35 AM		OFF RECORD
1:32:26 PM		ON RECORD
1:32:29 PM	GF	WE WILL REST WITH IDEA THAT WE WILL HAVE MORE TIME CONCERNING EASEMENT RIGHTS, NO MORE WITNESSES BUT COULD BE ADDITIONAL DOCUMENTS, WOULD LIKE TO SEE PL FILE WHATEVER IT IS THEY ARE GOING TO FILE, ONCE THEY FILE WOULD LIKE 20 DAYS
1:33:21 PM	AB	TALKED OF CLOSING BY PAPER, ME FIRST THEN GARY, 20 DAYS IS FINE WITH ME
1:33:35 PM	J	GOING TO FILE AMENDED COMPLAINT
1:33:44 PM	AB	I THINK HE EXPECTS COMPLAINT
1:33:56 PM	J	NEED TO FILE THE AMENDED COMPLAINT, HOW MUCH TIME DO YOU NEED FOR CLOSING
1:34:18 PM	AB	TWO WEEKS FROM TODAY
1:34:24 PM	GF	I WOULD LIKE 20 DAYS AFTER THAT GIVE OR TAKE
1:34:31 PM	AB	7 DAYS FOR REPLY

9/29/2008

Time	Speaker	Note
<u>1:34:38 PM</u>	J	OCT 17TH, MR FINNEY 21 DAYS AFTER THAT PUTS YOU AT NOV 3RD, MR. BISTLINE REPLY BY NOVEMBER 10TH, IF NO BRIEF BY NOVEMBER 10TH I WILL ASSUME THERE IS NO BRIEF, DO YOU WANT TO FILE TO REOPEN IF ADDITIONAL DOCS NEEDED MR. FINNEY?
<u>1:35:38 PM</u>	GF	YES
<u>1:35:39 PM</u>	J	ANYTHING ADDITIONAL TO ADDRESS
<u>1:35:49 PM</u>	BOTH	NO
<u>1:35:51 PM</u>	J	THAT LEAVES DESCRIPTIVE EASEMENT ISSUE COME BACK AT 3:00 I WILL HAVE A DECISION ON THAT.
<u>1:36:06 PM</u>	GF	OK
<u>1:36:07 PM</u>	AB	YES
<u>1:36:10 PM</u>	J	SEE YOU BACK HERE AT 3:00 PM
<u>3:01:19 PM</u>		BACK ON RECORD

Time	Speaker	Note
3:01:28 PM	J	<p>READY TO MAKE DECISION ON ISSUE AS RELATES TO PRESCRIPTIVE EASEMENT, MAY BE SOME CONFUSION, I WILL MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW, IN ADDITION TO RULING ON MOTION, IF A FINDING OF FACT IT IS A FINDING OF FACT IF CONCLUSION OF LAW WILL BE A CONCLUSION OF LAW, IN ORDER TO SUSTAIN BURDEN OF PROOF REQUIRED TO PROVE BY REASONABLY CLEAR ELEMENTS... MUST ESTABLISH 5 ELEMENTS AS SET FORTH BY IDAHO LAW, MUST PROVE USE OF SUBJECT PROPERTY IS CHARACTERIZED AS (LISTS THE 5 ELEMENTS) QUESTION IN THIS CASE AND IN ANOTHER CASE I HEARD LAST WEEK AS TO WHAT PERIOD OF LIMITATIONS APPLYS... 5 YEARS OR 20 YEAR STATUTE OF LIMITATIONS, NO APPELLATE CASES HAVE INTERPRETED AS YET, IN THIS MATTER WHETHER 5 OR 20 YEARS I CONCLUDE FAILURE OF PROOF AS RELATES TO PL CLAIM OF PRESCRIPTIVE EASEMENT, (CITES TESTIMONY) CH SHOWING THAT SHE AND HER HUSBAND PURCHASED PROP IN 1050, GARAGE AND HOUSE NEXT DOOR HAD ALREADY BEEN CONSTRUCTED, SHED ON PROPERT, PREDECESSORS IN INTEREST WHO PURCHASED IN 1947 IT WAS USED TO PARK DURING PERIOD OF TIME THAT MR. AND MRS. HADLEY OWNED THEIR LOT, ONLY USED FOR A FEW YEARS, USED WITH PERMISSION, LEO PARKED THERE, NO ONE ELSE USED, BUS PARKED ON RIGHT OF WAY FOR 10 YEARS, NOT CLEAR AND CONVINCING EVIDENCE OF USE FOR PRESCRIPTIVE EASEMENT, WAS ADVERSE USE FOR PERIOD OF 3 YEARS, TESTIMONY OF M.G. SHE MADE USE OF THE GARAGE, PARKED SPORTS CAR IN GARAGE PARKED THERE OCCASIONALLY WHEN SHE WANTED TO USE THE GARAGE OR SHED LEO H. WOULD USE WHEN REQUESTED, AS RELATES TO TERM OF OPEN AND NOTORIOUS SHE ONLY ASKED A FEW TIMES, THEY WERE GOOD FRIENDS, SHE STATED GRASS HAD GROWN ACROSS ENTRY WAY. SHE USED ONCE A YEAR TO PUT IN WOOD, THAT DOES NOT ESTABLISH OPEN OR NOTORIUOS USE, DOES NOT ESTABLISH 5 ELEMENTS WITH CLEAR AND CONVINCING EVIDENCE, ANNE COWARD ALSO TESTIFIED THAT SHE USED THE SHED FOR STORAGE, SHE LIVE INITIALLY IN THE RESIDENCE WHERE SHE IS NOW FOR JUST A FEW MONTHS, NOTHING IN TESTIMONY ESTABLISHED USE OF SHED WAS OPEN, NORORIOUS, CONTINUOUS ETC. GRANT DEFENDANTS MOTION TO DISMISS ON ISSUE OF PRESCRIPTIVE EASEMENT, THAT SAID IF I LOOK AT MERITS AND COMPARE TESTIMONY I DO FIND TESTIMONY OF THOSE INDIVIDUALS IN COURT ALL WERE IN FACT CREDIBLE, DOES APPEAR TEST ESTABLISHED BY DEFENSE THROUGH THEIR WITNESSES DEMONSTRATES IMPEDIMENTS TO USE, BUS COMPLETELY BLOCKED ENTRANCE, HE STAYED IN THE BUS AFTER GRANDFATHER DIED, USED BUS AS RESIDENCE, SLEPT IN BUS, THIS WOULD HAVE PREVENTED ANY TYPE OF VEHICLE ACCESS FOR PERIOD OF 10 YEARS, ALSO TEST BY NANCY HADLEY ALSO CLEAR AND UNEQUIVICOL, SHE TESTIFIED AT TIMES IT</p>

Time	Speaker	Note
3:17:23 PM	BOTH	NO
3:17:25 PM	J	I WILL AWAIT THE BRIEFS OFF RECORD
3:20:30 PM		125 PAGES

FR FINNEY FINNEY & FINNEY 20 38211

(TUE) SEP 30 2008 14: ST. 14:06/No. 6810297077

ORIGINAL

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2008 OCT -9 P 2:22

CLERK OF DISTRICT COURT
ap

GARY A. FINNEY
FINNEY FINNEY & FINNEY, P.A.
Attorneys at Law
Old Power House Building
120 East Lake Street, Suite 317
Sandpoint, Idaho 83864
Phone: (208) 263-7712
Fax: (208) 263-8211
ISB No. 1356

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

CHARLES COWARD and ANNE)
COWARD, husband and wife,)
)
 Plaintiff,)
)
 v.)
)
 CRYSTAL HADLEY, an)
individual,)
)
 Defendant.)

Case No. CV-2007-1997
ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS AND
DISMISSING PLAINTIFF'S CAUSE
OF ACTION FOR PRESCRIPTIVE
EASEMENT

On September 29, 2008 at the commencement of the trial on the Plaintiff's Complaint, the Court granted Plaintiff's Motion to Amend Complaint to add causes of action for express easement and for easement by implication. The trial was bifurcated as to the new causes of action and proceeded to trial on the issue of Plaintiff's claim for easement by prescription.

At the conclusion of Plaintiff's case on the issue of prescriptive easement the Defendant moved for nonsuit against

**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS AND
DISMISSING PLAINTIFF'S CAUSE OF ACTION FOR
PRESCRIPTIVE EASEMENT - 1**

that the Defendant prevailed on the trial of the merits of the
fact and conclusions of law, in open Court and on the record,
witnesses and evidence, the Court also set forth findings of
alternative bases, after consideration of the Defendant's
IT IS FURTHER ORDERED, ADJUDGED AND DECREED on an
of the Plaintiff.

facts and law show no right to a prescriptive easement on behalf
assessment because at the completion of Plaintiff's evidence the
Plaintiff's Complaint and cause of action for prescriptive
to Rule 41(b), the Court grants an involuntary dismissal of the
for prescriptive easement is DENIED and is DISMISSED. Pursuant
prescriptive easement is GRANTED and the Plaintiff's Complaint
Motion to Dismiss the Plaintiff's cause of action for
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's

thereon, the Court enters the following Order:
the Court's findings of fact and conclusions of law, and based
decision as stated into the record. The open Court record is
Court set forth its findings of fact, conclusions of law, and
to prepare its decision. Upon reconvening in open Court, the
defense of the prescriptive easement issue, the Court recessed
prescriptive easement issue. At the end of the Defendant's
directed the Defendant to proceed on its defense of the
the Plaintiff, which the Court took under advisement and

prescriptive easement issue, and, the Court hereby DISMISSES the Complaint for prescriptive easement.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all other and remaining issues are reserved by the Court for further and subsequent determination.

Prepared and Submitted by:

Gary A. Finney

GARY A. FINNEY
Attorney for the Defendant

Agreed and Consented as to Form and Content:

Arthur M. Bistline

ARTHUR M. BISTLINE
Attorney for the Plaintiff

IN WITNESS WHEREOF this 9th day of October 2008.

Steve Verby

STEVE VERBY
District Judge

CLERK'S RULE 77 (d) CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy, with the clerk's filing stamp thereon showing the date of filing, of the ORDER GRANTING DEFENDANT'S MOTION TO DISMISS AND DISMISSING PLAINTIFF'S CAUSE OF ACTION FOR PRESCRIPTIVE EASEMENT, was served by U.S. Mail, postage prepaid, this 15 day of October 2008, and was addressed as follows:

Gary A. Finney
Finney Finney & Finney, P.A.
Attorneys at Law
Old Power House Building
120 East Lake Street, Suite 317
Sandpoint, Idaho 83864

Arthur M. Bistline
Law Office of Arthur M. Bistline
5431 n. Government Way, Suite 101A
Coeur d'Alene, Idaho 83815

By: A. Phillips
Deputy Clerk

ARTHUR M. BISTLINE
LAW OFFICE OF ARTHUR M. BISTLINE
5431 N Government Way, Ste. 101B
Coeur d'Alene, ID 83815
(208) 665-7270
(208) 665-7290 (fax)

Attorney for Plaintiff

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2008 OCT 14 P 2:38

MARIE M.
CLERK DISTRICT
ap
DEPUTY

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

CHARLES COWARD and ANNE COWARD,

husband and wife,

Plaintiff,

vs.

CRYSTAL HADLEY, an individual,

Defendant

Case No.: No. CV-07-1997

AMENDED COMPLAINT

For a cause of action, Plaintiffs allege as follows:

- 1) Plaintiffs are husband and wife who reside in Bonner County, Idaho, at 309 S. Boyer, Sandpoint, Idaho.
- 2) Defendant is a single woman residing in Bonner County at 307 S. Boyer, Sandpoint, Idaho, which is the real property that is the subject of this suit and jurisdiction is proper before this Court.
- 3) Plaintiffs and their predecessors in interest have used a portion of Defendant's property to access their property and have done so in an open notorious and hostile manner for a period of time which establishes Plaintiffs' right to continue to use that property to access their property.

- 4) Plaintiffs are entitled to use the east twelve feet of Defendants property to access their property based on instrument number 53126 records of Bonner County, either by the express terms of that instrument or by an implied right to utilize the alley which is created by that instrument.
- 5) Plaintiffs' are entitled to judgment that they have the right to utilize a portion of Defendant's property to access their property as may be proved at trial.
- 6) Because of Defendant's unreasonable refusal to acknowledge the rights of Plaintiffs' Plaintiffs have had to acquire the services of an attorney and are entitle to an award of fees and costs incurred in this action with a reasonable sum being \$2,000 in the event this mater is uncontested.

Wherefor, Plaintiffs pray that this Court enter judgment declaring that Plaintiffs, and their successors an assigns, have the right to continue to use Defendant's property to access their property and are entitled to an award of reasonable attorney's fees and cost incurred in this action.

DATED this 24th day of September, 2008.


ARTHUR M. BISTLINE

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of September, 2008, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Gary Finney
120 E Lake St., Ste. 317
Sandpoint, ID 83864
Fax: 208-263-8211

- Hand-delivered
- Regular mail
- Certified mail
- Overnight mail
- Facsimile
- Interoffice Mail

BY:


JENNIFER HOSKINS

ARTHUR M. BISTLINE
LAW OFFICE OF ARTHUR M. BISTLINE
5431 N. Government Way, Ste. 101B
Coeur d'Alene, ID 83815
(208) 665-7270
(208) 665-7290 (fax)
ISB: 5216

Attorney for Plaintiff

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

CHARLES COWARD and ANNE COWARD,
husband and wife,

Plaintiff,

vs.

CRYSTAL HADLEY, an individual,

Defendant.

Case No.: No. CV-07-01997

CLOSING ARGUMENT

I. FACTS

Defendant Crystal Hadley (Hadley) owns lot 1 in Laws addition in Sandpoint, Idaho and Plaintiff Anne Coward (Coward) owns lot 2 which lies immediately to the south of lot 1. Both lots front on Boyer Avenue and Hadley's lot also borders Superior Street on the North. The present dispute involves the use of a 12 foot strip of land lying along the east line of Hadley's lot which Coward claims the right to use to access her garage (the alley). See Plaintiffs' exhibit 42.

When Coward purchased the property she made note of the alley and her seller, Mary O'Donnell n/k/a Goff, told her the alley provided access to the back of the property. O'Donnell purchased the lot 1 in 1979 and periodically utilized the alley to access the garage and back part of her property. Coward purchased the property from O'Donnell in 1994 and continued to use the alley to access the garage and the back part of the property.

In 2007, Coward began construction of a new garage on her property in reliance on the existence of the alley. Hadley had never given her any indication that she could not use the alley until they received a letter from Hadley's counsel in September 2007. In fact, the parties had a prior dispute regarding the location of an east/west fence between the lots and the alley was never mentioned. In addition, Coward previously claimed to have the rights in the alley when she demanded that Hadley remove a bus that was parked blocking her access along the alley.

Coward instituted suit in 2007 to determine the rights to alley in question. After taking the evidence, this court dismissed the Cowards' claim to have a prescriptive right to use the alley. Cowards' remaining claims are that they have the right to use the alley by the express or implied terms of instrument 53126, a 1922 deed from Freeman Daughters to Ole Sletegar. – Plaintiffs' Exhibit 3

In 1922, Daughters owned Lots 1, 2 and 11 of Laws Second Addition to Sandpoint¹. When he sold lots 1 and 2 to Ole Sletegar, the legal description reserved to Daughters, his heirs and assigns, a permanent right of way for an alley across the back 12 feet of lots 1 and 2.² Coward is the present owner of lot 2 and Hadley is the present owner of lot 1. If Instrument 53126 granted Sletegar the right to use the alley, then Coward also has that right.

The deed makes no mention of a dominant parcel or in any way restricts use of the alley to any particular lot. The home and garage presently on lot 1, Hadley's lot, were constructed so as to not obstruct the alley. When Hadley moved in, 1950, the garage shown on Plaintiffs' Exhibit 35 was on the premises and looked substantially the same as it does in Plaintiff's Exhibit 35. The garage was oriented towards Superior Street and the owner of lot 2 utilized the alley to park his car.

¹ Plaintiffs' Exhibit 2.

² Plaintiffs' Exhibit 3.

II. LAW

- A. **The deed from Daughters to Sletegar is ambiguous and the extrinsic evidence indicates the intent of Daughters to create an alley for the use of the owners of lots 1, 2 and 11.**

The goal in interpreting any deed is to give effect to the intention of the parties. If the deed is plain and unambiguous, then the intention must be determined from the deed itself.

Benninger v. Derifield, 142 Idaho 486, 489, 129 P.3d 1235, 1238 (2006). "Uncertainties should be treated as ambiguities; such ambiguities are subject to be cleared up by resort to the intention of the parties as gathered from the deed, from the circumstances attending and leading up to its execution, from the subject matter, and from the situation of the parties at the time. *Id.* citing *City of Kellogg v. Mission Mountain Interests*, 135 Idaho 239, 16 P.3d 915 (2000). (emphasis added)

In this case, the deed contains uncertainty regarding whether the reservation created an *in gross* easement or an *appurtenant* easement and, if appurtenant, whether the alley was intended to be appurtenant only to Lot 11. Both the extrinsic evidence and the language of the deed indicate that the reservation created an alley for use by lots 1, 2 and 11.

1. The Deed is Ambiguous because it does not identify any dominant parcel.

The deed here is not clear as to whether it creates an appurtenant easement or an *in gross* easement. An *in gross* easement is personal to the grantee and cannot be transferred. *Beckstead v. Price*, 190 P.3d 876, 884 (2008) If the easement in question was *in gross*, then it was personal to Freeman Daughters and cannot provide access to anyone but Freeman Daughters. If the easement is appurtenant, then it attaches to some parcel or, as in this case, parcels, of property and the right to use passes to the successors in interest to those parcels. *Id.*

The failure of this grant to identify a dominant parcel creates an ambiguity as it creates a factual question of its existence and/or location. *Christensen v. City of Pocatello*, 142 Idaho

132, 136-137, 124 P.3d 1008, 1012 - 1013 (2005); *Sells v. Robinson*, 141 Idaho 767, 773, 118 P.3d 99, 105 (2005).

The alley here was created by Instrument number 53126, the Daughters to Sletegar transaction. (Plaintiff's Exhibit 3) which contained the following:

Lots One (1) and two (2) in Block "JJ" of Law's Second Addition to Sandpoint, Idaho; provided, however, the party of the first part herein, [Daughters] his heirs and assigns shall have a permanent right of way over and across twelve feet on the east side or end of each of said lots for the purpose of an alley."

Since the deed is silent regarding the identity of the dominant parcel, it is ambiguous, therefore extrinsic evidence is admissible to determine the intent of the parties. *Sells v. Robinson*, 141 Idaho 767, 773, 118 P.3d 99, 105 (2005).

2. The deed was intended to be appurtenant.

When considering whether an ambiguous deed creates an appurtenant or in gross easement, there is a presumption that the easement was meant to be appurtenant. *Nelson v. Johnson*, 106 Idaho 385, 388, 679 P.2d 662, 665 (1984).

Beside the presumption, the deed itself indicates it was meant to be appurtenant to some parcel of land. It was granted to Daughters and his heirs and assigns, and a grant to "...heirs and assigns..." indicates that the easement was appurtenant. *King v. Lang*, 136 Idaho 905, 909, 42 P.3d 698, 702 (2002); *Boydston Beach Ass'n v. Allen*, 111 Idaho 370, 375, 723 P.2d 914, 919 (Ct. App.1986). The alley created was permanent which also indicates it was meant to be appurtenant. *Stig K-A v. Goodkin*, 98 Wash.App 1064 (2000 WL 44112, 3). *Pokorny v. Salas*, 81 P.3d 171, 178 (Wyoming 2003).

The deed is presumed to be appurtenant, indicates it is appurtenant and the surrounding circumstances remove all doubt as to that question. At the time of the conveyance, lots 1, 2, and 11 in the subdivision did not have an alley along the back. However, all the other lots in the

subdivision, save one, had a designated alley at the back of the lot. At the time Daughters drafted the deed, he owned lot 11 located on the south end of the alley he created. Three years later when Daughters transferred lot 11 to one Jack Blake it contained the following:

Also, a permanent right of way over and across twelve feet on the east side or end of Lots one (1) and Two (2), Block "JJ" Laws Second Addition to Sandpoint, Idaho, for the purpose of an alley.
(Plaintiffs' Exhibit 5)

Clearly, Daughters did not intend the alley to be a personal right to himself as he passed it on to Blake three years later. Furthermore, for the second time in three years when referring to this access, Daughters referred to it as an alley, and did not restrict its use to any particular parcel of land.

The permanent alley created in Instrument 53126 was intended to be appurtenant, and nothing about the grant indicates that it was intended to solely be appurtenant to lot 11.

3. Daughters granted the right to use this alley to his heirs and assigns. Coward is an assign of Daughters and nothing in the grant indicates an intent to restrict the use of the alley to lot 11.

The plain language of the deed provides that Daughters, *his heirs and assigns*, shall have a permanent right of way across lots 1 and 2 for the purpose of an alley. Sletegar was an assign of Daughters and Coward is an assign of Sletegar. *Evans v. Humphrey*, 51 Idaho 268, xxx, 5 P.2d 545, 547 (1931).

The only argument against this straight forward interpretation is that at the time the alley was created, Daughters no longer owned lots 1 and 2 so the right to use the alley could not "attach" to those lots. This exact argument was raised and rejected in *Boydston Beach Ass'n v. Allen* 111 Idaho 370, 723 P.2d 914, (Ct.App.1986).

In *Boydston*, the owners of the servient estate were claiming that an easement was not appurtenant to a parcel of land because the grantees did not own that parcel at the time of the grant. The Court of Appeals rejected the argument.

Even if W.B. Boydston was only a *record* owner of the thirty acre parcel when the six acres and the easement were conveyed to him in October 1926 and he had already conveyed away the thirty acres, it is nevertheless clear that his "assigns" were then the owners of the thirty acre parcel. The phrase "heirs and assigns" "generally comprehends all those who take either immediately or remotely from or under the assignor, whether by conveyance, devise, descent, or act of law." BLACK'S LAW DICTIONARY 109 (5th ed. 1979).

Boydston Beach Ass'n v. Allen
111 Idaho 370, 375, 723 P.2d 914,
919 (Ct.App.1986)

The plain language of the deed grants the right to use the alley to Daughters and his heirs and assigns. Coward is an assign of Sletegar and entitled to use the alley.

Lots 1, 2 and 11 did not have an alley when Daughters conveyed lots 1 and 2 to Sletegar, but the surrounding lots all had alley access, other than one. Under these circumstances, Daughters signed a deed that reserved a permanent access to him, his heirs and assigns, and called it an alley. Daughters did not restrict use of the alley in the instrument that created it, nor did he when he sold Lot 11 three years later. While one could argue that this is just sloppy drafting of that deed in that same deed the Grantor created an unrelated reversionary interest in himself. Given his or his lawyers ability to write more than simple deeds, it seems likely he would have not used the word "alley" if he intended to convey only a private thoroughfare for only the owners of Lot 11. Daughters intended to make an alley along the back of lots 1 and 2 and not restrict its use to the owner of lot 11.

B. This Court should adopt the rule that a grant containing an alley creates an implied right to use the alley as Idaho has already adopted a similar rule.

Idaho has adopted the rule that when a plat is recorded that shows a "way," there is a dedication of that way to public use. *Smylie v. Pearsall* 93 Idaho 188, 191, 457 P.2d 427, 430 (1969)

It is useless for us to cite other cases upon this proposition but there are many well-considered cases holding that dedication is complete when a plat is filed showing streets and alleys thereon, and sales are made with reference thereto, and that such dedication

- 71 -

is irrevocable, and does not require an acceptance on the part of the city, and we will content ourselves with citing a few of those cases.

Boise City v. Hon 94 P. 167,
169 -170 (1908)

In this case, an “alley” was created, and subsequent deeds referred to it as an alley³ including Plaintiffs’ deed which recited that the “alley” was under the control of the City of Sandpoint.⁴ The sale from Daughters to Sletegar made reference to an alley, although the alley was not shown on a plat. No reasons exist that the rule for a sale with reference to an alley would be any different than a sale with reference to a plat that contains an alley. In either case, the seller is selling and the deed by which he or she is transferring indicates the transaction includes an alley.

Idaho has already adopted the rule that conveyance by reference to a plat that contains an alley includes the right to use that alley. It follows that when a grant is bounded by an alley an implied right to use that alley in all those who abut it arises. This is not a novel theory, just one not specifically adopted in Idaho. Coward has met all the elements of an implied easement to use an alley.

An easement of this type requires that the parcels involved have a common grantor. *Brown v. Berry* 46 Tenn 98 (1868); *MDC Blackshear, LLC v. Littell*, 273 Ga 169, 172 (2000); *Gallagher v. Williams* 36 Del.Ch. 310, 311, 129 A.2d 554, 554 (Del.Ch.1957); *Murawski v. Kurlancheek* 82 Pa. D. & C. 3, 36, 1953 WL 4325, 20. In this case, a common grantor exists as Freeman Daughter’s owned the Hadley lot and the Coward lot and lot 11 when he created the alley.⁵

An easement of this type requires that the alley in question be designated as a limit of the grantees property. *Friday v. Parkhurst* 13 Wash. 439, 443, 43 P. 362, 363 (1896); *Brown v. Berry* 46 Tenn 98 (1868); *Murphy v. Martini* 884 A.2d 262, 266 (Pa.Super.2005); *Koch v.*

³ Plaintiff’s Exhibits 3, 4, 5, 8, 12, 18,

⁴ Plaintiff’s Exhibit 27

⁵ Plaintiffs’ Exhibit 2

10/17/2008 10:28 FAX 2000007200

Strathmeyer 357 Md. 193, 202, 742 A.2d 946, 951 (Md.1999); *Murrane v. Clarke County*, 440 N.W.2d 613, 615 (Iowa App.1989). The grant from Daughters to Sletegar expressly set forth that the eastern 12 feet of the property conveyed is an alley. The fact that the alley was created by reservation does not defeat the claim of an implied easement. In *Miller v. Culpepper* 556 So.2d 1074, (1990), the Supreme Court of Mississippi affirmed the lower Court which found an implied easement to use the road in question from the first and subsequent grants in the chain of title. *Id* at 1077. In this case, the property transferred to Sletegar in 1922 was limited by the reservation of the alley. It makes no difference to the analysis how the road was created, only that it was intended to be a road or alley, and, as set forth above, the facts of this case make it clear that an alley was intended.

Idaho has adopted the rule that a sale of land with reference to a plat that contains an alley creates an implied dedication to the public to use that alley. There is no logical reason that a grant which refers to an alley that is not on a plat would create anything different. Either way, a strip of land is being represented as an alley.

III. CONCLUSION

When Hadley purchased her lot, the garage on her lot was built out of respect for the alley and the alley was being used as an access to the rear of Cowards lot. The alley has been used, even if just sporadically, for that purpose ever since. Hadley purchased her lot with the knowledge of the alley. It seems that Hadley never questioned anyone's right to use the alley, but her children have.

In 1922, when Freeman Daughters reserved his permanent right of way to himself and his assigns, he called it an alley. Not an easement, not a private drive, but an alley. The lots Daughters owned did not have an alley. At the time Daughters called it an alley, the State of Idaho had already adopted the rule of law that implies the public's right to use alleys if they are

on plats and lots on that plat are conveyed. *Boise City v. Hon*, 94 P. 167, 169 -170 (1908). Nothing in that grant indicates that the alley was for the exclusive use of lot 11. The grant expressly reserves the right to Daughters' assigns, one of which is Coward.

Under these circumstances, this Court does not need to adopt any new theory to find that the grant from Daughters to Sletegar was ambiguous and that the intent of Daughters was to create an alley for the use of lots 1, 2 and 11. Instrument number 53126 grants Sletegar, and thus the Cowards, the right to use the alley to access the rear of their lot.

DATED this 14 day of October, 2008.


ARTHUR M. BISTLINE

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of October, 2008, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Gary Finney
120 E Lake St., Ste. 317
Sandpoint, ID 83864
Fax: 208-263-8211

- Hand-delivered
- Regular mail
- Certified mail
- Overnight mail
- Facsimile
- Interoffice Mail

BY


JENNIFER HOSKINS

ORIGINAL

GARY A. FINNEY
FINNEY FINNEY & FINNEY, P.A.
Attorneys at Law
Old Power House Building
120 East Lake Street, Suite 317
Sandpoint, Idaho 83864
Phone: (208) 263-7712
Fax: (208) 263-8211
ISB No. 1356

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2008 NOV -5 P 4:12

CLERK OF DISTRICT COURT

ap

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

CHARLES COWARD and ANNE	)	Case No. CV-2007-1997
COWARD, husband and wife,)	
	)	SPECIAL APPEARANCE AND ANSWER
Plaintiff,	)	TO AMENDED COMPLAINT AND
	)	COUNTERCLAIM
v.)	
	)	Category & Fee:
CRYSTAL HADLEY, an individual,	)	I(1)(a) paid
	)	J(8)(b) paid
Defendant.)	

COMES NOW the Defendant, CRYSTAL HADLEY, and by and through her attorney GARY A. FINNEY of Finney Finney & Finney, P.A and makes this Special Appearance contesting jurisdiction and does further make this Answer To Amended Complaint and a Counterclaim alleging as follows:

- I. ANSWER TO AMENDED COMPLAINT - There is no jurisdiction.
 - 1. The Defendant admits paragraph 1 & 2 of the Amended Complaint, except the Defendant's residential address is 303 S. Boyer.

SPECIAL APPEARANCE AND ANSWER TO AMENDED
COMPLAINT AND COUNTERCLAIM- 1

2. The Defendant denies paragraph 3, 4, 5 and 6 of the Amended Complaint.

3. The Plaintiff's Amended Complaint fails to state a cause of action upon which relief may be granted and should be dismissed by the Court.

4. The Plaintiff has failed to allege any beneficial interest in any dominant real estate, nor have they alleged any beneficial interest of the Defendant in any servient real estate. The Plaintiff has failed to legally and sufficiently describe any real estate of the Plaintiff or of the Defendant. The Plaintiff has no standing and hence there is no jurisdiction.

5. The Amended Complaint fails to comply with Rule 9(j).

6. The Plaintiff has not been vested or seized of any real estate for any time period sufficient to establish a right to any continued use of the Defendant's real estate.

7. The Amended Complaint and Plaintiff's action is frivolous, unreasonable and without merit. The Defendant is entitled to recover her attorney fees against the Plaintiff.

8. The Amended Complaint is too vague and is not a definite and certain statement of the facts giving the Plaintiff the alleged relief sought.

9. The Plaintiff has no express easement, easement by necessity, easement by implication, easement by prescription or any other easement, to use the Defendant's real estate.

II. AMENDED ANSWER CONTINUED and COUNTERCLAIM BY THE DEFENDANT
AGAINST THE PLAINTIFF.

10. The Defendant is the vested owner of record title to Lot 1, Block JJ of Law Second Addition in Sandpoint, Idaho.

11. By an Agreement as to Boundary Line recorded February 26, 2007, Instrument No. 723577 records of Bonner County, Idaho, the Plaintiff extinguished any right, title, claim, interest, use for access, or other legal or equitable doctrine as to the use of the Defendant's real estate.

12. Any use or occupancy by the Plaintiff of the Defendant's real estate is consensual by permission of the Defendant.

13. The Plaintiff has trespassed on the Defendant's real estate which caused damaged thereto, and which caused remediation and restoration damages to the Defendant. The trespass money damages should be awarded against the Plaintiff in favor of the Defendant, a monetary sum that is within jurisdiction of the District Court. Money damages are presumed.

14. By letter from Defendant's attorney, dated September 6, 2007, the Plaintiff was notified of their trespass on the Defendant's real estate.


15. The Plaintiffs trespass is willful and intentional and the Defendant is entitled to treble damages against the Plaintiff.

16. The Defendant is entitled to a quiet title judgment for the Defendant's real estate against the Plaintiff.

17. As and for further damages the Defendant incurs attorney fees to quiet title against the Plaintiff and the Court should award Defendant's attorney fees and costs against the Plaintiff for said damages.

WHEREFORE, the Defendant prays that the Court enter a judgment denying any relief to the Plaintiff and dismissing the Amended Complaint, and for judgment in favor of the Defendant and against the Plaintiff for money damages for the Plaintiff's trespass upon the Defendant's real estate, for treble damages and for quiet title in the Defendant's real estate against the Plaintiff and for money damages, and for attorney fees and costs.

DATED this 5TH day of November, 2008.

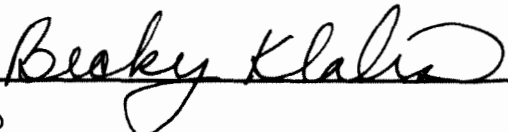

GARY A. FINNEY
Attorney at Law

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served as indicated this 5TH day of November, 2008, and was addressed as follows:

Arthur M. Bistline
Law Office of Arthur M. Bistline
5431 N. Government Way, Suite 101A
Coeur d'Alene, Idaho 83815
(Via U.S. Mail)

The Honorable Steve Verby
Bonner County Courthouse
(Via Hand Delivery)



STATE OF IDAHO
2009 FEB 13 P 5:17

am

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

CHARLES COWARD and ANNE)
COWARD, husband and wife,)
)
 Plaintiffs,)
)
vs.)
)
CRYSTAL HADLEY, an individual,)
)
 Defendant.)

Case No. CV 2007-0001997
MEMORANDUM DECISION

Charles and Anne Coward instituted this litigation claiming they had an easement across Crystal Hadley's lot which is located in Sandpoint, Idaho. The Cowards failed to prove entitlement based upon the theories of prescriptive easement, implied easement, or express easement. The lis pendens recorded by the Cowards is a slander on the title of Crystal Hadley's real property. Attorney's fees and costs are awarded in favor of Crystal Hadley.

I. INTRODUCTION

Shortly before trial, the Cowards sought to amend their complaint in order to request relief arising from an implied easement or an express easement of record. The

parties then agreed to try the case on the issue presented in the original complaint, "prescriptive easement." They also agreed to allow the amendment of the complaint and answer after trial. If additional testimony was considered necessary by Crystal Hadley, the parties also agreed to allow additional testimony to be presented.

At the conclusion of the trial, the court made findings of fact and conclusions of law. The Cowards' claim for a prescriptive easement was found wanting and was dismissed.

After trial an amended complaint was filed; Crystal Hadley filed an answer. The parties submitted proposed findings of fact and responded to an inquiry made by the court. After receiving the Cowards' response on January 21, 2009, the matter was taken under advisement.

II. FINDINGS OF FACT

Based on the evidence presented, the court makes the following findings of fact: The Cowards are the owners of Lot 2, Block JJ of the Laws addition to the City of Sandpoint. Crystal Hadley is the owner of Lot 1, Block JJ of the Laws addition to the City of Sandpoint. The Cowards' lot, the Hadley's lot, and the adjoining Lot 11, lying directly to the south of the Cowards, were owned by Freeman Daughters in 1922.

In 1922, by Instrument Number 53126, Daughters transferred Lots 1 and 2 to Ole Sletager with the following in the legal description:

Lots One (1) and two (2) in Block "JJ" of Law's second Addition to Sandpoint, Idaho; provided, however, the party of the first part herein, [Daughters] his heirs and assigns shall have a permanent right of way over and across twelve feet on the east side or end of each of said lots for the purpose of an alley."

A diagram depicting the positions of the respective parties' lots and the disputed area is contained in plaintiffs' exhibit 42, which is attached to this decision. At the time that Daughters created this language, all the other lots in this block save one had alley access.

Three years later, when Daughters transferred Lot 11 to Jack Blake, the deed contained the following language:

Also, a permanent right of way over and across twelve feet on the east side or end of Lots one (1) and two (2), Block "JJ" Laws Second Addition to Sandpoint, Idaho, for the purposes of an alley.

Lot 2 was ultimately deeded to George and Alice Donahue, the Cowards' predecessors in interest, who were *not* conveyed any easement over Lot 1. Lot 2 in the chain of title has never had an appurtenant easement over Lot 1. Lot 2 was the servient estate to an easement in favor of Lot 11.

Since 1938, the Collins were the owners of Lot 11 and had an appurtenant easement over Lots 1 and 2. When the Hadleys were about to purchase their Lot 1 in 1950, they did not want their property to be "subject to" the easement of Collins in favor of Lot 11. On June 13, 1950 (No. 34908), the Collins extinguished their easement. By Quitclaim Deed, they released and quitclaimed to the owner or owners of Lots 1 and 2 any interest they had in Lots 1 and 2.

The very next day (June 14, 1950), Glen and Dora Bandelin, by warranty deed, free and clear, with no "subject to" or "reservation" of any easement, conveyed Lot 1 to Irvin (Leo) and Crystal Hadley. Hadleys' Lot 1 had never been subject to an easement in favor

of Lot 2, but both Mrs. Hadley's Lot 1 and the Cowards' Lot 2 had previously been subject to an easement in favor of Lot 11. Since 1950, neither the Hadleys' Lot 1 nor the Cowards' Lot 2 have been subject to the east 12 foot right of way.

The Bandelins acquired Crystal Hadley's Lot 1 by deed (No. 8587) in 1942, and the legal description was not "subject to" any easement.

Alice Donahue, as a widow, deeded Lot 2 to Chapman (Instrument No. 117518), in 1968 without any conveyance of an easement in favor of Lot 2. Chapman deeded Lot 2 (No. 172043) in 1976 to Montgomery without any conveyance of an easement in favor of Lot 2.

In 1976, Helen Hannah deeded Lot 11 to Louvers (No. 271553) without any conveyance of an easement in favor of Lot 11.

In 1978, Montgomery deeded Lot 2 to O'Donnell (No. 203716) without any conveyance of an easement in favor of Lot 2. O'Donnell then deeded Lot 2 to Mary L. O'Donnell in 1981 (No. 243333) without any conveyance of an easement in favor of Lot 2. Mary L. O'Donnell is the Mary O'Donnell Goff who testified at trial.

Mary L. O'Donnell Goff and her spouse conveyed Lot 2 in 1994 (No. 452268) to Annie Marie Underwood without the conveyance of any "together with" easements, but rather "subject to" the 1922 right of way. Annie Marie Underwood married Mr. Coward, and she and her spouse deeded the property to themselves, as trustees, in 2005, (Instrument No. 675169). They conveyed their own property to themselves "subject to" an easement to the City of Sandpoint over the east 12 feet of their own Lot 2. There was no such easement to the City of Sandpoint.

In 2007, by agreement as to Boundary Line (Plaintiffs' Exhibit 31), Coward and Hadley, Instrument No. 723577, both agreed that any legal, equitable, or statutory doctrine does not apply to alter the legal description, ownership, or title to the real estate of the other party. The real estate description of Mrs. Hadley's ownership interest was Lot 1 and for the Cowards, Lot 2. There was no easement over or in favor of either Lot 1 or Lot 2.

Anne Coward subsequently recorded a Lis Pendens (Instrument No. 744377) as part of this action, in which she claimed an "encumbrance" on Crystal Hadley's Lot 1 property.

III. DISCUSSION

A. Implied Easement

In *Cordwell v. Smith*, 105 Idaho 7, (Ct. App. 1983) the court outlined the elements necessary for easement by implication. An easement by implication generally involves two (2) types of "common law" easements. One type of easement by implication arises when the owner of property severs a portion without making provision by deed for access.

In this action, Freeman Daughters had ownership of Lots 1, 2, and 11 and he severed off Lots 1 and 2. He retained Lot 11. None of these Lots were conveyed in such a manner so as to "cut off" any other Lots (conveyed or retained) from a public road.

The Plat, the Survey, the Map, and the testimony of all witnesses are conclusive that Lot 1, Lot 2, and Lot 11 all adjoined a public street, Boyer Avenue, City of Sandpoint, both before and after the severance of Lots 1 and 2 from Lot 11.

In regard to the other alternative method of proving an implied easement, there is no evidence of "apparent continuous use" by Mr. Daughters before the 1922 severance. Further, there is no "way of necessity" because there is no necessity to use an implied

easement over any Lot, as all of the Lots border the public street, Boyer Avenue.

The Cowards had the burden to prove the creation of an implied easement for Lot 2 to use Crystal Hadley's Lot 1, but were unable to do so.

B. Express Easement

Idaho follows the rule that when an easement is reserved or retained it remains with the land retained. Mr. Daughters kept Lot 11 and deeded out Lots 1 and 2. In doing so he reserved as an appurtenant easement in favor of Lot 11 for a permanent right of way over the east 12 feet of the lots he conveyed to Sletager, Lots 1 and 2. In *Hodgins v. Sales*, 139 Idaho 225, 76 P.3d 969 (2003), the Supreme Court held:

The district judge rejected the Property Owners' claim for an easement by express grant on the basis of current Idaho law, which provides that the reservation of an easement in a deed creates an easement on behalf of the grantor only. *Davis v. Gowen*, 83 Idaho 204, 209-210, 360 P.2d 403, 408-409 (1961). This is based on the rule that a reservation to a stranger to the instrument is void for all purposes.

139 Idaho at 232, 76 P.3d at 977.

C. Crystal Hadley's Counterclaim


Crystal Hadley's Counterclaim seeks quiet title against the Cowards as to her Lot 1. If the Cowards have no right, title, claim, or interest in Hadley's Lot 1, a judgment quieting title is appropriate. If so, the Cowards' Lis Pendens claiming this action is "encumbering" Hadley's Lot 1 is a slander of title. Idaho Code § 6-401 provides that Mrs. Hadley may quiet title against such adverse claim and recover money damages for the attorney fees and costs incurred to do so. *Koelker v. Turnbull*, 127 Idaho 262, 899 P.2d 972 (1995) holds that attorney fees to quiet title are a measure of damages to quiet title. *Koelker v. Turnbull*, 127 Idaho 262 at 266.

IV. CONCLUSIONS OF LAW

1. The Cowards were not conveyed any interest in Lot 1 at the time they purchased Lot 2.
2. The Cowards do not have either an express or implied easement across Lot 1.
3. The Cowards do not have any right, title, or interest in Lot 1.
4. The Collins conveyed any interest they had in Lot 1 when they executed and delivered a quitclaim deed in favor of Lot 1.
5. The filing of the Lis Pendens in regard to this action is a slander on the title of Lot 1.
6. Crystal Hadley is the prevailing party and is awarded costs and fees pursuant to Idaho Code § 6-401 and the holding of *Koelker v. Turnbull*, 127 Idaho 262, 899 P.2d 972 (1995).

IT IS SO ORDERED.

DATED this 13th day of February, 2009.

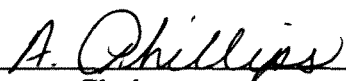

Steve Verby
District Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this 17 day of February, 2009, to:

Gary A. Finney
Finney, Finney & Finney, P.A.
Attorneys at Law
120 E. Lake Street, Suite 317
Sandpoint, ID 83864

Arthur M. Bistline
Bistline Law Office
5431 N. Government Way, Suite 101B
Coeur d'Alene, ID 83815



Deputy Clerk

GARY A. FINNEY
FINNEY FINNEY & FINNEY, P.A.
Attorneys at Law
Old Power House Building
120 East Lake Street, Suite 317
Sandpoint, Idaho 83864
Phone: (208) 263-7712
Fax: (208) 263-8211
ISB No. 1356

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2009 FEB 20 P 3:57

CLERK OF DISTRICT COURT
[Signature]

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

CHARLES COWARD and ANNE	)	Case No. CV-2007-1997
COWARD, husband and wife,)	
	)	DEFENDANT'S MOTION TO
Plaintiffs,	)	RECONSIDER, MOTION TO ALTER &
	)	AMEND FINDINGS AND
v.	)	CONCLUSIONS, FOR THE PURPOSE
	)	OF STATING THAT PLAINTIFF'S
CRYSTAL HADLEY, an individual,	)	CROSSING, DIGGING & DIRT WORK
	)	ON DEFENDANT'S LOT WAS A
Defendant.	)	TRESPASS, NOMINAL DAMAGES AND
	)	ATTORNEY FEES
	)	IDAHO CODE §6-202
)	

COMES NOW, the Defendant CRYSTAL HADLEY, by and through her
counsel, GARY A. FINNEY, Finney Finney & Finney, P.A., and moves
the Court, as follows:

1. Hadley is in agreement with the Court's Memorandum
Decision, which includes Findings of Fact and Conclusions of
Law, upon which the Court stated at the end... "IT IS SO
ORDERED". A "Judgment" includes a decree and any order from
which an appeal lies (Rule 54(a)). The Court's provision

that... "IT IS SO ORDERED" appears to be a final judgment; however the Court did not direct the drafting of an entry of a separate "judgment".


Rule 58(a) Entry of Judgment provides that upon a decision by the Court a judgment shall be entered by the Judge, and that every judgment shall be set forth on a separate document. Based on Rule 58(a), in addition to the Court's "IT IS SO ORDERED", which appears to be a judgment in substance, but not by title or by a separate document, meaning a separate "piece of paper". The Court is requested to enter a separate document title "Judgment". The Defendant's attorney will prepare and tender a separate "Judgment" if the Court desires.

2. Motion TO Reconsider, Motion TO Alter/Amend - to "add" trespass issues pled by Defendant under Rule 11(a)(2), Rule 52(b), and Rule 59(e), motions to reconsider, to alter and amend findings and conclusions, and to amend a judgment (order) are appropriate for the Defendant's Counterclaim issues on Trespass, paragraphs 13, 14, and 15 of the Answer to Amended Complaint and Counterclaim, filed November 5, 2008.

The Defendant moves the court to add to and supplement its findings of fact and conclusions of law that Coward's acts of hauling materials, moving dirt, and constructing a roadway, and driving across Hadley's Lot 1 for their use in constructing their second residential building on their Lot 2 was an

intentional trespass subjecting them to nominal damages and as an additional basis for Hadley to recover attorney fees against Coward under Idaho Code §6-202.

DATED this 20th day of February, 2009.



GARY A. FINNEY
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served as indicated below, this 20th day of February, 2009, and addressed as follows:

Arthur M. Bistline
Law Office of Arthur M. Bistline
5431 N. Government Way, Suite 101A
Coeur d'Alene, Idaho 83815
(Via U.S. Mail)

District Judge Steve Verby
Chamber's copy
(Via Hand Delivery)



ARTHUR M. BISTLINE
LAW OFFICE OF ARTHUR M. BISTLINE
5431 N. Government Way, Ste. 101B
Coeur d'Alene, ID 83815
(208) 665-7270
(208) 665-7290 (fax)
ISB: 5216

STATE OF IDAHO
COUNTY OF BONNER
DISTRICT COURT

2009 FEB 27 2 16:40

MARIE SCOTT
CLERK DISTRICT COURT

Attorney for Plaintiffs

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

CHARLES COWARD and ANNE COWARD,
husband and wife,

Plaintiff,

vs.

CRYSTAL HADLEY, an individual,

Defendant

Case No.: No. CV-07-1997

PLAINTIFF'S MOTION TO RECONSIDER

COMES NOW, Plaintiffs, CHARLES and ANNE COWARD, by and through their attorney of record, and requests the Court reconsider the Judgment entered on February 13, 2009.

This motion is based on Plaintiffs' Memorandum in support of Motion for Reconsideration.

DATED this 27th day of February, 2009.

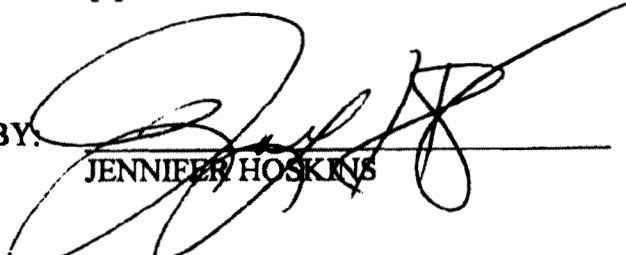

ARTHUR M. BISTLINE

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of February, 2009, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Gary Finney
120 E Lake St., Ste. 317
Sandpoint, ID 83864
Fax: 208-263-8211

- Hand-delivered
- Regular mail
- Certified mail
- Overnight mail
- Facsimile
- Interoffice Mail

BY: 
JENNIFER HOSKINS

ARTHUR M. BISTLINE
LAW OFFICE OF ARTHUR M. BISTLINE
5431 N. Government Way, Ste. 101B
Coeur d'Alene, ID 83815
(208) 665-7270
(208) 665-7290 (fax)
ISB: 5216

Attorney for Plaintiffs

FILED
MAR 11 2009
MAR 11 2009
MARIE SCOTT
CLERK DISTRICT COURT

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

CHARLES COWARD and ANNE COWARD,
husband and wife,

Plaintiff,

vs.

CRYSTAL HADLEY, an individual,

Defendant

Case No.: No. CV-07-1997

PLAINTIFF'S MOTION TO DISALLOW
COSTS

COMES NOW, Plaintiffs, and moves this Court to disallow attorneys fees as costs in this case.

This motion is based on the following

Idaho Code 12-121

There is no argument as to why this action was brought frivolously. A party must cite to a statute or contract that allows fees. "The party must then provide a reasoned argument, supported by case law as necessary, explaining why that statutory or contractual provision entitles the party to an award of attorney fees in this instance. For example, if the party seeks an award of attorney fees under Idaho Code § 12 120(3) on the ground that the case is an action to recover in a commercial transaction, the party should, to the extent necessary, provide facts,

authority, and argument supporting the claim that the case involves a “commercial transaction” and that such transaction is the gravamen of the lawsuit.” *Bream v. Benscoter*, 139 Idaho 364, 369-370, 79 P.3d 723, 728 - 729 (2003). This Court should deny an award of fees pursuant to Idaho Code 12-121 because no argument was provided to support such an award and such an award would not be proper in this case anyway.

In this case, there was an alley that had been used by all the owners of the Coward lot since the time Hadley purchased her lot. The alley was used to access a garage, albeit perhaps not in a fashion which would give rise to adverse possession according to this Court. The Cowards improved the garage, and then Hadley revoked her permission to use the strip of land. What the parties to the 1922 deed intended by reserving an “alley” is a debatable question of fact and there was nothing frivolous about the Cowards’ arguments.

Quiet Title and Slander of Title based on *Koelker v. Turnbull*, 127 Idaho 262 (1995)

The arguments set forth in the Cowards’ motion for reconsideration on these two subjects are incorporated here as if set forth in full. Neither Idaho Code 6-401 nor *Koelker* allows for an award of attorneys fees as costs.

Trespass and Nominal Damages

Nominal damages are not appropriate

The issue of trespass and nominal damages was not addressed at trial. It was not argued in Defendant’s closing brief and no evidence whatsoever of any compensable damage to the property was introduced. It would be improper to amend the Court’s findings to include a finding of trespass and to add a nominal damage award just so the Court could award attorneys fees.

Nominal damages are also inappropriate because, as argued in the Motion to add an award for nominal damages, there were actual damages to the property. If there are actual damages, nominal damages are only appropriate if the actual damages are so small as to be not subject to calculation. *Ransom v. Topaz Marketing, L.P.*, 143 Idaho 641, 645, 152 P.3d 2, 6 (2006). No evidence was introduced in this case which would support a finding that Hadley's damage was so small as to be incalculable.

Hadley did not prove trespass as she did not prove she had posted no trespassing signs.

Idaho Code 6-202 only allows for a finding of trespass if a person without the permission of the owner "enters upon the real property of another person which property is posted with "No Trespassing" signs or other notices of like meaning, spaced at intervals of not less than one (1) notice per six hundred sixty (660) feet along such real property...." Idaho Code 6-202. There is no such evidence in this case and the Court cannot make a finding that Idaho Code 6-202 was violated. The fact that an intrusion upon land be proven does not allow the Court to award attorneys fees for trespass in the absence of proof of compliance with the posting requirements of I.C. 6-202. "The plain language of I.C. § 6-202 also indicates that attorney's fees may be awarded *in addition to* any amounts awarded for damages ("plus a reasonable attorney's fee"). Because the district court determined that Lower did not violate the statute, the court's award of attorney's fees was in error and is reversed." *Ransom*, 143 Idaho 641, 646, 152 P.3d 2, 7 (2006).

Color of Title is a Defense to Trespass

Color of title is a defense to an action for trespass. The Idaho Supreme Court has never held that as such, but thought it was a creative argument that did not fit the facts of *Weaver v. Stafford*, 134 Idaho 691, 701, 8 P.3d 1234, 1244 (2000)

"In addition, color of title has reference to something which has the appearance or gives the semblance of title but is not such in fact. *Munkres v. Chatman*, 3 Kan.App.2d 601, 599 P.2d

314 (1979). A writing of some sort purporting to give title which on its face professes to pass title which does not from want of title in the person making it, but not so obviously imperfect that it would be apparent to one not skilled in the law that it is not good is essential to a claim of color of title." *Fouser v. Paige*, 101 Idaho 294, 297, 612 P.2d 137, 140 (1980). A trespasser who has color of title is entitled to remove any improvements he mistakenly made to the property, whereas one who does not have color of title cannot make that claim. *Id.* at 296, 612 P.2d at 139. A party who makes a good faith claim of right based on an ambiguous written document should not be found to have trespassed or made to pay the attorneys fees incurred by the other party interpreting the deed.

Coward made a good faith argument backed by authority as to why the 1922 deed created an alley for their use. Although this Court did not agree, the point is certainly debatable.

DATED this 6th day of March, 2009.



 ARTHUR M. BISTLINE

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of March, 2009, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Gary Finney
 120 E Lake St., Ste. 317
 Sandpoint, ID 83864
 Fax: 208-263-8211

- Hand-delivered
- Regular mail
- Certified mail
- Overnight mail

- Facsimile
- Interoffice Mail

BY:



Arthur Bistline

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

COURT MINUTES

JUDGE: STEVE VERBY
REPORTER: VAL LARSON
CLERK: SANDRA RASOR
DIVISION: DISTRICT

CASE NO. CV-07-1997
DATE: 05/06/09
CD: 09-115
TIME: 11:30 AM

CHARLES COWARD, ETAL.

vs **CRYSTAL HADLEY**

Plaintiff / Petitioner

Defendant / Respondent

Atty: ARTHUR BISTLINE

Atty: GARY FINNEY

SUBJECT OF PROCEEDINGS
CHARGE

MOTION TO RECONSIDER

INDEX	SPEAKER	PHASE OF CASE
1138	J	Calls Case
		Present: ARTHUR BISTLINE, GARY FINNEY, CRYSTAL HADLEY
	J	MOTION FOR RECONSIDERATION GO AHEAD MR. BISTLINE
	AB	THANK YOU YOUR HONOR, IN YOUR OPINION YOU STATE DEED RESERVES RIGHT TO ALLEY ONLY IN LOT 11, AT FIRST DIDN'T UNDERSTAND BECAUSE DEED SAID DAUGHTERS, IN LOOKING TODAY I UNDERSTAND WHAT COURT MEANT, (CITES WHAT HE UNDERSTANDS THAT THE COURT MEANT) STRANGER TO THE DEED DOESN'T APPLY, (STATES OTHER CASES) PEOPLE IN THOSE CASES WERE NOT ON THE DEED, IN OUR CASE CLEARLY MR. SLETAGER WAS PARTY TO THE DEED, HE WAS ON THE DOCUMENT, HE WAS TAKING LOT THAT WOULD BENEFIT IN CREATION OF ALLEY, (ARGUMENT) ALLEY MEANS SOMETHING, NOT A PRIVATE ROAD, NONE EXCLUSIVE USE. NO RESTRICTION ONLY TO LOT 11. LOOKS LIKE TRYING TO CONVEY AN ALLEY, RESERVED TO HIM AND HIS ASSIGNS WHICH INCLUDED MR. SLETAGER, FINDING REGARDING ATTORNEY FEES, DOES NOT ALLOW FINDING OF ATTORNEY FEES IN THAT CASE, SLANDER OF TITLE ISSUE WAS NOT ADDRESSED SO I DON'T THINK SHOULD BE CONSIDER, FILING OF LIZ PENDANZE NOT SLANDER JUST GIVING NOTICE OF ACTION
1146	J	MR. FINNEY SLANDER OF TITLE HOW DO YOU GET TO POINT THAT WAS LISTED AS DEFENSE OR COUNTER CLAIM?
	GF	RULE ON ATTORNEY FEES IS ALL YOU HAVE TO DO IS ASK FOR FEES, IF YOU ARE PREVAILING PARTY YOU FOLLOW MEMORANDUM YOUR BASIS FOR SEEKING,
	J	WHAT IS THE BASIS?
	GF	SINCE THEY CLAIMED AN EASEMENT THAT IS A CLAIM AGAINST OUR TITLE, WE RECEIVED THAT IN YOUR DECISION, MUST PREVAIL TO RECEIVE
1149	GF	3 CASES, FIRST FOR PRESCRIPTIVE COURT DISMISSED NO FACTS, 2 ND AMENDMENT FOR APPLIED EASEMENT, NO TESTIMONY ON TWO OF THE THREE ELEMENTS, 3 RD IS EXPRESS EASEMENT, ARGUMENT, CAN'T HAVE AN EASEMENT FROM YOU TO YOU ON YOUR OWN LAND IN FAVOR OF YOURSELF, ONLY THEORY WAS 1942 DEED COMPLETED EXPRESSLY, IN 1950 QUIT CLAIM DEED WAS GIVEN TO LOT ONE, NEIGHBOR WANTED TO GO OVER MRS. HADLEY'S LOT RATHER THAN THEIR OWN. COULD USE THERE OWN LOT, NO LAW AND THE COURT HELD THEM TO THAT, WE DID SAY THE BASIS, WE HAVE COMPLIED WITH BASIS, IN ESSENCE THEY ROLLED THE DICE AND SUED THEIR NEIGHBOR, SHOULD BE MADE WHOLE AND COVER

		HER ATTORNEY FEES, TRESPASS,. ANOTHER STATUTORY RIGHT OF DAMAGES, MAKE HER WHOLE FOR WHAT SHE HAS HAD TO TOLERATE
1158	AB	DID NOT ADDRESS ATTORNEY FEES JUST THE MOTION TO RECONSIDER, ARGUMENT/ USED THE WORD ALLEY, WILL NOT ADDRESS ATTY FEES OR MOTION TO AMEND UNLESS YOU ASK ME TO
1159	J	NO
	AB	LOT 11 RELEASED THEIR RIGHTS
1159	J	GOING TO TAKE UNDER ADVISMENT WANT TO CHECK AGAIN AFTER HEARING ARGUMENT, AS TO WHEN I WILL NOT OFFER ANY GUARANTEES, UNSURE IF WITHIN 30 DAYS,
1200		END

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2009 JUL 15 A 10:52

MARIE SCOTT
CLERK DISTRICT COURT
MS
DEPUTY

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

CHARLES COWARD and ANNE)
COWARD, husband and wife,)
)
)
 Plaintiffs,)
)
)
 v.)
)
 CRYSTAL HADLEY, an individual,)
)
)
 Defendant.)
_____)

CASE NO. CV-2007-0001997

AMENDED MEMORANDUM
DECISION AND ORDERS
ON POST TRIAL MOTIONS

Motions to reconsider the findings of fact and conclusions of law in the Memorandum Decision made on February 13, 2009, were filed by the parties. This Memorandum Decision amends the previous decision and addresses attorney's fees, trespass, and the release of easements.

**I. FINDINGS OF FACT AND CONCLUSIONS OF LAW IN
FEBRUARY 13, 2009, MEMORANDUM DECISION**

Based on the evidence presented, the Court, in its February 13, 2009, Memorandum Decision, issued the following findings of fact and conclusions of law.

A. Findings of Fact

1. Plaintiffs (Cowards) are the owners of Lot 2, Block JJ of the Laws addition to the City of Sandpoint. Defendant (Crystal Hadley) is the owner of Lot 1, Block JJ of the

Laws addition to the City of Sandpoint. The Cowards' lot, the Hadley's lot, and the adjoining Lot 11, lying directly to the south of the Cowards, were owned by Freeman Daughters in 1922.

2. In 1922, by Instrument No. 53126, Daughters transferred Lots 1 and 2 to Ole Sletager with the following in the legal description:

Lots One (1) and two (2) in Block "JJ" of Law's second Addition to Sandpoint, Idaho; provided, however, the party of the first part herein, [Daughters] his heirs and assigns shall have a permanent right of way over and across twelve feet on the east side or end of each of said lots for the purpose of an alley.

3. At the time that Daughters created this language, all the other lots in this block save one had alley access.
4. Three years later, when Daughters transferred Lot 11 to Jack Blake, the deed contained the following language:

Also, a permanent right of way over and across twelve feet on the east side or end of Lots one (1) and two (2), Block "JJ" Laws Second Addition to Sandpoint, Idaho, for the purposes of an alley.

5. Lot 2 was ultimately deeded to George and Alice Donahue, the Cowards' predecessors in interest, who were *not* conveyed any easement over Lot 1. Lot 2 in the chain of title has never had an appurtenant easement over Lot 1. Lot 2 was the servient estate to an easement in favor of Lot 11.
6. Since 1938, the Collins were the owners of Lot 11 and had an appurtenant easement over Lots 1 and 2. When the Hadleys were about to purchase their Lot 1 in 1950, they did not want their property to be "subject to" the easement of the Collins in favor of Lot 11. On June 13, 1950 (Instrument No. 34908), the Collins extinguished their

easement. By Quitclaim Deed, they released and quitclaimed to the owner or owners of Lots 1 and 2 any interest they had in Lots 1 and 2.

7. The very next day (June 14, 1950), Glen and Dora Bandelin, by warranty deed, free and clear, with no "subject to" or "reservation" of any easement, conveyed Lot 1 to Irvin (Leo) and Crystal Hadley. The Hadleys' Lot 1 had never been subject to an easement in favor of Lot 2, but both Mrs. Hadley's Lot 1 and the Cowards' Lot 2 had previously been subject to an easement in favor of Lot 11. Since 1950, neither the Hadleys' Lot 1 nor the Cowards' Lot 2 have been subject to the east 12 foot right of way.
8. The Bandelins acquired Crystal Hadley's Lot 1 by deed (Instrument No. 8587) in 1942, and the legal description was not "subject to" any easement.
9. Alice Donahue, as a widow, deeded Lot 2 to Chapman (Instrument No. 117518), in 1968 without any conveyance of an easement in favor of Lot 2. Chapman deeded Lot 2 (Instrument No. 172043) in 1976 to Montgomery without any conveyance of an easement in favor of Lot 2.
10. In 1976, Helen Hannah deeded Lot 11 to Louvers (Instrument No. 271553) without any conveyance of an easement in favor of Lot 11.
11. In 1978, Montgomery deeded Lot 2 to O'Donnells (Instrument No. 203716) without any conveyance of an easement in favor of Lot 2. O'Donnells then deeded Lot 2 to Mary L. O'Donnell in 1981 (Instrument No. 243333) without any conveyance of an easement in favor of Lot 2. Mary L. O'Donnell is the Mary O'Donnell Goff who testified at trial.

12. Mary L. O'Donnell Goff and her spouse conveyed Lot 2 in 1994 (Instrument No. 452268) to Annie Marie Underwood without the conveyance of any "together with" easements, but rather "subject to" the 1922 right of way. Annie Marie Underwood married Mr. Coward, and she and her spouse deeded the property to themselves, as trustees, in 2005 (Instrument No. 675169). They conveyed their own property to themselves "subject to" an easement to the City of Sandpoint over the east 12 feet of their own Lot 2. There was no such easement to the City of Sandpoint.
13. In 2007, by agreement as to Boundary Line (Plaintiffs' Exhibit 31), the Cowards and Hadley (Instrument No. 723577) both agreed that any legal, equitable, or statutory doctrine does not apply to alter the legal description, ownership, or title to the real estate of the other party. The real estate description of Mrs. Hadley's ownership interest was Lot 1 and for the Cowards, Lot 2. There was no easement over or in favor of either Lot 1 or Lot 2.
14. Anne Coward subsequently recorded a Lis Pendens (Instrument No. 744377) as part of this action, in which she claimed an "encumbrance" on Crystal Hadley's Lot 1.

B. *Conclusions of Law*

1. The Cowards were not conveyed any interest in Lot 1 at the time they purchased Lot 2.
2. The Cowards do not have either an express or implied easement across Lot 1.
3. The Cowards do not have any right, title, or interest in Lot 1.
4. The Collins conveyed any interest they had in Lot 1 when they executed and delivered a quitclaim deed in favor of Lot 1.
5. The filing of the Lis Pendens in regard to this action is a slander on the title of Lot 1.
6. Crystal Hadley is the prevailing party and is awarded costs and fees pursuant to Idaho

Code § 6-401 and the holding of *Koelker v. Turnbull*, 127 Idaho 262, 899 P.2d 972 (1995).

II. THE PARTIES' MOTIONS FOR RECONSIDERATION IN REGARD TO THE FEBRUARY 13, 2009, MEMORANDUM DECISION

On February 20, 2009, Crystal Hadley filed a "Motion to Reconsider, Motion to Alter & Amend Findings and Conclusions, for the Purpose of Stating that Plaintiff's Crossing, Digging & Dirt Work on Defendant's Lot was a Trespass, Nominal Damages and Attorney Fees, Idaho Code § 6-202." The Cowards, on February 27, 2009, filed a "Motion to Reconsider" the Court's decision, seeking to amend the conclusions of law set forth in the Memorandum Decision. The Cowards also filed a Motion to Disallow Attorney's Fees and Costs awarded to Mrs. Hadley.

On reconsideration, the parties make the following arguments:

A. *The Cowards' Arguments*

The Cowards address four issues in their Motion for Reconsideration. First, the Cowards argue that Idaho Code § 6-401 does not provide for an award of attorney's fees as damages in a quiet title action, and state that the *Koelker v. Turnbull* case cited in the decision only allows attorney's fees as damages in a breach of covenant of title case. Thus, the Cowards ask the Court to reverse that portion of the Memorandum Decision which awards attorney's fees and costs to Mrs. Hadley.

Second, the Cowards contend that the primary objective in interpreting a deed is to determine the intent of the parties to it. They state that in the decision the conclusion was reached that Freeman Daughters only intended to benefit Lot 11, but no analysis was provided as to how that conclusion was reached. The Cowards believe that the proper conclusion is that Mr. Daughters did not intend to restrict the use of the alley to Lot 11 only, and this Court should so hold, or provide an explanation for the conclusion that Mr. Daughters intended otherwise.

Third, the Cowards insist that no slander of title claim was ever pled and should not have been considered.

As a fourth point, the Cowards assert that the Court did not address the issue raised by the Cowards that a reservation of an "alley" in a grant has the same effect under Idaho law as the designation of an "alley" on a plat; that it grants a right to use the alley to more than just the grantor. The Cowards ask that these issues be reconsidered.

B. Crystal Hadley's Arguments

Mrs. Hadley initially takes issue with the title of the February 13, 2009, decision as a "Memorandum Decision." Mrs. Hadley claims that the Court's statement at the end of the Memorandum Decision that ... "IT IS SO ORDERED" makes the decision appear to be a final judgment. She states that the Court is still required under I.R.C.P. 58(a) to draft and enter a separate document titled "Judgment."

Second, Mrs. Hadley urges the Court to add to, and to supplement the findings of fact and conclusions of law to state that the Cowards' acts of hauling materials, moving dirt, constructing a roadway, and driving across Mrs. Hadley's lot in order to construct a second residential building on their lot was an intentional trespass, thus subjecting the Cowards to nominal damages. Further, Mrs. Hadley maintains that a finding of trespass serves as an additional basis for her to recover attorney's fees against the Cowards pursuant to Idaho Code § 6-202.

Mrs. Hadley also requests that the Court award attorney's fees pursuant to Idaho Code § 12-121, claiming that the Cowards brought this action and pursued it frivolously, unreasonably, and without foundation in fact or law.

C. The Cowards' Reply

The Cowards' response to Mrs. Hadley's arguments is that the issue of "trespass and

nominal damages” was not addressed at trial. They point out that the issue was not argued in Mrs. Hadley’s closing brief, and no evidence of any compensable damage to Mrs. Hadley’s Lot 1 was introduced. Therefore, the Cowards contend that it would be improper for the Court to amend its findings of fact to include a finding of trespass and to add a nominal damage award in order to award Mrs. Hadley attorney’s fees.

The Cowards also insist that Mrs. Hadley is not entitled to an award of attorney’s fees under Idaho Code § 6-202, because she did not prove that she posted “No Trespassing” signs, as required by the statute. Further, they believe that the plain language of Idaho Code § 6-202 indicates that attorney’s fees may be awarded *in addition to* any amounts awarded for damages, but no damages were awarded to Mrs. Hadley in this case. Lastly, the Cowards dispute the contention that this action was frivolous, and that Mrs. Hadley should receive any attorney’s fees under Idaho Code § 6-202.

III. DISCUSSION

A. *The Parties’ Motions For Reconsideration Are Equivalent To “Motions To Alter Or Amend The Judgment.”*

Idaho Rule of Civil Procedure 52(a) provides:

In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; ... If an opinion or memorandum decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. ... A written memorandum decision issued by the court may constitute the findings of fact and conclusions of law only if the decision expressly so states or if it is thereafter adopted as the findings of fact and conclusions of law by order of the court.

The Idaho Supreme Court, ruling on this issue in *Varkas v. Varkas*, 64 Idaho 297, 130 P.2d 867 (1942), stated:

The "Memorandum Decision", by the trial judge, is a document of nine typewritten pages and covers every detail of fact in the case as presented by the pleadings and covered by the proofs, and states the finding and conclusion of the court thereon. This document, while designated "Memorandum Decision", may very well be taken as the findings of the court on the facts of the case; the name of the document is immaterial. *Swank v. Sweetwater Irr. & P. Co.*, 15 Idaho 353, 354, 98 P. 297; *Consumers Co. v. Public U. Comm.*, 40 Idaho 772, 774, 236 P. 732.

Id. at 300, 130 P.2d at 868-869.

Similarly, in *Angleton v. Angleton*, 84 Idaho 184, 370 P.2d 788 (1942), the Idaho Supreme Court ruled that:

The findings of fact and conclusions of law required by Rule 52(a) I.R.C.P. constitute the trial court's decision as to what are the ultimate facts established by the evidence and the conclusions of law resulting therefrom upon which a judgment may be entered accordingly

No special form is required.

Id. at 190, 370 P.2d at 790.

In *Obray v. Mitchell*, 98 Idaho 533, 567 P.2d 1284 (1977), the Idaho Supreme Court stated:

The Idaho Rules of Civil Procedure do not provide for a petition to reconsider a memorandum decision. As such, the district court correctly treated appellant's petition as a motion to alter or amend judgment pursuant to I.R.C.P. 59(e).

Id. at 538, 567 P.2d at 1289.

In the February 13, 2009, Memorandum Decision, in accord with Rule 52(a), the Court did "find the facts specially and state separately its conclusions of law thereon." Thereafter, the remaining action was only for the Court to "direct the entry of the appropriate judgment." As stated in *Varkas v. Varkas*, "[t]his document, while designated "Memorandum Decision", may

very well be taken as the findings of the court on the facts of the case; the name of the document is immaterial,” and under *Angleton v. Angleton, supra*, “[n]o special form is required.”

Based on *Obray v. Mitchell, supra*, this Court is treating the parties’ motions to reconsider the February 13, 2009, Memorandum Decision as motions to alter or amend judgment, pursuant to I.R.C.P. 59(e), and upon reconsideration of the findings of fact and conclusions of law entered therein, this document shall be considered an “Amended Memorandum Decision,” to be followed by the entry of a Judgment, to be prepared by Crystal Hadley’s counsel.

B. Attorney’s Fees For Trespass Pursuant To Idaho Code § 6-202 Are Not Awarded.

Mrs. Hadley alleged common law trespass when she stated in her counterclaim that the Cowards’ trespass on her real estate had “caused remediation and restoration damages to the Defendant.” She went on to state that the Cowards’ “trespass is willful and intentional and the Defendant is entitled to treble damages against the Plaintiff.” Because she asserts treble damages, and because treble damages are only available in a trespass action pursuant to Idaho Code § 6-202, by this “notice pleading” the authority of this Code provision becomes an issue.

Idaho Code § 6-202 provides, in pertinent part:

Any person who, without permission of the owner, ... enters upon the real property of another person which property is posted with "No Trespassing" signs ... or otherwise injures any tree or timber on the land of another person ... is liable to the owner of such land ... for treble the amount of damages which may be assessed therefor or fifty dollars (\$50.00), plus a reasonable attorney's fee which shall be taxed as costs

The Idaho Supreme Court, ruling on this issue in *Ransom v. Topaz Marketing, L.P.*, 143 Idaho 641, 152 P.3d 2 (2006), stated:

The awarding of attorney's fees and costs is within the discretion of the trial court and subject to review for an abuse of discretion. See *Burns v. Baldwin*,

138 Idaho 480, 486, 65 P.3d 502, 508 (2003); *Bowles v. Pro Indiviso, Inc.*, 132 Idaho 371, 374, 973 P.2d 142, 145 (1999); *O'Boskey v. First Fed. Sav. & Loan Ass'n of Boise*, 112 Idaho 1002, 1008, 739 P.2d 301, 307 (1987). However, whether a statute awarding attorney's fees applies to a given set of facts is a question of law. *Kidd Island Bay Water Users Coop. Ass'n, Inc. v. Miller*, 136 Idaho 571, 573, 38 P.3d 609, 611 (2001). The standard of review for questions of law is one of free review. *Electrical Wholesale Supply Co., Inc. v. Nielson*, 136 Idaho 814, 825, 41 P.3d 242, 253 (2001).

Id. at 643-644, 152 P.3d 4-5.

The Court in *Ransom* went on to say:

As explained by the district court, Farr West was unable to collect treble damages for trespass under the statute because Farr West failed to post "No Trespassing" signs on its property and failed to prove any damages for lost timber. Nevertheless, the district court awarded attorney's fees based upon the statute. There is no independent claim for attorney's fees if the plain language of the statute does not so indicate. *Barbee v. Barbee*, 143 Idaho 391, 146 P.3d 657 (2006). In *Barbee*, this Court held that the plain language of I.C. § 30-1446, did not support a suit solely for attorney's fees filed after an arbitration award assigning damages was fully paid. In support of its decision, this Court referred to the language of the statute, which stated that a claimant is entitled to sue for consideration paid, "together with interest, costs and fees." The plain language of I.C. § 6-202 also indicates that attorney's fees may be awarded in addition to any amounts awarded for damages ("plus a reasonable attorney's fee"). Because the district court determined that Lower did not violate the statute, the court's award of attorney's fees was in error and is reversed.

Id. at 646, 152 P.3d at 7.

This Court finds that Mrs. Hadley is not entitled to attorney's fees pursuant to Idaho Code § 6-202 because she failed to either post "No Trespassing" signs on her property, or prove that the Cowards cut down or carried off any wood, tree, or timber, or otherwise injured any tree or timber on her lot, as required by the statute. See *Akers v. D.L. White Construction, Inc.*, 142 Idaho 293, 304, 127 P.3d 196, 207 ("Idaho Code § 6-202 provides that a trespasser is liable for attorney fees to a prevailing plaintiff who brings an action to enforce the terms of that section."). Since this Court does not find that the Cowards committed trespass pursuant to Idaho Code

§ 6-202, Mrs. Hadley is not awarded treble damages, for which “reasonable attorney’s fees” are meant only to be an addition.

Based on the rationale and holdings of the Idaho Supreme Court as outlined above, the Court denies Mrs. Hadley’s request to amend the judgment to include a finding that the Cowards committed an intentional trespass under Idaho Code § 6-202 as an additional basis to recover attorney’s fees. The denial of this request for an amendment is to be considered a mixed finding of fact and conclusion of law.

C. *The Cowards Released Any Claimed Right To Lot 1 When They Signed the Agreement in February, 2007.*

This litigation is not the first time there has been a dispute between the parties. At some point, the fence between the two respective properties was replaced. When the fence was rebuilt, it was placed in such a position that a portion was on the Cowards’ lot and a portion was on Mrs. Hadley’s lot. A survey revealed that the fence failed to follow the actual boundary line. Concern resulted from such misplacement of the fence and the parties entered into a written agreement resolving the differences between them. Although the thrust of the agreement involved the location of the fence and operative legal theories, such as adverse possession and boundary line established by acquiescence or by agreement, the signed document also included boilerplate language to resolve other potential disputes.

The signed “Agreement As To Boundary Line” included the following provision:

1. This agreement concerns the boundary lines of the parties real property and is made so that the boundary lines on the ground remain as legally described in each parties separate deed as to their respective ownership, and is further made pursuant to Idaho Code § 5-208(3) to provide that by permitting possession or occupation of the real property, the doctrine of adverse possession, boundary by agreement/acquiescence, **and any other legal, equitable, or statutory doctrine does not apply to alter the legal descriptions, ownership, boundary, or title to the real estate of either party.** (Emphasis added).

In paragraph two of the document, the parties agreed as to the respective estates that each had in the real property which was the subject of that dispute, and which is also the subject of this dispute:

2. The real estate of each party is as follows:

a. Hadley's Real Estate is:

Lot 1, Block JJ of the Amended Plat of Law's Second Addition to Sandpoint, Idaho as recorded in Book 1 of Plats, Page 58, records of Bonner County, Idaho.

b. Coward's Real Estate is:

Lot 2, Block JJ of the Amended Plat of Law's Second Addition to Sandpoint, Idaho as recorded in Book 1 of Plats, Page 58, records of Bonner County, Idaho.

The agreement was entered into by the parties to this litigation as of February 26, 2007, eight months before this litigation began. The Cowards, by signing the agreement, represented that they had no interest in Mrs. Hadley's Lot 1. When reading paragraphs one and two of the agreement together, it appears that the parties intended to set forth what their ownership interests were as of February of 2007, and they agreed that no "other legal, equitable, or statutory doctrine [would] apply to alter the legal descriptions, ownership, boundary, or title to the real estate of either party." If the Cowards claimed an interest in an easement or alley across Mrs. Hadley's property, the time to have claimed such a property interest in their neighbor's property was at the time they entered into the agreement. By signing the agreement, the parties set forth what their property interests were, in essence disclaiming that they had an interest in each other's real property so as to "alter the legal descriptions, ownership, boundary, or title" to those interests set forth in the agreement.

In the portion of the agreement where each party's real property interest is described, the Cowards could easily have claimed an interest in Mrs. Hadley's property, regardless of whether that interest was claimed as an "alley" or an easement.

In *Jackvoney et al. v. Poncelet et al.*, 584 A.2d 1112 (R.I. 1991), the Supreme Court of Rhode Island "enumerates five means by which an easement can be terminated: (1) by expiration; (2) by act of the dominant owner (either release or abandonment); (3) by act of the servient owner (prescription or conveyance to a bona-fide purchaser without notice); (4) by conduct of both parties (merger or estoppel); or (5) by eminent domain, mortgage, foreclosure, or tax sale." *Id.* at 1114 (quoting 3 R. Powell, *The Law of Real Property* ¶¶ 421-426 (1987)).

Of these possible means of terminating an easement, we need only focus on termination by release. In the "Agreement As To Boundary Line" executed by the Cowards and Mrs. Hadley, as stated above both parties agreed that no "other legal, equitable, or statutory doctrine [would] apply to alter the legal descriptions, ownership, boundary, or title to the real estate of either party." According to the Restatement of Property, a bilateral transaction through which an easement is extinguished by the concurrence of both the owner of the easement and the owner of the servient tenement is a release. 5 RESTATEMENT OF PROPERTY § 500 cmt. a; *see also Jackvoney et al.*, 584 A.2d at 1115. Therefore, any claim of the Cowards to an easement (access) across Mrs. Hadley's lot was effectively released with the signing of the agreement. Having concluded that a release occurred, an analysis of other applicable methods of terminating an easement is not necessary.

D. The Conclusion That The Easement Benefitted Only Lot 11 Is Withdrawn.

Having concluded that the Cowards released any claimed easement, the decision involving the easement benefitting only Lot 11 is withdrawn.

E. Common Law Trespass Was Established.

Pursuant to Idaho law, the tort of common law trespass is the "wrongful interference with the right of exclusive possession of real property." *Luce v. Marble*, 142 Idaho 264, 274, 127 P.3d 167, 177 (2005) (quoting *Moon v. N. Idaho Farmers Ass'n*, 140 Idaho 536, 541, 96 P.3d 637, 642 (2004)).

In this case, Mrs. Hadley proved the above two elements of trespass by the exhibits and testimony admitted at the time of trial. She proved that the Cowards wrongfully interfered with her exclusive possession of her real property. No proof, however, was presented as to the extent of damage, nor was there proof of the cost of "remediation" or "restoration" as alleged in her counterclaim. Faced with a dearth of proof, the Court awards Mrs. Hadley nominal damages of \$25.00. The previous findings of fact and conclusions of law are amended consistent with this mixed finding of fact and conclusion of law.

F. The Filing of a Lis Pendens Is Not A Slander of Title.

Proof of slander of title requires four elements: "(1) publication of a slanderous statement; (2) its falsity; (3) malice; and (4) resulting special damages." *Hogg v. Wolske*, 142 Idaho 549, 556, 130 P.3d 1087, 1094 (2006) (quoting *McPheters v. Maile*, 138 Idaho 391, 395, 64 P.3d 317, 321 (2003)).

The Idaho Supreme Court recently ruled that "**...the publication of the notice of lis pendens is not defamatory. It merely informs the public that the property is involved in litigation.**" *Vanderford Co., Inc. v. Knudson*, 144 Idaho 547, 165 P.3d 267, 271 (2007). (Emphasis added).

In her brief, Mrs. Hadley argues that:

Coward has no right, title, claim, or interest in Hadley's Lot 1. As such, Coward's Lis Pendens (Plaintiff's Exhibit 32) claiming this action is "encumbering" Hadley's Lot 1 is slander of title.

(Hadley's Post Trial Brief, p. 14).

Despite making this assertion, however, no authority (either statutory or case law) in support of this contention is proffered, and no further argument or briefing on the issue is provided. In fact, *Vanderford, supra*, states a contrary view.

Further, it does not appear that slander of title was pled in the counterclaim. In addition, the four elements of slander were not proved to exist in this case.

Based on these reasons, the Court amends its finding of fact and conclusion of law stated in the February 13, 2009, Memorandum Decision that the Coward's filing of the lis pendens in regard to this action is a slander on the title of Mrs. Hadley's Lot 1.

G. The Award of Attorney's Fees to Crystal Hadley Pursuant to Idaho Code § 6-401 and Koelker v. Turnbull is Amended.

In the February 13, 2009, *Memorandum Decision*, at p. 7, the holding was made that: "Crystal Hadley is the prevailing party and is awarded costs and fees pursuant to Idaho Code § 6-401 and the holding of *Koelker v. Turnbull*, 127 Idaho 262, 899 P.2d 972 (1995)."

Unfortunately, in making the above statement, this Court took at face value the representations made in the Defendant/Counterclaimant's "Post Trial Brief," where it is stated:

Idaho Code § 6-401 provides Hadley may quiet title against such adverse claim and to recover money damages for the attorney fees and costs to do so. *Koelker v. Turnbull*, 127 Idaho 262, 899 P.2d 972 (1995) holds that attorney fees to quiet title are a measure of damages to quiet title (*Koelker v. Turnbull*, 127 Idaho 262 at 266).

(Hadley's Post Trial Brief, pp. 14-15).

After reviewing the post trial motions, the accompanying arguments, and after conducting additional research, it appears that the Court's reliance on such representations made on behalf of the defendant was misplaced.

Idaho Code § 6-401 says nothing about attorney's fees and costs incurred in quieting title, as evidenced by the complete text of Idaho Code § 6-401, which reads:

An action may be brought by any person against another who claims an estate or interest in real or personal property adverse to him, for the purpose of determining such adverse claim, provided that all actions to adjudicate water rights and obtain a decree as to water source, quantity, point of diversion, place of use, nature of use, period of use, and priority as against other water users shall be brought under the provisions of chapter 14, title 42, Idaho Code.

Therefore, Idaho Code § 6-401 does not authorize an award of attorney's fees and costs in this case.

Koelker v. Turnbull also does not authorize an award of attorney's fees under the circumstances presented in this case. *Koelker v. Turnbull* holds that the costs to quiet title, including attorney's fees, can be awarded as damages for a violation or breach of the covenant of title:

Although the measure of damages for a violation of a covenant of title is normally the value of the property lost to a third party, the Court has also awarded as damages the grantee's attorney fees incurred as a result of the breach. For example, in *Madden v. Caldwell Land Co.*, 16 Idaho 59, 72, 100 P. 358, 362 (1909), the Court held that damages for breach of the covenant of title included the grantee's attorney fees expended in her unsuccessful quiet-title action against the third party. See also *Flynn v. Allison*, 97 Idaho 618, 622, 549 P.2d 1065, 1069 (1976). Therefore, since they did not lose any property interest, the costs and attorney fees incurred by the Koelkers to quiet title provide the measure of their damages.

Id. at 266, 899 P.2d at 976.

The instant case does not involve a breach of covenant of title, as Mrs. Hadley did not obtain her title from the Cowards.

Based on the reasons set forth in this section, the Court amends its conclusion in the February 13, 2009, Memorandum Decision and denies Mrs. Hadley attorney's fees and costs pursuant to Idaho Code § 6-401 and the holding of *Koelker v. Turnbull*.

H. The Court Does Not Find That The Action Was Pursued Frivolously Or Without Foundation.

Idaho Rule of Civil Procedure 54(e)(1) provides:

In any civil action the court may award reasonable attorney fees, which at the discretion of the court may include paralegal fees, to the prevailing party or parties as defined in Rule 54(d)(1)(B), when provided for by any statute or contract. **Provided, attorney fees under section 12-121, Idaho Code, may be awarded by the court only when it finds, from the facts presented to it, that the case was brought, pursued or defended frivolously, unreasonably or without foundation;** but attorney fees shall not be awarded pursuant to section 12-121, Idaho Code, on a default judgment. (Emphasis added).

In this case, access across Lot 1 was used by the previous owners of the Cowards' lot since before the time Mrs. Hadley purchased her lot. The entry through the Hadleys' predecessors' lot was used to access a garage, which was located on what is now the Cowards' real property. What the parties to the 1922 deed intended by reserving an "alley" is a disputed question of fact, and it does not appear that the Cowards' brought this action and pursued it frivolously, unreasonably, and without foundation in fact or law, as alleged by Mrs. Hadley. Therefore, the Court denies Mrs. Hadley's request to award attorney's fees under Idaho Code § 12-121. The previous findings of fact and conclusions of law are amended in conformity with this conclusion.

CONCLUSION

After reconsideration of this Court's February 13, 2009, Memorandum Decision, the Court amends the previous decision as follows:

1. Crystal Hadley's request for attorney's fees for trespass pursuant to Idaho Code § 6-202 is denied.

2. The Cowards released any claimed right to Lot 1 by signing the February 2007, Agreement As To Boundary Line.
3. The portion of the decision addressing the easement's benefit solely to Lot 11 is withdrawn.
4. Common law trespass was proven by Crystal Hadley, and nominal damages in the amount of \$25.00 are awarded to her.
5. The Cowards filing of a lis pendens was not a slander on the title of Crystal Hadley's Lot 1.
6. The award of attorney's fees to Crystal Hadley pursuant to Idaho Code § 6-401 and *Koelker v. Turnbull* was erroneously made in reliance on the representations made in the defendant's post trial brief. No attorney's fees are awarded on this basis.
7. Crystal Hadley's request for attorney's fees pursuant to Idaho Code § 12-121 is denied.
8. Crystal Hadley is the prevailing party, and is awarded costs, but not attorney's fees.

Counsel for Crystal Hadley is to prepare the appropriate Judgment, provide a copy to the Cowards' attorney by facsimile transmission, and submit the original to the Court. If there is no objection within five (5) business days and the Judgment is in compliance with the Memorandum Decisions, it will be entered.

IT IS SO ORDERED,

DATED this 15th day of July, 2009.


Steve Verby
District Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this 15 day of July, 2009, to:

Arthur M. Bistline
LAW OFFICE OF ARTHUR M. BISTLINE
5431 N. Government Way, Ste 101B
Coeur d'Alene, ID 83815

Gary Finney
FINNEY FINNEY & FINNEY, P.A.
120 East Lake Street, Suite 317
Sandpoint, Idaho 83864



Deputy Clerk

ORIGINAL

GARY A. FINNEY
FINNEY FINNEY & FINNEY, P.A.
Attorneys at Law
Old Power House Building
120 East Lake Street, Suite 317
Sandpoint, Idaho 83864
Phone: (208) 263-7712
Fax: (208) 263-8211
ISB No. 1356

2009 AUG -4 P 4: 21

ap

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

CHARLES COWARD and ANNE	)	Case No. CV-2007-1997
COWARD, husband and wife,)	
	)	JUDGMENT IN FAVOR OF DEFENDANT
Plaintiffs,	)	AND AGAINST PLAINTIFFS
)	
v.)	
)	
CRYSTAL HADLEY, an)	
individual,)	
)	
Defendant.)	
)	

Based upon the Court's Memorandum Decision of findings of fact and conclusions of law filed February 13, 2009 and as modified in the Court's Amended Memorandum Decision And Orders On Post Trial Motions filed July 15, 2009, the Court does hereby enter Judgment in favor of the Defendant and against the Plaintiffs and it is Ordered, Adjudged, and Decreed that,

1. Plaintiffs' Complaint and Amended Complaint are Dismissed, and Plaintiffs shall have no recovery against the Defendant.

2. As and for common law trespass, the Defendant shall have and recover nominal damages against the Plaintiffs in the sum of \$25.00.

3. The Defendant is the prevailing party but is not awarded attorney fees; however, the Defendant shall have and recover costs against the Plaintiffs in the sum of \$687.10.

4. The Plaintiffs have no right, title, claim, encumbrance or easement as to the Defendant's real estate, and the Defendant is awarded a quiet title decree against Plaintiffs and quashing Plaintiffs' Lis Pendens recorded January 14, 2008 as Instrument No. 744377. Defendant's real estate is Lot 1, Block JJ Law's Second Addition to Sandpoint, Bonner County, Idaho.

5. This is a final Judgment.

DATED this 4th day of August 2009.



STEVE VERBY
District Judge

CLERK'S RULE 77 (d) CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy, with the clerk's filing stamp thereon showing the date of filing, of the JUDGMENT IN FAVOR OF DEFENDANT AND AGAINST PLAINTIFFS, was served by U.S. Mail, postage prepaid, this 5 day of August 2009, and was addressed as follows:

Gary A. Finney
Finney Finney & Finney, P.A.
Attorneys at Law
Old Power House Building
120 East Lake Street, Suite 317
Sandpoint, Idaho 83864

Arthur M. Bistline
Law Office of Arthur M. Bistline
5431 N. Government Way, Suite 101A
Coeur d'Alene, Idaho 83815

By: A. Phillips
Deputy Clerk

GARY A. FINNEY
FINNEY FINNEY & FINNEY, P.A.
Attorneys at Law
Old Power House Building
120 East Lake Street, Suite 317
Sandpoint, Idaho 83864
Phone: (208) 263-7712
Fax: (208) 263-8211
ISB No. 1356

2009 AUG 18 P 3:22

b

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

CHARLES COWARD and ANNE	)	Case No. CV-2007-1997
COWARD, husband and wife,)	
	)	DEFENDANT'S MOTION TO ALTER,
Plaintiffs,	)	AMEND, RECONSIDER, AND TO MAKE
	)	ADDITIONAL FINDINGS AND
v.	)	CONCLUSIONS AWARDED ATTORNEY
	)	FEEES TO THE DEFENDANT
CRYSTAL HADLEY, an individual,	)	AND
	)	NOTICE OF HEARING AND ORAL
Defendant.	)	ARGUMENT
	)	(September 9, 2009 at 2:00
	)	p.m.)
)	

COMES NOW, the Defendant CRYSTAL HADLEY, by and through her
counsel, GARY A. FINNEY, Finney Finney & Finney, P.A., and
petitions the Court and moves, as follows:

1. The Court is moved to alter, amend, reconsider, and
make additional finding of fact, conclusions of law, and to
amend the Court's Amended Memorandum Decision And Orders On Post
Trial Motions, filed July 15, 2009, and the Court's Judgment In
Favor Of The Defendant And Against The Plaintiffs, filed August

4, 2009, and to enter an Amended Judgment accordingly on the issue of an award of attorney's fees to the Defendant.

2. Rule Authority For Defendant's Motion:

a. Rule 11(a)(2)(B) provides that a motion for reconsideration of any order of the trial court may be made after entry of the final judgment and may be filed within 14 days.

b. Rule 52(b) provides that a motion to amend findings and conclusions or to make additional findings and conclusions may be filed but not later than 14 days after entry of the judgment.

c. Rule 59(e) provides that a motion to alter or amend a judgment shall be served not later than 14 days after entry of judgment.

3. Authority To Award Attorney Fees To Defendant is Idaho Code § 12-121:

Rule 54 (e) (1) Attorney Fees provides that under I.C. § 12-121 attorney fees may be awarded only when, from the facts presented, the case was brought, pursued, or defended frivolously, unreasonable, or without foundation.

4. IT IS ERROR NOT TO AWARD ATTORNEY FEES TO THE DEFENDANT. The Court has held that the Defendant is the prevailing party. The final judgment and the result of the action in relation to the relief sought are entirely in favor of

the Defendant on all issues and the Plaintiffs pursued the case frivolously, unreasonably, and without foundation. The analysis is of "the facts presented".

5. THE FOLLOWING IS AN ANALYSIS OF THE FACTS PRESENTED AND THE RESULTS OBTAINED:

a. The Complaint, the Answer and Counterclaim, and the Court Trial.

The Complaint pled only one theory, which was an easement by prescription.

The Answer and Counterclaim alleged that Plaintiffs have no express easement, easement by necessity, easement by implication, easement by prescription, or any other easement to use Defendant's real estate; further, that the Complaint and action was frivolous, unreasonable, and without merit and that Defendant was entitled to recover her attorney fees from the Plaintiffs. The Counterclaim, paragraph 11, alleged that by an Agreement as to Boundary Line, recorded February 26, 2007, Instrument No. 723577, the Plaintiffs had extinguished any interest for access or other legal or equitable doctrine as to alleged trespass and sought quiet title as to Defendant's real estate against the Plaintiffs, and it sought attorney fees.

The Trial was held September 29, 2008. For the trial, the Defendant filed Hadley's Trial Memorandum and

Proposed Finding and Conclusions, filed September 16, 1008, which pointed out the elements and the inability of the Plaintiffs to prove a prescriptive easement. Further, the Agreement as to Boundary Line provided that the possession, occupancy, or use of the real estate was by consent and no doctrine would apply to alter ownership or title to the real property.

The Plaintiffs' Trial Brief, dated September 23, 2008, did not have any facts or law relative to the Complaint on the issue of a prescriptive easement; however, the Plaintiffs went to trial and proceeded on their prescriptive easement action. At the end of the trial on the prescriptive easement claim the Defendant moved for "non-suit" against the Plaintiffs, which was then under advisement by the Court. At the end of the Defendant's defense to the prescriptive easement action the Court granted a Rule 41(b) involuntary dismissal; and alternatively entered findings of fact and conclusions of law in open Court, upon the record that the Defendant prevailed on the trial of the merits and the Complaint for prescriptive easement was dismissed. An Order Granting Defendant's Motion To Dismiss And Dismissing Plaintiffs' Cause Of Action For Prescriptive Easement was subsequently entered by the Court, filed October 9, 2008. The Plaintiffs' prescriptive easement claim was not supported by facts in their case to avoid a Rule 41 dismissal.

In other words, from the "facts presented" the Plaintiffs' case was entirely devoid of any merit, i.e. frivolous, unreasonable, and without foundation.

The Plaintiffs' Trial Brief, of September 23, 2008, set forth claims of Express Easement and Easement by Implication. The Plaintiffs' Trial Brief, page 4, first sentence, states,

"There is no Idaho case on this type of implied easement."

In other words, the Plaintiffs' theory of implied easement was acknowledged to be unsupported by any Idaho case law, to which any facts could be presented entitling Plaintiffs to prevail. This indicates the frivolous, unreasonable, and without foundation of Plaintiffs' implied easement claim.

b. Amended Complaint and Amended Answer and Counterclaim.

The Plaintiffs moved to amend and the Court permitted the filing of an Amended Complaint, which added, paragraph 4, that a 1922 deed, Instrument No. 53126, either by express terms or by an implied right, was created by that instrument. The Answer To Amended Complaint and Counterclaim denied any easement and that the Agreement as to Boundary Line extinguished any right, title, claim, interest, use or other doctrine as to the use of Defendant's real estate, and alleged

trespass, quiet title, and recovery of Defendant's attorney fees.

There was no more "trial", and no more facts were presented, only briefing was submitted to the Court.

c. The Court's Memorandum Decision (filed February 13, 2009) was supplemented by its Amended Memorandum Decision And Orders On Post Trial Motions (filed July 15, 2009).

6. THE DISTRICT COURT ERRED IN DENYING ATTORNEY FEES TO THE DEFENDANT BASED ON AN ANALYSIS OF A SINGLE ISSUE OF THIS MULTI-ISSUE ACTION. The Court's Amended Memorandum Decision, page 17, paragraph H, is the Court's analysis on Defendant's request for attorney fees under Idaho Code § 12-121 and Rule 54(e)(1). The Court cited the provisions of Rule 54(e)(1). The Court denied attorney fees to the Defendant by single analysis to what appears to be only the Plaintiffs' express easement theory by stating that what the parties to the 1922 deed intended by reserving an "alley" as a disputed question of fact, and it does not appear the Cowards brought this action and pursued it frivolously, unreasonably, and without foundation in fact or law, as alleged by Mrs. Hadley.

This analysis of a single issue, express easement, makes no analysis of who prevailed "in the action" or of the other issues of this action. The other issues were:

a. prescriptive easement

- b. implied easement
- c. Agreement as to Boundary Line
- d. trespass
- e. quiet title

The Defendant prevailed on all five (5) of these issues, and in the action, without the Plaintiffs setting forth any foundation in fact or law to support prescriptive easement or implied easement, and the Plaintiffs presented no foundation in fact or law concerning Defendant's Counterclaim issues of Agreement as to Boundary Line, trespass, or quiet title.

As to the Prescriptive Easement - The Plaintiff suffered a "non-sit" dismissal of this cause of action. In other words, this cause of action, the Complaint, was dismissed, as stated in Rule 41(b) because of the ground that "...upon the facts and the law the Plaintiff has shown no right to relief." In other words, the prescriptive easement action through trial, upon the facts presented, had no basis in fact or law, which is "without foundation".

7. ATTORNEY FEES ARE AWARDED TO THE PARTY THAT PREVAILS "IN THE ACTION" AS AN OVERALL VIEW, NOT A CLAIM-BY-CLAIM ANALYSIS.

The Case of Eighteen Mile Ranch v. Nord Excavating, Idaho 716, 117 p.3d 130 (2005) states:

"...In determining which party prevailed in an action where there are claims and counterclaims between opposing parties, the court determines who prevailed 'in the action'. That is, the prevailing party question is examined and determined from an overall view, not a claim-by-claim analysis."

In *Eighteen Mile Ranch v. Nord Excavating*, 141 Idaho 716 at 719, the Supreme Court referred to the fact that various defendants "incurred no liability", as being "the most favorable outcome that could possibly be achieved".

In the instant action, the Defendant incurred no liability, the Plaintiffs prevailed on none of its three (3) theories of easements; prescriptive, implied, or express, the Defendant prevailed in trespass and quiet title. In other words, the Defendant received the most favorable outcome that could be achieved, demonstrating that Plaintiffs' entire action was frivolous, unreasonable, and without foundation.

8. THE COURT ANALYSIS OF THE EXPRESS EASEMENT THEORY involving a question of fact disregards that the Agreement as to Boundary Line extinguished any easement.

The Agreement as to Boundary Line, (Defendant's Exhibit D) signed by Plaintiffs and Defendant was dated in February of 2007 and was recorded February 26, 2007, Instrument No. 723577. As stated in the Court's Amended Memorandum Decision, page 11, paragraph C.,

"The Cowards released any claimed right to lot 1 when they signed the Agreement on February 2007".

Having agreed in writing to extinguish any claimed right to the Defendant's real estate, within nine (9) months time they filed this action, Complaint, on November 29, 2007, seeking a claimed easement right and they recorded a Lis Pendens, January 14, 2009, Instrument No. 744377 (Plaintiffs' Exhibit 32) in which they claimed that they had an "action encumbering" Hadley's real estate.

The Court's analysis of the Plaintiffs' express easement claim as involving "a disputed question of fact" stated that it does not appear that Cowards' brought this action and pursued it frivolously, unreasonably, and without foundation. However, from the facts presented, disputed or otherwise, Cowards could not prevail, at all, as a matter of law.

It is advanced to the Court, that the Agreement as to Boundary Line, signed only nine (9) months before this action, had extinguished the express easement claim, so the analysis that the express easement claim involved a disputed question of fact falls short of negating that Cowards action was frivolous, unreasonable, and without foundation. This is because Coward signed on an Agreement which extinguished the express easement claim, disputed or not. At all stages of this action, Coward did not appear to argue against the Agreement as to Boundary

Line being a complete defense to their action, rather they just seemed to ignore it. In other words, Cowards, in writing, extinguished any claimed right to Hadley's real estate, and then frivolously, unreasonably, and without foundation soon brought an action against Hadley claiming easement rights to her real estate.

SUMMARY

Hadley is the prevailing party "in the action". The action sought easement rights in Hadley's real estate, which had already been extinguished by Cowards' own written agreement. This action, from the facts presented, is frivolous, unreasonable, and without foundation. Even if the 1922 deed issue of express easement involved disputed questions of fact, the fact was that the Agreement extinguished any such easement. The 1922 deed was of no moment, i.e. irrelevant and of no consequence at all because it was extinguished by Cowards. In other words, under no set of facts in relation to the 1922 deed could Coward prevail.

The Court is requested to award attorney fees, per Defendant's Memorandum, to the Defendant.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the Defendant's Motion To Alter, Amend, Reconsider, And To Make Additional Findings And Conclusions Awarding Attorney Fees To The Defendant, shall come

for hearing before the Honorable District Judge Steve Verby, on September 9, 2009 at 2:00 p.m., or as soon thereafter as counsel may be heard, in a courtroom of the Bonner County Courthouse, 215 South First Avenue, Sandpoint, Idaho 83864. The Defendant intends to present oral argument.

DATED this 18TH day of August, 2009.



GARY A. FINNEY
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served as indicated below, this 18 day of August, 2009, and addressed as follows:

Arthur M. Bistline
Law Office of Arthur M. Bistline
5431 N. Government Way, Suite 101A
Coeur d'Alene, Idaho 83815
(Via U.S. Mail)

District Judge Steve Verby
Chamber's copy
(Via Hand Delivery)



ARTHUR M. BISTLINE
 LAW OFFICE OF ARTHUR M. BISTLINE
 1423 N. Government Way
 Coeur d'Alene, ID 83814
 (208) 665-7270
 (208) 665-7290 (fax)
 ISB: 5216

Attorney for Plaintiffs

STATE OF IDAHO
 COUNTY OF BONNER
 FIRST JUDICIAL DIST.

2009 SEP -2 P 4:41

MARIE SUBIT
 CLERK DISTRICT COURT
 DEPUTY

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

CHARLES COWARD and ANNE COWARD,
 husband and wife,
 Plaintiff,
 vs.
 CRYSTAL HADLEY, an individual,
 Defendant

Case No. CV-07-1997

PLAINTIFFS' RESPONSE TO
 DEFENDANT'S MOTION TO ALTER OR
 AMEND THE JUDGMENT

Hadley argues that *because* she won, Plaintiff's prosecution of the case was frivolous and she is entitled to attorneys fees. Who is the prevailing party is not relevant in the analysis of whether frivolous conduct existed to warrant an award of attorneys fees pursuant to Idaho Code §12-121. To award attorneys fees in a civil action to the prevailing party pursuant to Idaho Code §12-121, the Court must determine that "the case was brought, pursued or defended frivolously, unreasonably or without foundation." *Beach Lateral Water Users Ass'n v. Harrison*, 142 Idaho 600, 607, 130 P.3d 1138, 1145 (2006). "Where a case involves a novel legal question, attorney fees should not be granted under I.C. § 12-121." *Campbell v. Kildew*, 141 Idaho 640, 651, 115 P.3d 731, 742 (2005), citing *Graham v. State Farm Mut. Auto. Ins. Co.*, 138 Idaho 611, 614, 67 P.3d 90, 93 (2003).

PL RESP TO DEF MOTION TO ALTER OR AMEND JUDGMENT

One theory for arguing that the 1922 deed from Daughters to Sletegar created a right for the owner of Lot 2 to use the easement was that it was referred to as an "alley" and not restricted to any particular lot. In Idaho, calling something an alley on a plat means it is public use when that plat is recorded. *Dunham v. Hackney Airpark, Inc.*, 133 Idaho 613, 617, 990 P.2d 1224, 1228 (1999). It is not that far of a leap to say when something in a deed is called an "alley" and its use is not restricted to any particular lot, a right of use is created in others along the alley.

The other theory – that the 1922 deed from Daughters to Sletegar granted the right to the easement to Coward's lot because it reserved the right of use to Daughters and his assigns, and Coward was an assign of Daughters – was not frivolous. Coward is a remote assignee of Daughters and the Court did not rule otherwise.

Coward respectfully disagrees with this Court's interpretation of the contract between the parties as amounting to a release of Coward's interest in the easement. The purpose of interpreting any contract is to give effect to the intent of the parties. *Lamprech v. Jordan, LLC*, 139 Idaho 182, 185, 75 P.3d 743, 746 (2003). The Court interpreted the following language out of the agreement at issue to mean that Coward gave up any easement rights they had:

This agreement concerns the boundary lines of the parties real property and is made so that the boundary lines on the ground remain as legally described in each parties separate deed as to their respective ownership, and is further made pursuant to Idaho Code § 5-208(3) to provide that by permitting possession or occupation of the real property, the doctrine of adverse possession, boundary by agreement/acquiescence, *and any other legal, equitable, or statutory doctrine does not apply to alter the legal descriptions, ownership, boundary or title to the real estate of either party.*


Emphasis added. The agreement specifically states that it concerns the boundary lines of real property. The dispute in this case has nothing to do with boundary lines. Also, a finding by this Court that Coward has an express or implied easement would not in any way alter the legal descriptions, ownership, boundary lines, or title to the real estate of either party. An easement is

only the right to use the land of another, *Backman v. Lawrence*, 147 Idaho 390, ___, 210 P.3d 75, 79 (2009), and does not have anything to do with the boundary lines or ownership of property.

Furthermore, if the Court does interpret an easement to be included as something that would alter the *legal descriptions, ownership, boundary or title to the real estate of either party*, under Coward's theory, the easement came into existence in 1922 and was in existence when that agreement was executed. The Court has used the legal theory of a contractually-based release of that easement to defeat that easement, which the agreement expressly states cannot apply.

Hadley is not entitled to an award of attorneys fees.

Respectfully submitted this 2nd day of September 2009.



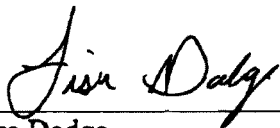
Arthur Bistline

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of September, 2009, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Gary Finney
120 E Lake St., Ste. 317
Sandpoint, ID 83864
Fax: 208-263-8211

- Hand-delivered
- Regular mail
- Certified mail
- Overnight mail
- Facsimile
- Interoffice Mail

BY: 

Lisa Dodge

PL RESP TO DEF MOTION TO ALTER OR AMEND JUDGMENT

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

COURT MINUTES

JUDGE: STEVE VERBY CASE NO. CV-07-1997
REPORTER: VAL LARSON DATE: 09/09/09 TIME: 2:00 PM
CLERK: SANDRA RASOR CD: 09-222
DIVISION: DISTRICT

CHARLES COWARD, ETAL. vs CRYSTAL HADLEY
Plaintiff / Petitioner Defendant / Respondent
Atty: ARTHUR BISTLINE Atty: GARY FINNEY

SUBJECT OF PROCEEDINGS MOTION
CHARGE

INDEX	SPEAKER	PHASE OF CASE
200	J	Calls Case
		Present: GARY FINNEY, CRYSTAL HADLEY, AMY BISTLINE FOR ARTHUR BISTLINE
	J	ISSUED AMENDED DECISION AND ORDER ON POST TRIAL MOTIONS JUDGMENT IN FAVOR OF CRYSTAL HADLEY, HERE NOW TO ADDRESS AMENDMENT REGARDING ATTORNEY FEES
206	GF	THANK YOU, GO OVER WHAT CASE WAS ABOUT, STANDARD FOR ATTORNEY FEES, WE ALL CITED SAME STANDARD, TWO SIDES TO THIS CASE, HOWARD'S BROUGHT THE CASE, HADLEY HAD COUNTER CLAIM AND THEY DEFENDED THE COUNTERCLAIM SO THEY ARE ON BOTH SIDES, DID NOT USE PRESCRIPTIVE EASEMENT BUT IT WAS A PRESCRIPTIVE EASEMENT CASE, IN PT BRIEF THEY DID NOT STATE STANDARDS OF PRESCRIPTIVE EASEMENT, SAME FACTUAL THEORY BUT ADDED EASEMENT BY IMPLICATION, THEY SAID THIS WAS A NOVEL ISSUE ON THESE FACTS, ON THE FIRST ISSUE PRESCRIPTIVE EASEMENT THEY HAD NOTHING, THEY HAD WITNESSES BUT NONE ON ELEMENTS OF PRESCRIPTIVE EASEMENT, WE PUT ON A DEFENSE AND YOU RULED NO EVIDENCE, YOU FOUND THAT CASE WAS VOLUNTARILY DISMISSED, (CONTINUES TO GO OVER JUDGES DECISION) WHEN PUTTING ON YOUR OWN CASE IF YOU DON'T PUT FACTS IN RECORD IN PRIMA FASCIA... PURSUING CASE FRIVOLOUSLY NO FOUNDATION, NO FACTS, 2 ND PART WE ADMIT NO IDAHO CASE ON WHAT YOU ARE PLEADING AND IT IS NOVEL, CAN DO THAT ON A COMMON LAW THEORY, IF YOU CAN'T CITES ONE CASE OUT OF IDAHO TO SUPPORT THEORY AND ADMIT THERE IS NO CASE, (ARGUMENT) 2/3 OF CASE WITHOUT FOUNDATION, 3 RD ISSUE EASEMENT BY EXPRESS EASEMENT (EXPLAINS) NO PLAT CREATED AN ALLEY, MRS. GOTH ASKED MR. HADLEY IF SHE COULD PARK THERE WHILE SHE MOVED TO ALASKA WHICH HE ALLOWED THEN LATER HE MOVED THE CAR OUT.
215		SHOULD NOT HAVE BEEN ABLE TO BRING THIS IN ESPECIALLY AT THIS POINT. THEY DID NOT DEFEND AGAINST THE AGREEMENT, NOTHING IN THEIR CASE TO DISPUTE,
223		ARGUMENT CONTINUES
224	J	MS. BISTLINE?
	AB	(CITES RULE/CODE) BRIEF SUBMITTED WHEREIN MR. BISTLINE DISCUSSED THE AMENDED MEMORANDUM, POINT OUT THERE HAVE BEEN TWO DECISIONS IN THIS CASE, A CASE THAT HAS SOME DIFFICULTY IN

		UNDERSTANDING IN THAT THE COURT CHANGED ITS DECISION ON SOME ISSUES, PURSUED WITHOUT MERIT CLAIM NOT ON THE PARTY BUT IF ISSUE BEFORE COURT OF FACT, JUDGE DID SAY THERE WAS DISPUTED ISSUES IN THIS CASE, ADMITTEDLY MR. BISTLINE HAD CASE THAT WAS NOT IDAHO CASE FOR THAT ISSUE HOWEVER A NOVEL THEORY IS NOT A FRIVOLOUS ACTION. THE POWERS BELIEVED THEY HAD ACCESS TO THEIR GARAGE, IT WAS AN ISSUE FOR THEM AND HAD TO BE RESOLVED, COURT HAS DECIDED COWARDS DO NOT HAVE ACCESS BUT THIS WAS NOT A FRIVOLOUS ACTION, MR. BISTLINE BELIEVED SOMETHING TO BE PURSUED
229	GF	ARGUMENT (CASE DID IN FACT GO ON SUMMARY JUDGMENT,
	J	I DIDN'T DECIDE ON SUMMARY JFG, I SAID (QUOTES JUDGMENT) I AM PREPARED TO RULE AS RELATES TO ISSUES, FOR THE INDIVIDUALS INVOLVED IN THESE TYPES OF CASE, EACH SIDE AFFECTED, ISSUES OFTEN DO NOT REQUIRE EXCESSIVE DISCOVERY BEFORE TRIAL, WHEN THIS CASE CAME TO COURT INFO PRESENTED WAS SUMMARY AT BEST, RIGHT BEFORE TRIAL MORE SUBMITTED, GOES OVER EVIDENCE SUBMITTED PHOTOS SHOW PARKING OF BUS ETC. ETC. THE DOCUMENT ITSELF USED PRIOR TO JDG, I DID FIND THE AGREEMENT AS TO BOUNDARY LINE DID RESOLVE THE DISPUTE THAT WAS PRESENTED, EVEN SO DO NOT FIND CASE BROUGHT OR DEFENDED FRIVOLOUSLY, I DO NOT AWARD ATTORNEY FEES, MOTION DENIED,
	GF	SHALL I PRESENT AN ORDER
	J	YES YOUR HONOR
236		END

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2009 SEP 15 A 10:34

MARIE SOU
CLERK DISTRICT COURT
ms
DEPUTY

ARTHUR M. BISTLINE
LAW OFFICE OF ARTHUR M. BISTLINE
1423 N. Government Way
Coeur d'Alene, ID 83814
(208) 665-7270
(208) 665-7290 (fax)
abistline@povn.com
ISB: 5216

Attorney for Plaintiffs

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

CHARLES COWARD and ANNE COWARD,

husband and wife,

Plaintiff/Appellant,

vs.

CRYSTAL HADLEY, an individual,

Defendant/Respondent.

Case No. CV-07-1997

NOTICE OF APPEAL

Appeal from the District Court, First Judicial District, State of Idaho, the Honorable
Stephen Verby presiding.

I. Judgments and Orders Appealed

- a. The Amended Memorandum Decision and Orders on Post Trial Motions, filed
July 15th, 2009.
- b. The Judgment resulting therefrom filed August 4th, 2009.

II. Issue on Appeal

- a. Did the District Court error by interpreting a settlement agreement between the parties to extinguish any right that Coward had in the use of the alley behind Hadley's home?

III. Statement of Jurisdiction

- a. The matter is a final judgment and appealable pursuant to Idaho Appellate Rule 11(a)(1).


IV. A standard record and transcript is requested.

- V. In addition to the matters included pursuant to IAR 28, Defendant's Exhibit D (Agreement as to Boundary Line, Instrument 723577) is requested to be included in the record on appeal.

VI. Certification of Attorney:

- a. I, Arthur Bistline, certify that this Notice of Appeal has been served upon the Court reporter and upon all other parties to this proceeding.
- b. I further certify that the Clerk of the District Court has been paid the estimated fee for preparation of the transcript and for the record and all appellate filing fees have been paid.

Respectfully submitted this *H* day of September 2009.



ARTHUR M. BISTLINE

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of September, 2009, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Gary Finney
120 E Lake St., Ste. 317
Sandpoint, ID 83864
Fax: 208-263-8211

- Hand-delivered
- Regular mail
- Certified mail
- Overnight mail
- Facsimile
- Interoffice Mail

BY: _____

JENNIFER HOSKINS

GARY A. FINNEY
FINNEY FINNEY & FINNEY, P.A.
Attorneys at Law
120 East Lake Street, Suite 317
Sandpoint, Idaho 83864
Phone: 208-263-7712
Fax: 208-263-8211
ISB NO. 1356

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2009 SEP 22 P 3:00

MARIE SCOTT
CLERK DISTRICT COURT
ms
DEPUTY

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

CHARLES COWARD and ANNE	)	Case No. CV-2007-1997
COWARD, husband and wife,)	
	)	NOTICE OF CROSS-APPEAL
Plaintiffs-Appellants,)	
	)	Fee Category: L4
v.	)	Fee: \$101.00
)	
CRYSTAL HADLEY, an)	
individual,)	
)	
Defendant-Respondents,)	
and Cross-Appellant.)	
)	

TO: THE ABOVE NAMED PLAINTIFFS-APPELLANTS, CHARLES COWARD and ANNE COWARD, AND THE PARTY'S ATTORNEY, ARTHUR BISTLINE, AND THE CLERK OF THE ABOVE ENTITLED COURT NOTICE IS HEREBY GIVEN THAT:

1. The above named cross-appellant, CRYSTAL HADLEY, appeals against the above named Plaintiffs-Appellants to the Idaho Supreme Court from the:

a. The Amended Memorandum Decision and Orders on Post Trial Motions, filed July 15, 2009.

b. The Judgment resulting there from, filed August 4, 2009.

c. The Order Denying Defendant Hadley's Motion To Alter, Amend, Reconsider, And To Make Additional Findings And Conclusions Awarding Attorney Fees To The Defendant, submitted September 15, 2009.

2. In the above entitled action the presiding Judge is Honorable District Judge Steve Verby.

3. That the party has a right to cross-appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule (11(a)(5)), or (12(a)) I.A.R.

4. A preliminary statement on appeal which the cross-appellant intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the cross-appellant from asserting other issues on appeal are:

The cross-appellant intends to assert that District Judge Verby should have awarded attorney fees to the cross-appellant, HADLEY, below because, COWARD, cross-respondent pursued this action below, pursued or defended frivolously, unreasonably, or without foundation. The District Court erred in denying Defendant's Motion To Alter, Amend, Reconsider, And To Make Additional Findings And Conclusions Awarding Attorney Fees To the Defendant, filed August 18, 2009.

5. a. Is additional reporter's transcript requested?
Yes.

b. The cross-appellant requests the preparation of the following portions of the reporter's transcript:

Arguments of Counsel and the Court's oral ruling on the hearing of September 9, 2009, on the Defendants' Motion Motion To Alter, Amend, Reconsider, And To Make Additional Findings And Conclusions Awarding Attorney Fees To the Defendant.

6. The cross-appellant request the following documents to be included in the clerk's (agency's) record in addition to those automatically included under Rule 28, I.A.R. and those designated by the appellant in the initial notice of appeal:

The Order Order Denying Defendant Hadley's Motion To Alter, Amend, Reconsider, And To Make Additional Findings And Conclusions Awarding Attorney Fees To The Defendant.

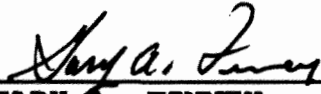
6. I certify:

a. That a copy of this notice of cross-appeal and any request for additional transcript have been served on the reporter.

b. That the clerk of the district court or administrative agency has been paid the estimated fee for preparation of the reporter's transcript and any additional documents requested in the cross-appeal.

c. That service has been made upon all parties
required to be served pursuant to Rule 20.

DATED this 22nd day of September, 2009.



GARY A. FINNEY
Attorney for Defendant/Cross-
Appellant, CRYSTAL HADLEY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, as indicated below or by deposit in U.S. Mail, postage prepaid, this 22nd day of September, 2009, and was addressed as follows:

Honorable Steve Verby
District Judge
VIA HAND DELIVERY - Chambers

Arthur M. Bistline
Law Office of Arthur M. Bistline
1423 N. Government Way
Coeur d'Alene, Idaho 83814

Valerie Larsen
Certified Court Reporter
215 South First Avenue
Sandpoint, Idaho 83864



Heather Schubert

GARY A. FINNEY
FINNEY FINNEY & FINNEY, P.A.
Attorneys at Law
Old Power House Building
120 East Lake Street, Suite 317
Sandpoint, Idaho 83864
Phone: (208) 263-7712
Fax: (208) 263-8211
ISB No. 1356

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2009 SEP 25 P 1:11

MARIE SCOTT
CLERK DISTRICT COURT
Marie Scott
DEPUTY

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


CHARLES COWARD and ANNE	)	Case No. CV-2007-1997
COWARD, husband and wife,)	
	)	ORDER DENYING DEFENDANT
Plaintiff,	)	HADLEY'S MOTION TO ALTER,
	)	AMEND, RECONSIDER, AND TO MAKE
v.	)	ADDITIONAL FINDINGS AND
	)	CONCLUSIONS AWARDING ATTORNEY
CRYSTAL HADLEY, an	)	FEEES TO THE DEFENDANT
individual,)	
)	
Defendant.)	
)	

This matter came on for oral argument to the Court on
September 9, 2009 at 2:00 p.m. Counsel for the Defendant and
counsel for the Plaintiff presented oral argument and the Court
orally announced its ruling in open Court upon the record
denying the Defendant's request for an award of attorney fees.
The Court further directed the preparation and entry of this
Order, that,

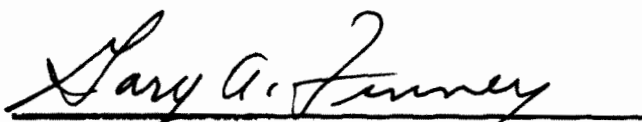
ORDER DENYING DEFENDANT HADLEY'S MOTION TO ALTER, AMEND, RECONSIDER, AND TO
MAKE ADDITIONAL FINDINGS AND CONCLUSIONS AWARDING ATTORNEY FEES TO THE
DEFENDANT - 1

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Court does not find that the Plaintiff brought, pursued, or defended frivolously, unreasonably, or without foundation, and the Court does not award attorney fees to the Defendant, HADLEY, against the Plaintiff, COWARD. The Defendant HADLEY'S Motion, filed August 18, 2009 is DENIED.


IN WITNESS WHEREOF this 25th day of September 2009.


STEVE VERBY
District Judge

Prepared and Submitted by:


GARY A. FINNEY
Attorney for the Defendant

Agreed and Consented as to Form and Content:

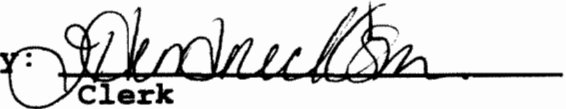

ARTHUR M. BISTLINE
Attorney for the Plaintiff

CLERK'S RULE 77 (d) CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy, with the clerk's filing stamp thereon showing the date of filing, of the ORDER DENYING DEFENDANT HADLEY'S MOTION TO ALTER, AMEND, RECONSIDER, AND TO MAKE ADDITIONAL FINDINGS AND CONCLUSIONS AWARDED ATTORNEY FEES TO THE DEFENDANT, was served by U.S. Mail, postage prepaid, this 25 day of Sept, 2009, and was addressed as follows:

Gary A. Finney
Finney Finney & Finney, P.A.
Attorneys at Law
Old Power House Building
120 East Lake Street, Suite 317
Sandpoint, Idaho 83864

Arthur M. Bistline
Law Office of Arthur M. Bistline
1423 N. Government Way
Coeur d'Alene, Idaho 83814

By: 
Clerk

IN THE SUPREME COURT OF THE STATE OF IDAHO

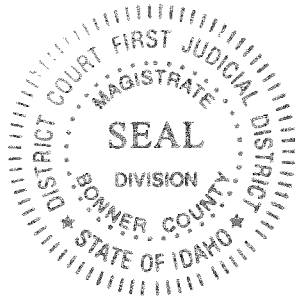
CHARLES COWARD and ANNE)
COWARD, husband and wife,)
)
Plaintiffs/ Appellants,)
)
vs.)
)
CRYSTAL HADLEY, an individual,)
)
Defendant/ Respondent.)
_____)

SUPREME COURT NO. 36981
CLERK'S CERTIFICATE

I, Marie Scott, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do certify that the foregoing Record in this cause was compiled and bound under my direction and is a true, correct and complete Record of the pleadings and documents requested by Appellant Rule 28.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 18 day of December, 2009.

MARIE SCOTT
Clerk of the District Court



Susan M. Mueller
Deputy Clerk

Clerk's Certificate

IN THE SUPREME COURT OF THE STATE OF IDAHO

CHARLES COWARD and ANNE)
COWARD, husband and wife,)
)
Plaintiffs-Appellants,)
)
vs.)
)
CRYSTAL HADLEY, an)
Individual,)
)
Defendant/Respondent.)

SUPREME COURT NO. 36981
CLERK'S CERTIFICATE OF EXHIBITS

I, Marie Scott, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do hereby certify that the following is offered as the Clerk's exhibit on appeal:

Defendant's Exhibit List filed September 15, 2008
Defendant's Pretrial Submission filed September 15, 2008
Hadley's Trial Memorandum and Proposed Findings and Conclusions filed September 16, 2009
Letter from Arthur Bistline filed September 24, 2008
Plaintiff's Trial Brief filed September 24, 2008
Memorandum in Support of Motion to amend Complaint and in Opposition of Motion to Dismiss filed September 25, 2008
Letter from Arthur Bistline filed September 25, 2008
Affidavit of Arthur Bistline in support of Motion to Amend Complaint filed September 25, 2008
Plaintiff's Supplement to Exhibit List filed September 26, 2008
Plaintiff's Exhibits presented at Trial: #1-42 (September 29, 2008)
Defendant's Exhibits presented at Trial: A-Q (September 29, 2008)
Hadley's Post Trial Brief filed November 4, 2008
Plaintiffs' Reply to Defendant's Closing Statement filed November 10, 2008
Requests for Additional Briefing and Submission of Proposed Findings of Fact and Conclusions of Law filed December 31, 2008
Defendant Hadley's Additional Memorandum and Proposed Findings of Fact and Conclusions of Law filed January 20, 2009
Plaintiffs Additional Briefing filed January 21, 2009
Proposed Findings of Fact and Conclusions of Law filed January 21, 2009
Defendant's Memorandum of Attorney Fee and Costs filed February 20, 2009
Plaintiff's memorandum in Support of Motion to Reconsider filed February 27, 2009

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 18 day of December, 2009.

Marie Scott
Clerk of the District Court

Susan M. Mueller
Deputy Clerk



Certificate Of Exhibits

IN THE SUPREME COURT OF THE STATE OF IDAHO

CHARLES COWARD and ANNE COWARD,)
husband and wife,)
)
Plaintiffs/Respondents,)
)
vs.)
)
CRYSTAL HADLEY, an individual,)
)
Defendant/ Appellant.)
_____)

SUPREME COURT NO. 336981

CERTIFICATE OF SERVICE

I, Marie Scott, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do hereby certify that I have personally served or mailed, by United States Mail, one copy of the CLERK'S RECORD and to each of the Attorneys of Record in this cause as follows:

ARTHUR M. BISTLINE
1423 Government Way
Coeur d'Alene, ID. 83814

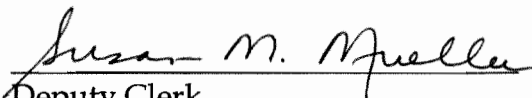
GARY A. FINNEY
Old Power House Building
120 E. Lake St., Ste. 317
Sandpoint, ID 83864

ATTORNEY FOR RESPONDENT

ATTORNEY FOR DEFENDANT

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 18 day of December, 2009.

Marie Scott
Clerk of the District Court


Deputy Clerk



In the Supreme Court of the State of Idaho

CHARLES COWARD and ANNE COWARD,)
husband and wife,)
)
Plaintiffs-Appellants,)
)
v.)
)
CRYSTAL HADLEY, an individual,)
)
Defendant-Respondent.)

ORDER GRANTING IN PART AND
DENYING IN PART THE MOTION
TO AUGMENT THE RECORD

Supreme Court Docket No. 36981-2009
Bonner County Docket No. 2007-1997

A MOTION TO AUGMENT THE RECORD was filed by counsel for Appellants on February 26, 2010. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellants' MOTION TO AUGMENT THE RECORD be, and hereby is, GRANTED in part and the augmentation record shall include the documents listed below, copies of which accompanied this Motion, as EXHIBITS:

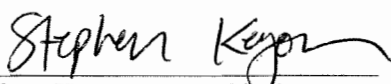
1. Defendant's exhibit C, admitted at Tr. 50, Ln. 1;
2. Defendant's exhibit D, admitted at Tr. 50, Ln. 1; and
3. Plaintiffs' exhibit 2, admitted at Tr. 68, Ln. 5;

IT FURTHER IS ORDERED that Appellants' MOTION TO AUGMENT THE RECORD be, and hereby is, **DENIED** in part as to the document listed below as it does not bear the file stamp of the district court as required by IAR 30(a).

1. Plaintiff's Memorandum in Support of Motion to Reconsider, dated February 27, 2009.

DATED this 17th of March 2010.

For the Supreme Court


Stephen W. Kenyon, Clerk

cc: Counsel of Record

ORDER GRANTING IN PART AND DENYING IN PART THE MOTION TO AUGMENT THE
RECORD – Docket No. 36981-2009