4-1-2011

Erickson v. McKee Clerk's Record v. 2 Dckt. 38130

LAW CLERK Vol 2 of 4

IN THE

SUPREME COURT

OF THE

STATE OF IDAHO

MAUREEN ERICKSON,

Personal Representative, and

Appellant,

VS.

JEROME S MCKEE,

Respondent. and

Volume II

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

Hon. Fred Gibler *District Judge*

Lloyd Herman

Attorney for Appellant

Charles Dean

Attorney for Respondent

Filed this ____ *day of* ____, *19*__

Clerk

By ____ *Deputy*

SUPREME COURT NO. 38130-2010 DISTRICT COURT NO. CV-2006-40

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3 orig Affidavits in note book

LLOYD A. HERMAN
LLOYD HERMAN & ASSOCIATES, P.S.
213 N. University Road
Spokane Valley, WA 99206
(509) 922-6600 * fax (509) 922-4720
ISB No. 6884

IN THE DISTRICT COURT OF THE FIRST JUDICAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTYOF SHOSHONE

IN THE MATTER OF THE ESTATE OF NATALIE PARKS McKEE, Deceased	CASE NO. CV 2006-40 AFFIDAVIT OF LLOYD A. HERMAN

I, LLOYD A. HERMAN, being first duly sworn on oath, deposes and says:

1. That I am now and, at all times material hereto, a citizen of the United States, resident of the State of Washington, over the age of 18 years, and am competent to be a witness herein, and licensed to practice in Washington and Idaho.
2. I am one of the attorneys for Maureen Erickson, Personal Representative for the Estate of Natalie Parks McKee.
3. The following documents attached as exhibits are true and correct copies.
   a. Exhibit "1" – Bill McKee's letter to Michael Peacock 1/14/05;
   b. Exhibit "2" – Bill McKee's letter to Jerome McKee 11/1/05;
   c. Exhibit "3" – Affidavit of Bill McKee January 20, 2006;
   d. Exhibit "4" – Notice of Heaing 7/12/06;
   e. Exhibit "5" – Peacock's Memorandum to Branstetter 7/13/06;
   f. Exhibit "6" – Affidavit of Bill McKee January 26, 2007;
   g. Exhibit "7" – Community Property Agreement filed 7/12/88;
   h. Exhibit "8" – Affidavit of Maureen Erickson July 29, 2009;

Lloyd A. Herman & Associates
213 N. University
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

i. Exhibit "9" – Holographic will of Natalie Parks McKee 6/26/94;

j. Exhibit "10" – Affividat of John J. Rose, Jr. pg 3, lns 20-26;

k. Exhibit "11" – Bill McKee's videotaped deposition, pg 28, lns 1-9;

l. Exhibit "12" – Death Certificate of Natalie Parks McKee;

m. Exhibit "13" – Deposition of Jerome McKee 5/29/07;

n. Exhibit "14" – Safety Deposit Box sign in sheet;

o. Exhibit "15" – Affidavit of Dirk Erickson May 12, 2009;

p. Exhibit "16" – Affidavit of Van Smith July 27, 2009;

q. Exhibit "17" – Affidavit of Rhonda Fay June 18, 2009;

r. Exhibit "18" – Cutting permits/documents obtained by Van Smith;

s. Exhibit "19" – Affidavit of Garth Erickson May 11, 2009;

t. Exhibit "20" – Spokane County Complaint for Fraud Action No. 07202928-6 and Judgment Nun Pro Tunc;

u. Exhibit "21" – Shoshone County Fraud Filing Instrument #443803 (Exhibit 20 above);

v. Exhibit "22" – Idaho Code 55-901 – Fraudulant Conveyances of Land;

w. Exhibit "23" – Idaho Code 55-914 – Fraudulant Transfers/Creditors;

x. Exhibit "24" – Idaho Code 15-2-902 – Duty of Custodian of Will;

y. Exhibit "25" – Idaho Code 55-101/55-101A – Real Property Defined;

DATED this 29th day of July, 2009.

Lloyd A. Herman

GIVEN under my hand and official seal this 29th day of July 2009.

BEATRICE E. MCNEIL NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES DECEMBER 08, 2010

NOTARY PUBLIC in and for the State of Washington, residing in Spokane
MY COMMISSION EXPIRES: 12-8-2010

Lloyd A. Herman & Associates
213 N. University Rd.
Spokane, Valley WA 99206
(509) 922-6600

Charles R. Dean, Jr, ISB # 5763
Dean & Kolts
2020 Lakewood Dr., Suite 212
Coeur d'Alene, Idaho 83814
(208) 664-7794/(208) 664-9844 FAX

DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT

STATE OF IDAHO, COUNTY OF SHOSHONE

IN THE MATTER OF THE ESTATE OF NATALIE PARKS McKEE:	Case No.: CV 06-40
Deceased.	AFFIDAVIT IN OPPOSITION TO "AMENDED" MOTION FOR RECONSIDERATION

Jerome McKee, being duly sworn, deposes and says:

1. I am a resident of Lafourche Parish, Louisiana. I am over the age of majority, I have personal knowledge of the facts set forth herein, and am competent to testify thereto.

2. I am the oldest son of Bill E. McKee and Natalie Parks McKee. I graduated from the University of Idaho with a BA in Architecture and a regular commission in the US Navy. I served on active duty as a Light Attack/Fighter pilot and Naval Officer for seven years. In 1975, I moved to Louisiana, where I have remained with my family and been self-employed as a farmer, cattleman and businessman. I have served the business community through positions with the American Sugarcane League as Chairman of the Legislative Committee, Chairman of the Board, President and General Manager. I have testified before the U. S. Congress on behalf of the Louisiana sugar industry and on behalf of the entire U. S. sugar industry. I was appointed by President Bush I and President Clinton to serve on the Agricultural Advisor Trade Committee (ATAC) to advise the U. S. State Department and the U. S. Department of Agriculture on

ORIGINAL

international trade issues regarding sugar. This appointment required a Top Secret Clearance. I have also served on numerous Boards of Directors in our local community.

3. Throughout my life, I have had a wonderful relationship with my father. He and I corresponded frequently and talked at least weekly by phone, with increased frequency in his later years. He and I shared many common interests and happy times together. My wife and I made one to two trips with our children each year to visit with my parents, and with my father after my mother passed away. Likewise, my parents visited us one to two times a year, with my father continuing the same after our mother died. We spent many holidays together over the years. As a result, our children have wonderful memories of times spent together with my parents in Idaho and British Columbia. This all began to change in late 2005, however, from approximately the time my father was 88 years old, and I was 61.

In 2002, during a visit with us in Louisiana, my father told us that because of his financial assistance to Maureen and her family, he was in extreme financial difficulty. He asked for our help. We began giving him money and helping him financially. We visited him in Idaho more or less every 3-4 months to help organize his finances and his house. We cleaned his house and hired Loving Care of Wallace to keep his house clean, cook his meals, drive him on errands and generally care for him. When I began helping with his financial problems in 2002, we arranged for his bank account to have only his name on it, and to have certain monthly expenses automatically deducted from his bank account. I ensured that this left him adequate funds monthly for his living expenses. Additionally, I began paying the remainder of his monthly expenses by having the statements sent to me, at my father's request. When my sister obtained our father's Power of Attorney in early 2005, she put her name back on his bank accounts, refinanced his houses and caused him financial

troubles immediately. To keep my father safe at his home, and to pay off my father's indebtedness, most of it incurred on Maureen's behalf, we spent over $80,000 of our personal funds.

4. My sister has many problems and has relied since the early 1990s on my parents for most of her support. Since my mother's death in 1994, Maureen has bled my father dry of literally all of his assets as Curtis Clark detailed for this Court in the guardianship/conservatorship. What hasn't been sold to pay for her living expenses is now encumbered far beyond reason.

5. Throughout her motion and supporting affidavit (and disturbingly those of her two sons), my sister takes a grain of truth and spins it into a tale of incredible deception. While I will not address all of her fabrications, a few examples should be sufficient:

a. As both my brother and I have attested, there was no family meeting at which my parent's estate was discussed in 1994. We gathered as a family for Thanksgiving because we were certain it would our mother's last and that she would not survive until Christmas. The last thing we would have discussed was estate issues, especially in front of Maureen's children (who forget to tell the Court when recounting their recollection of this supposed meeting that they were 10 and 13 at the time). The only accurate statement Maureen makes is that we were all present at my parents' home shortly before my mother died.

b. Maureen did not move to Washington in 1997 so that she could take care of my father. As reflected in Exhibit 1 (a letter my father wrote to Maureen in 1996 after years of covering her expenses (see Exhibit 2 in which he details many of his expenses)), he advised that he after selling $58,000 worth of stock in the preceding 15 months and borrowing $15,000 on his house, he had "*no immediately marketable property left and damned little stock to raise more money on*". My father then went on to say that he did not have enough income to even

support himself. The truth is my father told Maureen that he could no longer support her living in Southern California and that she would have to move back home if he wanted help from him. She personally told me she would never "return to the valley" and therefore chose Spokane in which to live.

c. Maureen did not provide for my father in any meaningful way until it became expedient for her to do so in the conservatorship proceedings. When my wife and I arrived to help him in 2002 after he complained to us about being broke, his house was a mess. It was filthy, he had no food, his papers were strewn everywhere and his many of his bills were ignored and unpaid. For that reason, we secured and paid for outside help because Maureen was providing no meaningful assistance.

d. Maureen's claim that I received a copy of my mother's holographic will in 2002 from my father and that we conspired to keep it from her is a complete falsehood and shameful. On November 9, 2002, Maureen faxed me a letter, a copy of which is attached as Exhibit 3, asking if I wanted to buy her property on the North Fork of the Coeur d'Alene River. I was puzzled as to why she would think the property was hers. My wife and I had purchased the property jointly with my parents in 1971 after I returned from an overseas deployment. In 2000, my father deeded the property to me by deed recorded March 13th of that year (a copy of which is attached hereto as Exhibit 4). He did so consistent with my parents' promise at the time of the purchase and the will I later discovered that he had executed in 1999 (a copy of which is attached hereto as Exhibit 5).

I managed to reach Maureen by telephone a few days later. I made notes of our conversation, a copy of which is attached hereto as Exhibit 6. In our conversation, I specifically asked Maureen about what she meant when she referred to the property my wife and I had

owned for years as her property. Maureen told me that our father had found a handwritten will from our mother leaving everything to her and that that was the basis upon which she claimed ownership of the property. I asked her to send me a copy, which she did a few days later.

I then spoke with my father who told me that he had not known about the will, but had recently found it in their safety deposit box and discussed it with Maureen again. On November 25, 2002, my father sent me a letter discussing logging of the property, a copy of which is attached hereto as Exhibit 7. In that letter, my father mentioned the will, asking only that I not tell my brother about it because he was not mentioned. Instead, according to my father, he would try to do "something to equalize".

I assuredly did not get the will from my father. Instead, I received it from Maureen, meaning that Maureen had the will from at least 2002 and probably knew about it well before. If she had discovered it in August of 2004 as she must now claim to avoid a statute of limitations defense, her son Garth would not have stated as he did in the attached letter (Exhibit 8) I received from him in February of 2005 (5 months after her now professed discovery) – "*My Mom never had the Will probated because she foresaw no reason necessary to do so*".

e. Maureen's claim (one that her sons disappointingly support) that in August of 2004, my wife and I were pressing my father to do a new will and that we contacted Nancy McGee to do so is an outrageous lie. In fact, just the opposite is true. We were assisting my father clean up his affairs after having surgery and in preparation for his trip with us to Louisiana. He mentioned that he had a will (which turned out to be Exhibit 5), but did not know where the original could be found. He could only recall that a female attorney had prepared the will. I looked through the phonebook reading him names of female attorneys until he

remembered Nancy McGee. My father then telephoned her and she agreed to drop the will by his home the following day.

At no time did either my wife or I ask Mrs. McGee to do a new will for my father or pressure him to do so. Instead, it was Maureen who did so. My father apparently mentioned to Maureen that Mrs. McGee was bringing his will by the following day for, as this Court can see from the accompanying affidavit of Nancy McGee, *it was Maureen, not me*, who contacted her saying that our father wanted a new will. Mrs. McGee also confirms that *it was Maureen, not us* who was trying to convince my father to sign a new will.

6. I did not tell Maureen that I had reconveyed a half interest in the Coeur d'Alene River property to her or anyone else. As a perfect example of "no good deed goes unpunished", I agreed to allow Maureen to log a portion of the property in 2002 and keep the net proceeds because she claimed she would lose her house if she did not get some money. My wife and I had already spent tens of thousands of dollars covering my father's expenses taking care of Maureen, knew more would be necessary and thought that allowing her to do so would be a good way to avoid coming out of pocket even more money to assist her. She now twists our gift to a family member as a sign we admitted she owned a portion of the property. That will not happen again.

7. Maureen's biggest tale of all is her newly concocted claim that in 2004 she also saw a holographic will signed by my father in 2004. In all of the mountains of pleadings and affidavits she and her attorneys have filed in this proceeding, the guardianship/conservatorship proceeding, the Washington action, and the lawsuit my father (as Maureen's surrogate) filed against my wife and me in Shoshone County District Court, not one mention is ever made of another holographic will until this motion. Maureen did not claim one existed in 2002 when she first brought my mother's alleged will to my attention and never suggested there was another

will even though she had months to respond to my opposition to her motion for partial distribution even though it would have behooved her to do so. Another fairytale.

8. In July of 2005, I was contacted by attorney Michael Peacock on behalf of Maureen, telling me that to avoid litigation I must "buy out" Maureen's alleged interest in the North Fork property. A true and correct copy of the letter is attached hereto as Exhibit 9. The Court will note that Mr. Peacock made no mention of a holographic will other than the one Maureen claims our mother signed.

9. As a result of Maureen's threatened legal action, I retained attorney Michael Branstetter to represent me. As reflected in Exhibit 10 hereto, Mr. Peacock then began negotiations with my attorney.

10. Despite clear knowledge of who I was and who represented me, Mr. Peacock prepared and Maureen signed under penalty of perjury an Application for Informal Probate in this matter in which they both averred that Maureen and Bill were my mother's only heirs. As a result, neither I, my brother or Mr. Branstetter received notice of Maureen's surreptitious filing. In doing so, Maureen managed to get herself appointed as the personal representative under a will of questionable authenticity 12 years after my mother's death.

Jerome McKee

State of Louisiana }

Parish of LAFOURCHE }

SUBSCRIBED AND SWORN to before me the 7th day of August 2009, at THIBODAUX, Louisiana.

Notary Public for Louisiana
My Commission Expires WITH MY LIFE

(Seal)

I have been owed about what 1992 1993 and 1994 cost me but we had enough to pay most of it as we went.

1995 was worse and I sold $55 000 worth of stock, $2000 received from Lotti and all I received for social Security and pension.

In last 3 months of 1996 I have sold $20 000 worth of stock and borrowed $15,000 on the house.

I have no immediately marketable property left and loaned Lotti stock to cover her money out.

My social security and pension is not enough to cover living expenses plus costs of Priest and Mayer plus taxes and insurance.

EXHIBIT 1

DITECH.com 1 800 71 FIXED
no closing cost
yrs payment ?
6 3/4 %

1 800 91 FIXED
adjustable 1/4 % below
everybody else

Present mtg. holders
RIVER CITY MORTGAGE
MR - CHRIS WALES
WILSHIRE & GREENPOINTE
6 3/4 — 7/4
WELLS FARGO
JOE HOWARD

COLUMBIA MORTGAGE
MIKE - CANNON
$ 1700 @ Month
include taxes & insurance
don't get
1 (206) 329 3574

[redacted]
1465 @ month include
taxes & insurance
due $ 179,000 00

MONEY PROVIDED BY MCKEES

ACTUAL 288.03

1992 ESTIMATED TO BE $350.00. WE LEFT HOME FEBRUARY 1 WITHOUT BRINGING THIS INFORMATION BECAUSE WE HAD BEEN ASSURED THE FINAL HEARING WOULD NOT OCCUR FOR AT LEAST 30 DAYS WE WERE CALLED IN LOUISIANA AND ADVISED THAT IT HAD BEEN MOVED AHEAD. SO, WE FLEW DIRECTLY TO ORANGE COUNTY TO ATTEND. SINCE, IT HAS BEEN MOVED AHEAD AGAIN. FINAL FIGURES FOR 1992 CANNOT BE SUPPLIED UNTIL I CAN RETURN TO IDAHO

1993 MACEA CHECKS

CHECK $5000 — ✓ No. 5582 - $5000 LEGAL FEE TO MR. STABILE

✓ No. 5256 500 LIVING EXPENSES FOR MAUREEN

✓ No. 5259 105 CHASE VISA

✓ No. 5731 200 CHASE VISA

✓ No 5732 200 CHASE MASTERCARD

✓ No 5749 24 VOLVO REPAIR

✓ No 5771 32 DE PORTOLA SCHOOL

✓ No 5772 32 LA PAZ INTERMEDIATE SCHOOL

✓ No 5775 8 " " "

✓ No 5804 32 DE PORTOLA SCHOOL

✓ No 5809 1000 DEPOSIT MAUREEN'S ACCT - LIVING EXP

✓ No 5814 32 DE PORTOLA SCHOOL

✓ 5815 32 " " "

EXHIBIT 2

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KEMPEL	✓	No 101	5000	SCHWAMB & STABILE LEGAL
	✓	102	1000	WARWICK & DUCKWORTH ACCTG.
	✓	103	500	MAUREEN - LIVING EXPENSE
7300	✓	104	800	MAUREEN - LIVING EXPENSE
	✓	106	1125	DR DAVID GARLAND - BOYS PSYCHOLOGY
4125	✓	107	3000	SCHWAMB & STABILE - LEGAL
McKEE	✓	5902	500	MAUREEN LIVING EXPENSE
	✓	5906	100	MAUREEN " "
		5907	77.52	ARROWHEAD WATER
		5908	1000	WARWICK & DUCKWORTH
		5909	32	DE PORTOLA SCHOOL
		5910	32	DE PORTOLA
		5911	75	J.C. PENNEY - MAUREEN ACCT
		5914	2	DE PORTOLA SCHOOL
1858		5915	40	LA PAZ INT. "
		5916	1000	WARWICK & DUCKWORTH - ACCTG
		5917	1500	SCHWAMB & STABILE - LEGAL
		5919	1000	WARWICK & DUCKWORTH - ACCTG
		5920	2500	WARWICK & DUCKWORTH ACCTG
7000		WIRE TRANSFER	1000	GLASERS - LEGAL FEES
10000		5921	1000	MAUREEN ERICKSON - LIVING EXPENSES & BILLS
TOTAL TO		~~5901~~		
$28808.03		2/2/94	99.00	CHASE VISA
			99.00	CHASE MASTERCHARGE
		9/18/93	12.50	MISSION VIEJO ANIMAL HOSPITAL DOGNEL
		8/1/94	~~155.48~~	MISSION VIEJO MOTORS - VOLVO REPAIR
2305		~~9/20/93 CASH~~	~~169.48~~	~~VETERINARIAN VET HOSPITAL~~ 120 DOG TREA

PAGE N

Added Credit Card Charges

Citibank 9/30/92	$ 15.15	
" 9/30/92	223.16	288.0
Am. Express 12/10/92	49.72	
~~Citibank 2/26/93~~	~~46.97~~	
~~4/28/93~~	~~39.95~~	
7/5/93 & 7/12/93 Citibank/Maureen Maureen & Boys Hotel - AAU KARATE	571.40	
Am Express - Junior Olympics	218.69	
American Express - Jr. Olympics	127.92	
7/13/93 AMER EXPRESS AIR FARE MAUREEN & BOYS JR OLYMPICS	718.00	
1924.04		

~~Total~~	28808.03
	330.50
	288.03
	1924.04
$	31350.60
	241.22
Summary of Citibank Master Card	$31,591.82

Page 6&7

FOR MAUREEN
FROM B/M^c KEE
CONTRIBUTIONS

PERSONAL CHECKS 8969.00
CAR PURCHASE & REPAIR 6311.79
AMERICAN EXPRESS (MAUREEN) 3139.42
" " (BILL) 1875.18
CITIBANK (MAUREEN) 13593.22
PLEDGE 1200.00
35088.61

TOTAL 35088.61
5773.30
29315

REEN

Maureen

AMERICAN EXPRESS

MY CARD
- AIRLINE 252.80
- LODGING/TRAVEL 157.52
- RESTAURANT 113.17
- MERCHANDISE 39.46
- INS. IN. GN 4.00
- PHONE 5.93

MAUREEN CARD 3139.42

~~4773.30~~

TOTAL

CITIBANK

ENTERTAIN 112.47

HEALTH CARE 1845.95

LODGING 601.25

MERCHANDISE 4918.83

MISC. 73.00

RESTAURANTS 429.72

SERVICES 138.03

VEHICLE SERV 700.64

~~39~~ 19.92

985 447-4261

DEAR JERRY

I NEED MONEY TO TAKE CARE OF MY FAMILY. SINCE YOU BOTH INFLUENCED AND FRIGHTENED DADDY INTO NOT TAKING ANY EQUITY OUT OF OUR HOUSE, I HAVE NO OTHER WAY TO RAISE MONEY THAN TO SELL MY PROPERTY ON THE RIVER. I HAD HOPED TO BUILD THERE AT SOME POINT. SINCE I WILL NOT QUALIFY FOR A LOAN I THOUGHT I MIGHT BE ABLE TO COME UP WITH THE MONEY TO BUILD A HOUSE ON THE RIVER WHEN I HAD NO OTHER OPTIONS. THE BOYS LOVE THIS LAND AS THEY OFTEN CAMPED AND PLAYED THERE WITH DADDY.

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MOTHER WANTED ME TO SELL EVERYTHING I NEEDED TO GET MY CHILDREN THROUGH COLLEGE AND TAKE CARE OF THEM AND MYSELF. LET ME KNOW IF YOU WANT THE PROPERTY AS I CAN NOT WAIT TO SELL OR LOG IT.

Maureen

EXHIBIT 3

392931

(Optional)

Recorded	☐	Platted	☐	Key Punched	☐	To Treasurer	☐
Microfilmed	☐	Deed Card	☐	Master File	☐		☐
Indexed	☐	Compared	☐	Abstracted	☐		

QUITCLAIM DEED

COPY

THIS INDENTURE, Made this 13TH day of MARCH

in the year of our Lord ~~one~~ TWO thousand ~~nine hundred~~ and between

BILL E. MCKEE /

of SHOSHONE County of

State of IDAHO, the party of the first part, and JEROME S. MCKEE
MINA C. MCKEE

of THIBODAUX County of

State of LOUISIANA, the parties of the second part,

whose current address is BOX 702 THIBODAUX LA 70302

WITNESSETH That the said party of the first part, for and in consideration of the sum of

1 DOLLARS,

lawful money of the United States of America, to HIM in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, does by these presents remise, release and forever QUITCLAIM, unto the said parties of the second part, and to THEIR heirs and assigns all certain lot, piece or parcel of land, situate, lying and being in . County of SHOSHONE, State of Idaho, bounded and particularly described as follows, to-wit:

SEE ATTACHED

Location of above described property _____
House No. Street

MAIL DEED TO:

MAIL TAX NOTICE TO:
Name JEROMES MCKEE
Address BOX 702
City & State THIBODAUX, LA 70302

EXHIBIT 4

392931

TOGETHER With all and singular the tenements, hereditament and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

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

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

SIGNED, SEALED AND DELIVERED IN PRESENCE OF

Bill E. McKee ..... [Seal]

..... [Seal]

..... [Seal]

..... [Seal]

STATE OF IDAHO
County of Shoshone } ss.

On this 13th day of March in the year 2000, before me Sharon K Jacobs a Notary Public in and for said State, personally appeared Bill E. McKee

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

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

Sharon K Jacobs
Notary Public for the State of Idaho.
Residing at , Idaho.

SHARON K. JACOBS
NOTARY PUBLIC - STATE OF IDAHO
RESIDING AT WALLACE, IDAHO
MY COMMISSION EXPIRES 08/18/2004

No.. ...

QUITCLAIM DEED

—TO—

Dated..... 19....

STATE OF IDAHO, } ss.
County of .....

I hereby certify that this instrument was filed for record at request of.....

at.....minutes past ... o'clock ... M., this ... day of ..., A.D. 19.. in my office, and duly recorded in Book.. of ... at page ...

Ex-Officio Recorder.

By..... Deputy.

Fees, $ .....

Mail to .....

LAST WILL AND TESTAMENT
OF
BILL EARL McKEE

I, BILL EARL McKEE, a legal resident of Osburn, Idaho, being of sound mind do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils heretofore made by me, if any there be.

ARTICLE I.

I am a widower. I hereby declare that on the date of execution hereof, I have the following children who are living, to wit: JEROME S. McKEE, CRAIG N. McKEE, and MAUREEN McKEE ERICKSON.

All references to my children or descendants are intended to include children of mine born after the execution of this Will and such afterborn children shall have no right in my estate other than those granted by this Will.

ARTICLE II.

It is my intention by this Will to dispose of all of my property. I hereby declare that all of the property of which I am seized or possessed or in which I have any interest of any kind is my separate property.

EXHIBIT 5

ARTICLE III.

I hereby declare that all of my just debts, obligations and expenses of my last illness and funeral expenses be paid out of my estate as soon as practicable after my death; provided, however, that this direction shall not authorize any creditor to require payment of such debt or obligation prior to its normal maturity in due course; secured debts are to be paid by the beneficiary. In the event that any property or interest in property passing under this will or by operation of law, or otherwise by reason of my death shall be incumbered by a mortgage or a lien or shall be pledged to secure any obligation, it is my intention that such indebtedness shall not be charged or paid from my estate, but that the devisee, legatee or beneficiary shall take such property or interest in property subject to all incumbrances existing at the time of my death.

ARTICLE IV.

While I love and care for all of my children and grandchildren, some family members are "well-heeled", and not in need financially. It is my desire to in some way assist those most in need financially.

Therefore, I hereby devise and bequeath all of the rest, residue and remainder of my estate, whether real or personal, as follows:

Unto my beloved son and daughter-in-law, JEROME and MINA McKEE, I hereby devise and bequeath any and all interest I may have in

 BEM

the "North Fork" property owned jointly with them, provided, however, that it is my desire that Maureen McKee Erickson and her boys should have access to the property, should the lease on the Priest Lake property be lost.

Unto my beloved son and daughter-in-law, CRAIG and SYLVIA McKEE, I hereby devise and bequeath the sum of Five Thousand Dollars ($5,000.00), from the sale of real estate.

Unto my beloved grandchildren and step-grandchildren, BILL McKEE, GENEVIEVE McKEE, BOB FORET, and MARTIN FORET, I hereby devise and bequeath that each be allowed to select items of personal property from my home in which to remember me and their Grandmother, NATALIE McKEE. It would be my suggestion that said personal property be a gun, a piece of jewelry of NATALIE McKEE'S, or other household or personal item. However, each grandchild shall be allowed to select any items of personal property as a memento of their grandparents.

Unto my beloved grandchildren, GARTH ERICKSON, DANE ERICKSON, and DIRK ERICKSON, I hereby devise any and all remaining guns, recreational equipment, boats, cars, and recreational vehicles, to share and share alike, provided that such items shall be held in trust by their mother, MAUREEN McKEE ERICKSON, until each child reaches the age of eighteen (18) years of age.

Unto my beloved daughter, MAUREEN McKEE ERICKSON, I hereby devise and bequeath all the rest, residue, and remainder of my estate, whether real or personal property, after fulfilling the specific bequests listed above.

ARTICLE V.

I hereby appoint my daughter, MAUREEN McKEE ERICKSON, to be my Personal Representative of this, my last Will and Testament.

It is my intention that said nominee shall act without bond, and without the intervention of any court, except as required under the non-intervention laws of the jurisdiction of which my will is admitted to probate, in the case of non-intervention wills. My Personal Representative nominated herein shall have full power to sell, convey, lease mortgage, and incumber, without notice, court approval or confirmation, any assets of my estate, real or personal, at such price and terms as my nominee may seem just, whether or not such acts are necessary for the administration of my estate and to do any other acts which my nominee, in his or her discretion, may deem necessary or advisable in the administration of my estate.

ARTICLE VI.

It is my desire that the expenses of my funeral and burial be minimal, including a "no expense" casket. There are two lots owned and remaining at the cemetery in Osburn. It is further my desire to be buried next to NATALIE P. McKEE.

IN WITNESS WHEREOF, I subscribe my name to this Last Will and Testament this 16th day of November, 1999.

Bill Earl McKee

BILL EARL McKEE

I, the above-named testator, sign my name to this instrument on the day and year above-written, and being first duly sworn, do hereby declare this instrument as my Last Will and Testament and that I sign it willingly and execute it as my free and voluntary act for the purposes herein expressed, and that I am eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence whatsoever.

Bill Earl McKee

BILL EARL McKEE

We, the undersigned witnesses, do hereby sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority, that the testator signs and executes this instrument as the testator's Last Will and Testament, and that the testator signs it willingly, and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence whatsoever.

Sandra Searcy of Penehurst, Idaho

Bill W. McKee of P.O Box 295 Silverton ID

STATE OF IDAHO)
)ss.
County of Shoshone)

SUBSCRIBED, SWORN to and acknowledged before me by BILL EARL McKEE, the testator, and by Sandra Nearing and NANCY W. McGEE, the witnesses, this 16th day of November, 1999.

SHARON K. JACOBS
NOTARY PUBLIC - STATE OF IDAHO
RESIDING AT WALLACE, IDAHO
MY COMMISSION EXPIRES 08/18/2004

Sharon K Jacobs

NOTARY PUBLIC, in and for the State of Idaho, residing at: _____
My commission expires: _____

BEM

985 447-4261 home (509) 443-6127 cell 475-7905

DEAR JERRY

I NEED MONEY TO TAKE CARE OF MY FAMILY. SINCE YOU BOTH INFLUENCED AND FRIGHTENED DADDY INTO NOT TAKING ANY EQUITY OUT OF OUR HOUSE, I HAVE NO OTHER WAY TO RAISE MONEY THAN TO SELL MY PROPERTY ON THE RIVER. I HAD HOPED TO BUILD THERE AT SOME POINT. SINCE I WILL NOT QUALIFY FOR A LOAN I THOUGHT I MIGHT BE ABLE TO COME UP WITH THE MONEY TO BUILD A HOUSE ON THE RIVER WHEN I HAD NO OTHER OPTIONS. THE BOYS LOVE THIS LAND AS THEY OFTEN CAMPED AND PLAYED THERE WITH DADDY.

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MOTHER WANTED ME TO SELL EVERYTHING I NEEDED TO GET MY CHILDREN THROUGH COLLEGE AND TAKE CARE OF THEM AND MYSELF. LET ME KNOW IF YOU WANT THE PROPERTY AS I CAN NOT WAIT TO SELL OR LOG IT.

Maureen

EXHIBIT 6

STOLE THIS PEN FROM FORE: CRUK

11/25/02

Dear Jerry & Mike

Enclosed are maps, tax statements, etc. on property. Also explanation of reduced rate on timber land. By the way I learned that once you have this they can't take it away. Didn't used to be that way.

Hope these help you to remember how it all goes. Sure helped me.

Maureen would like to selectively log it up on top. She hates to cut a tree as bad as the rest of us. She contacted a forester who shares views and guarantees a clear cut that would not show from road. I walked up with him as much as I could. Can't climb hills like I used to!

EXHIBIT 7

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Will leave it to you two parties figure it out.

Please note that there is no mention of Craig & Sylvia in Mother will. I'd suggest something to explain and not show him the will. Love you all, Grant.

2/23/05

Uncle Jerry,

I appreciated our conversation a while back, and I thought that I would follow it up with this letter. It is very difficult for my Mom to stay out of debt with the little income that she receives. She did get a really good buy on our house, and I know that Grandpa helped with the down payment. A lot of her financial problems are due to her spending on my brothers (myself included, especially in the past.) She has no social life, never vacations, and is constantly having to come up with money for my brothers' school events, athletics, auto insurance, auto accident damage, etc, etc. On top of that, her legal bills somehow involve the family, and were seen as necessary not only by her, but by Grandpa as well.

The river property would not be of concern to me if it were not for

EXHIBIT 8

the stress it has caused my Mom. I believe that her financial planning in the past was reliant on the fact that Grandma and Grandpa's portion of the property would be hers. She was surprised to find out that her parents' portion was no longer hers, and even more surprised as to how it was handled, and how it had been kept a secret from her for so long. Grandpa now regrets the decision, and the whole situation is causing him a lot of stress in a time of his life when he should have none.

The last thing I wanted to cover was your description of Grandma's Will's appearance as being suspicious. As mad as you may be at my Mom, we both know that she is not capable of creating a fake will, and then forging her mother's name. My Mom never had the Will probated because she foresaw no reason necessary to do so. Though it may provide some legal leverage, I

can not imagine it is an argument that you want to fight in court, especially in your parents' home town. It is still plausible to me that a settlement can be reached. I have always seen your family as close to ours in the past and I wish the best to all of you in the future. I hope you try to get ahold of Grandpa. Life is pretty tough for him right now. I know that he misses being in the Valley, and I know that his feelings are hurt that he has not heard from you or Craig in a long time. Thank you.

Sincerely,

Garth

(206) 399-8302
garthje@hotmail.com

MICHAEL F. PEACOCK
Attorney at Law, PLLC

123 McKinley Avenue
Kellogg, Idaho 83837
Telephone: (208) 783-1231
Facsimile: (208) 783-1232

July 6, 2005

Jerry McKee
Box 702
Thibodaux, LA 70302

RE: Estate of Natalie P. McKee

Dear Mr. McKee:

I am writing to you on behalf of Maureen Erickson to try to straighten a couple of matters out before the situation becomes serious and involves litigation.

First of all, as verified by your father, your mother executed a holographic Will leaving her share of their community property estate to Maureen. Your father acknowledges this, but indicates that he never filed this with the Court.

In Idaho, your mother had a right to give her half of the community estate to anyone that she wanted and apparently this Will was made in response to your parents' promise to your sister that she would be given the balance of their estate if she moved to this area to take care of them, which she did.

It is not clear to me how Maureen became aware that your father had not followed through with this. She just went along and figured that what your father did was fine and that she was entitled to the remainder of the estate when he passed away. Only recently did Maureen become aware of your mother's Will, which left Maureen her one-half of the estate. This means that Maureen was entitled to one-half of the proceeds of the "Mojie" property, as well as one-half of any other existing assets at the time your mother passed away. This is Idaho law.

Because Maureen was not aware and did not file for probate, she now may go through a procedure called a determination of heirship. This will vest her in one-half interest in the community property at the time of your mother's passing. This would include not only the Mojie property, but the Priest Lake lease, upon which Maureen has paid, and the home in Osburn.

I believe that your sister thinks that you believe she is financially draining your father of his assets because of her illness and divorce. However, she was promised by both of your parents that she would receive the estate if she moved here. From what she has told me, you and your brother were both aware of that promise and agreed to it. Now for some reason, it appears that you do not want to honor that agreement.

EXHIBIT 9

Your sister finds herself in severe financial straits where she could lose her home. She is trying to put two sons through college and needs to realize some money from some of the property. Because your dad loves the Priest Lake property and is able to go there occasionally, she does not want to sell that and has in fact, paid to keep that lease current for his behalf. She wants him to be able to live at home as long as he possibly can and therefore, sale of the Osburn residence probably is not a viable alternative at this time. That leaves the property on the North Fork of the Coeur d'Alene River as a source from which she can receive payment unless she is forced to ask for an accounting of his assets over the years since your mother passed on.

As she has told you, she has been told that there is a considerable amount to be obtained from the sale of the property on the North Fork. If we have to go much farther, we can get a estimate as to the selling price, but I can tell you some of the prices I have seen have topped $20,000 an acre on the river.

Where we are now is that if you would care to buy your sister out of her interest in the river property, this matter could be put to bed. I think we can also resolve the remainder of the issues with the other assets. However, if you do not chose to do so, Maureen will have no choice but to file a determination of heirship and then proceed to obtain an accounting of assets. There are several assets from your father's home, such as a coin collection and guns, which are no longer there and she assumes may have been taken by one of the brothers. These things all have value and although it is not her intent to try to pick at everyone for minor items, she really is in bad financial straits and needs to be able to get closure on this matter so she knows where she stands. Her position is perfectly tenable legally and although she wants to have a good relationship with all of her family, the position she finds herself in is that of a single mother who only has received sporadic child support payments; who has tried to care for your father and has had him live with her a lot of the time. She is unemployable because of her injuries, she has two children in college and somehow needs to pay her bills without sacrificing their education.

As you can see, she does not have very many options, so I hope you can understand why she is proceeding.

I look forward to your response regarding this matter. Thank you.

Very truly yours,

Michael F. Peacock
Attorney at Law

MFP:dkr

cc: Maureen Erickson

MICHAEL F. PEACOCK
Attorney at Law

123 McKinley Ave.
Kellogg, ID 83837
(208)-783-1231
FAX (208)783-1232

September 9, 2005

To: Mike Branstetter

From: Michael F. Peacock

RE: Erickson

I'm sorry that it has taken me sometime to get back to you, but with the Tuggle case ongoing along with all the normal load, I've been swamped.

The history as I understand it is that Maureen agreed to move to this area from California and care for her mother and father. In return it was agreed by all the parties that she would inherit the property of the parents for caring for them. Maureen, the parents, and the sons including your client discussed this and agreed. Maureen fulfilled her part of this bargain and continues to care for Bill and tries to do whatever she can to keep him safe. She has had him live with her for extended periods of time.

When Bill sold the Mojie property, she didn't really give it much thought as she felt Bill should do what he needed and she would be still inherit. At some point Maureen and Bill had a discussion and Bill informed Maureen that her mother had gone so far as to write out a will and put it in the safety deposit box. Bill got the holographic will and gave te original to Maureen. Bill had never acted on the will as he should have and acknowledged to me that he knew about it but just didn't do anything.

Maureen tells me that your client has acknowledged all these facts on several occasions, but them changes his mind. She doesn't want a long and drawn out problem, she is trying to ensure that her children can finish their educations, including college.

Perhaps you can discuss this with your client and see if there isn't some way to resolve the problems between the two short of litigation.

Maureen has been involved in serious automobile accidents and has had to have back surgery and extended recovery periods. It occurs to me that your client feels that she is taking advantage of their father. I don't believe this to be true. She has upheld her part of the agreement and cared for Bill even when she was barely able to get around herself. However, given the agreement and the fact that some valuable property in which Maureen had a ½ interest has been disposed of since her mother's death it is extremely unlikely she has received near what she is entitled to. She isn't privy to the amount received for the Mojie property to which, in equity, she was entitled

EXHIBIT 10

Mike Branstetter
RE: Erickson
September 9, 2005

to ½.

I have talked extensively with Bill. He has told me that there was an agreement and that the will is his wife's. He is elderly and doesn't' want his children to fight. To some extent, he tells them what he thinks they want to hear, but I believe that he is an honest man and will tell the truth. In any event, the holographic will speaks for itself.

Please let me know your thoughts as soon as possible.

Thank you.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of August 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Michael F. Peacock
123 McKinley Avenue
Kellogg, ID 83837-2501
Facsimile: (208) 783-1232

Lloyd A. Herman
Lloyd A. Herman & Associates, P.S.
213 N. University
Spokane, WA 99206
Facsimile: (509) 922-4720

- ☒ U.S. MAIL
- ☐ FEDEX GROUND
- ☐ HAND DELIVERED
- ☐ OVERNIGHT MAIL
- ☐ FACSIMILE

Charles R. Dean, Jr.

Charles R. Dean, Jr, ISB # 5763
Dean & Kolts
2020 Lakewood Dr., Suite 212
Coeur d'Alene, Idaho 83814
(208) 664-7794/(208) 664-9844 FAX

DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT

STATE OF IDAHO, COUNTY OF SHOSHONE

IN THE MATTER OF THE ESTATE OF NATALIE PARKS McKEE:	Case No.: CV 06-40
Deceased.	MEMORANDUM IN OPPOSITION TO "AMENDED" MOTION FOR RECONSIDERATION

INTRODUCTION

Petitioner, Maureen Erickson ("Maureen"), who became the Personal Representative of her mother's estate in this action by trickery and deceit, demonstrates yet again in this motion her absolute inability to tell (or, more likely, by this point recognize) the truth. Literally, almost every purported fact she relates through her counsel is either completely untrue or so twisted in meaning that the truth becomes a lie.

Regardless, she is not entitled to the relief she seeks as a matter of law.

PROCEDURAL BACKGROUND

Natalie Parks McKee died in 1994. She was survived by her husband Bill McKee, sons, Jerome ("Jerry") McKee and Craig McKee, and daughter, Maureen.

After having exhausted virtually all of her father's estate on herself and her family in the 10 years following Natalie's death, Maureen turned her attention to Jerry as her next source of funding. In 2005, she hired attorney Michael Peacock to threaten Jerry with litigation if he did

ORIGINAL

not voluntarily return the half interest in acreage on the North Fork of the Coeur d'Alene River that Jerry, his wife, and parents had jointly purchased in 1971 after Jerry returned from overseas deployment (the "Property"). While negotiating with Jerry and his attorney, Michael Branstetter, in the later half of 2005, Maureen and her attorney hatched a new plan to give them some tactical advantage – this probate proceeding.

Obviously thinking that they could sneak something past Jerry and Mr. Branstetter, Maureen verified as true an Application for Informal Probate that Mr. Peacock prepared that affirmatively averred that ***Natalie had no heirs or children other than herself and her father***. No notice of the Application was accordingly sent to Jerry, his brother or Mr. Branstetter. Maureen and her counsel thus hid from the Court when seeking her appointment that she, in fact, had two brothers, brothers she did not want to know about this proceeding.

Maureen's objective was to secure an order of distribution from this Court as to an interest in the Property before Jerry or Mr. Branstetter knew or could do anything about it. Fortunately, Jerry and Mr. Branstetter discovered what Maureen and Mr. Peacock tried to pull and appeared in the action. Maureen nevertheless filed a petition for partial distribution of a ¼ interest in the Property (ostensibly her mother's interest) without advising this Court of the fact Bill and Natalie McKee had executed and recorded a Community Property Agreement that passed title to the Property to her husband upon her death as a matter of law. She also did not disclose that her father had deeded his (and Natalie's) interest in the Property to Jerry and his wife over 5 years earlier and that the estate thus had no interest in the Property to distribute.

In response, Jerry filed both a Motion to Dismiss this probate proceeding based on the statute of limitations and opposition to the motion for partial distribution premised upon the Community Property Agreement. In reply to the Motion to Dismiss, Maureen came up with

THE BIG LIE (see *infra*). In reply to the opposition to her less than candid motion for partial distribution, Maureen made essentially the same arguments she makes now, except with fewer words and more coherence.

This Court correctly saw that Maureen was not entitled to an order of partial distribution because the Community Property Agreement trumped the alleged holographic will, whatever its terms may be. It accordingly denied the motion for partial distribution and announced that it need not decide the statute of limitations issue at that time. Before doing so, however, this Court permitted a continuance of the hearing on the motions premised on a horrific misrepresentation (obviously fed to Mr. Peacock by Maureen). In a motion he filed on January 23, 2006, Mr. Peacock represented that Maureen's son was in the Marine Corp. and made it seem like he had only a day or so to see his mother before he was deployed into a war zone. The truth, however, was that her son was in college in Seattle, in Marine ROTC, was not scheduled to deploy and had enough time off to be able to take a cruise with his mother and siblings paid for through the refinance of his grandfather's home.

THE BIG LIE

Maureen knew when she tried to probate a will 12 years after her mother died that she had statute of limitations problems. She therefore concocted the tale that her father defrauded her by keeping the existence of her mother's holographic will secret until she discovered it in her father's safety deposit box on August 17, 2004. In that way, she could claim the 3-year statute of limitations for probating the will (IC § 15-3-108) was tolled.

As the Court is well aware from the guardianship/conservatorship proceedings, by 2006-7, Bill McKee would sign anything Maureen put in front of him. He has done so repeatedly to help convince both Idaho and Washington Courts that he perpetrated a fraud on his daughter by

keeping the existence of the will secret. However, in truth, Maureen knew from at least November of 2002 about the will. As explained in the attached affidavit of Jerry McKee, Maureen faxed him a letter on November 9, 2002 asking if he wanted to buy the Property. Puzzled as to why she could even begin to think she had any interest in the Property, Jerry telephoned Maureen. Maureen (not Bill) then told Jerry about Bill's discovery of the alleged holographic will in his safety deposit box. Jerry had to explain to Maureen that he and his wife had owned half of the Property since its purchase in 1971 and their parents' interest had been deeded to him 2 years before. Maureen then sent Jerry a copy of the will. Jerry discussed the will with his father, suspecting that it was not genuine because of the nonsensical statement therein that Natalie could count on Maureen to take care of Jerry if he needed help and the fact that the will made no mention of her other son, Craig.[1] His father wrote back referencing the will and the possibility of logging the Property to help Maureen's financial plight. Bill asked only that it be kept secret from his son Craig, since he was not mentioned in the will (a situation he would try to otherwise remedy) and would feel slighted.

Nothing was kept from Maureen or the sons who now support her version of the will discovery. As the Court will note from the letter from Garth attached to Jerry's affidavit, Garth referenced the will and the fact his mother never sought to probate it because she did not think it necessary. That letter was dated in February of 2005, only 5 months after Maureen now claims she "discovered" the will and before Maureen realized she had a statute of limitations problem. Her son clearly would not have made the statement about not probating the will had it been such a recent discovery. He was, instead and unquestionably, referring to her many-year delay in probating the will.

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[1] Nonsensical in the sense that Natalie knew Jerry was highly successful and that Maureen was bleeding her parents

The fiction about the discovery of the will and Bill's now-admitted fraud was then used to perpetrate another deceit on the courts of Washington.[2] While the guardianship/conservatorship was pending (and, in fact, during the very week Maureen was testifying before this Court as to how much she loved her father and wanted to care for him), Maureen secretly filed a lawsuit against her father for fraud in Spokane Superior Court seeking $2,000,000 in damages from him. The fraud alleged was the same phony claim that her father had kept the will from her. Maureen then retained Lloyd Herman, her present lawyer in this matter, to represent Bill. Together they then colluded to circumvent the orders of this Court in the conservatorship proceeding by stipulating to a judgment that awarded Maureen all of her father's assets. They then filed a petition in Shoshone County to have the Washington judgment admitted in Idaho so that they could end run this Court's order prohibiting the attempt to transfer the Priest River lease to Maureen. Of course, the Washington Court was not told about the proceedings in Idaho before this Court or the fact that the claims Maureen was making were a total sham.

The truth about her many year knowledge of the existence of the alleged holographic will would have resulted in not only the motion for partial distribution being denied, but this probate being dismissed for being time barred.

ARGUMENT

A. This Motion Is Untimely. This Court denied Maureen's motion for partial distribution *on April 19, 2007*. Eleven days later, Maureen, through Mr. Peacock, filed a pro

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virtually dry of most of their liquid assets and had never taken care of anyone in her life without money from others.

[2] This Court may find of interest how Maureen has used the transcript of this Court's announcing its Findings of Fact and Conclusions of Law on Jerry's motion to dismiss. This Court's efforts to articulate that there might be factual issues on the fraud defense to the statute of limitations issue have since been used by Maureen and her current counsel as being a recommendation from this Court that she sue her father for fraud.

forma motion for reconsideration that had no argument and no substance. Mr. Peacock did nothing to supplement that motion or bring it on for hearing.

IRCP 11(a)(2)(B), of course, requires that a motion for reconsideration be brought within 14 days of the challenged order. Maureen's current counsel cleverly attempts to circumvent that time limitation by piggybacking onto Mr. Peacock's motion, calling this motion an "Amended Motion for Reconsideration".

This Court denied Maureen's motion for partial distribution over 28 months ago. In that time period, Maureen did nothing whatsoever to bring her original motion on for hearing. Doing so now with the ploy of amending the original motion clearly violates the spirit of Rule 11(a)(2)(B) and should not be permitted.[3]

B. This Court Did Not Treat The Motion As One For Summary Judgment.

Maureen's attempt to challenge this Court on procedural grounds is misguided for two reasons. First, Maureen misstates the record. This Court did not grant a motion to dismiss. That motion was denied because the Court felt there were factual issues related to the statute of limitations. Instead, what this Court denied was Maureen's motion for a partial distribution. That motion was timely opposed and no objection was made by Maureen or her counsel in reply that this Court was somehow procedurally in error in considering Jerry's opposition.

Second and in any event, Maureen brought the motion, noticed it up for hearing in January of 2007, and then secured a 2-½ month continuance until April of 2007 before it was argued and submitted. She thus had more than twice the notice to which she would have been entitled had Jerry's opposition to her motion instead been filed as a motion for summary judgment.

Maureen thus has it backwards. She brought the motion upon which this Court ruled. Jerry simply opposed it within the time limits Maureen set in her original notice. By deceit (see *supra*), Maureen then secured more time to respond to Jerry's opposition than she ever would have had if the issue of the Community Property Agreement been brought before the Court by summary judgment motion.

C. Maureen Is Not Entitled To Any Relief As A Matter Of Law. Aside from being untimely, Maureen's arguments in support of her motion mean nothing as a matter of law.

Bill and Natalie McKee entered into a Community Property Agreement, which they then duly recorded as required by former Idaho Code § 32-921. That agreement specifically provided that title to the Property would pass to the survivor upon the death of the first spouse. That document remained of record from 1988 until the time of Natalie's death in 1994. By operation of that agreement, Bill McKee thus acquired all interest Natalie had in the Property. Bill then deeded his interest in the Property to Jerry and his wife in 2000.

Maureen now argues that factual issues exist as to whether Bill and Natalie revoked the Community Property Agreement. Jerry will not (and need not) stoop to pointing out the numerous and transparently false factual assertions Maureen and her counsel make in their moving papers, since nothing Maureen claims makes any difference in the outcome of the case even if all of her claims were true.

Before addressing why Maureen is not entitled to any relief based on her present claims, the Court should appreciate what she has now concocted. The Community Property Agreement establishes a future interest in real property and is thus subject to the Statute of Frauds. Since IC § 6-503 also applies to the "surrender" of an interest in real property, any contract to revoke or

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[3] If allowed, this Court would effectively allow every jurisdictional time limitation to be extended indefinitely by the

rescind the Community Property Agreement must also be in writing. *Writings signed by both Bill McKee and Natalie McKee are thus required to end the efficacy of the Community Property Agreement.*

When she originally replied to Jerry's opposition to her Motion for Partial Distribution, Maureen argued that her parents intended to revoke the Community Property Agreement as evidenced by a number of facts and circumstances she asserted to be true, including the existence of mother's alleged holographic will. No mention was ever made or claimed that Bill McKee had signed anything indicating an intent to revoke that agreement. The same held true in pleading after pleading and affidavit after affidavit in both Idaho and Washington. Now, after years of litigation in 4 different forums, Maureen now comes up with the claim her father also signed a holographic will at the same time his wife did. For the first time, she and her son assert they saw not just one, but two holographic wills in her father's safety deposit box.

With two holographic wills, Maureen can now claim that there are instruments signed by both parties to the Community Property Agreement and that there exists an ambiguity as to what the parties intended such that this Court should take evidence to determine if Bill and Natalie intended by their holographic wills to revoke the Community Property Agreement. Maureen, of course, does not produce a copy of the recently hatched holographic will of her father, nor explain why she did not make a copy when she supposedly copied her mothers when it was discovered. Of course, her claims are a complete and utter fabrication designed to bootstrap herself into her current argument, truth be damned.

Regardless of truth, Maureen's claims are time barred. Maureen admits in her affidavit filed in support of this motion (Exhibit I) that Jerry told her about the deed to the Property in the

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filing of a one-page motion for reconsideration and not setting it for hearing.

fall of 2002. An action to set aside a deed on the grounds of duress, fraud or undue influence must be filed within 3 years of the date of discovery (*Jemmett v. McDonald*, 136 Idaho 277 (2001)). As in *Jemmett*, different dates are possible – March 13, 2000 when the deed was recorded or the fall of 2002 when Maureen admits she was told of the deed. No action was filed to set aside that deed within 3 years of either date and, as in *Jemmett*, the claim is time barred.

Moreover, any claim that the deed was void as being a fraudulent transfer as Maureen appears to claim is also of no avail. Jerry was possessed of the Property under claim of title for more than 5 years before any action was taken concerning title to the Property and thus held the Property adversely pursuant to IC § 5-207. Without even addressing the other missing elements of a fraudulent conveyance, Maureen is time barred under that section, as it existed when this action was initiated.

Maureen's attempts to dodge the statute of limitations are also transparent fabrications that have no impact on the running of either statute of limitations. Whether Jerry told her or not ("not" is the operative word) that he had or would reconvey the interest deeded by his father, no action has ever been taken to set aside the deed. Even if her claims are taken as true, Maureen has known for many years that Jerry did not reconvey any interest to his father. As of August of 2009, *more than 9 years after the deed and 4 years after Maureen started her quest through Mr. Peacock*, no action to set aside the deed has been filed.[4]

Maureen's claims are also barred by the Statute of Frauds. She has not and cannot produce a copy of the supposed holographic will of Bill McKee. The purpose of the Statute of Frauds (IC § 6-503) is to "guard against the frailties of human memory and the temptation of

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[4] A motion for partial distribution of an asset the estate of Natalie McKee did not own does not qualify as an action to set aside a deed. As the PR, Maureen could have filed an action to set aside the deed were there real grounds to do so, but she did not.

litigants and their friendly witnesses [like Maureen and her sons] to testify to facts and circumstances that never happened" (*Dunn v. Dunn*, 59 Idaho 471, 484 (1938)). Giving any consideration to Maureen's newly hatched claim that she and her son saw a holographic will signed by Bill would countenance such a fraud.

Dated: August 10, 2009

Dean & Kolts

By _____
Charles R. Dean, Jr.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of August 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Michael F. Peacock
123 McKinley Avenue
Kellogg, ID 83837-2501
Facsimile: (208) 783-1232

Lloyd A. Herman
Lloyd A. Herman & Associates, P.S.
213 N. University
Spokane, WA 99206
Facsimile: (509) 922-4720

☒ U.S. MAIL
☐ FEDEX GROUND
☐ HAND DELIVERED
☐ OVERNIGHT MAIL
☐ FACSIMILE

Charles R. Dean, Jr.

Charles R. Dean, Jr, ISB # 5763
Dean & Kolts
2020 Lakewood Dr., Suite 212
Coeur d'Alene, Idaho 83814
(208) 664-7794/(208) 664-9844 FAX

DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT

STATE OF IDAHO, COUNTY OF SHOSHONE

IN THE MATTER OF THE ESTATE OF NATALIE PARKS McKEE:	Case No.: CV 06-40
Deceased.	AFFIDAVIT IN OPPOSITION TO "AMENDED" MOTION FOR RECONSIDERATION

I, NANCY W. McGEE, being first duly sworn, depose and say:

1. I am an attorney duly licensed to practice in the State of Idaho.

2. In 1999, Bill McKee, with whom I have been acquainted with for years, asked me to draft a will for him. I did so after meeting with Bill. No one else from his family participated in my consultation with Bill, and I was confident that he was competent to execute his will.

3. The will I drafted for Bill left his half interest in some property he and his son Jerry owned on the North Fork of the Coeur d'Alene River to Jerry. The will also left $5,000 to his other son, Craig. The balance of the estate was left to Bill's daughter Maureen with the clear statement that he was leaving her the bulk of his estate because she was the child in need, not because he loved his sons any less.

ORIGINAL

4. Bill left the executed will with me so that I could get copies. He failed to come by to pick it up as expected.

5. Five years later, I believe in August of 2004, I received a telephone asking if I had Bill's will. I do not recall if it was Bill or someone acting on his behalf that called with the inquiry regarding the will. I responded that I did and agreed to bring it to him at his home.

6. A day or so later, I received a telephone call from Bill's daughter Maureen advising me that her father wanted to do a new will and inquiring if I could do so when I dropped by with the first will I had done. I agreed to do so.

7. I went to Bill's house with his will. When I arrived, Bill was present. Also at the home were his daughter, Maureen and his son and daughter in law, Jerry and Mina. This was the first time that I had met Maureen, Jerry or Mina. I was also introduced to a couple of Maureen's children who were also present. I met with Bill at the kitchen table. Maureen, Jerry and Mina sat with us, and Maureen's children were in another room and not a party to the discussions that followed. During our discussion regarding what his will now had in it, Maureen would say to Bill, "you know mother wanted me to have everything." It became clear that whatever Bill stated that he wanted in his will was met with opposition by Maureen, and Bill would then nod and agree with Maureen.

8. It was my belief that Maureen was exerting undue influence on Bill. As a matter of professional responsibility, I declined to write a new will for Bill. I advised Bill that I could not ascertain what his wishes were, and that if he truly wanted me to do a new will he should contact me to make an appointment where I could talk to him alone. I advised him that his current will would remain valid, unless he revoked it. I also advised him that if he died without

a will his estate would be divided equally between his children. I never heard from him after that meeting, and no other will was prepared for him by me.

9. At no time did Jerry or Mina McKee contact me asking that I do a new will for Bill. Maureen was the only one who called indicating that Bill wanted to do a new will.

10. At the meeting I had with Bill where Maureen, Jerry and Mina were present, Jerry and Mina did not attempt to exert any undue influence on Bill. As I recall, both remained pleasant throughout and seemed embarrassed by what was happening.

NANCY W. McGEE

State of Idaho }

County of Shoshone }

SUBSCRIBED AND SWORN to before me the 11th day of August, 2009, at Kellogg, Idaho.

LINDA L. GATES NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho, residing at Kingston, Id.
My Commission Expires: 8/15/2014

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of August 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Michael F. Peacock
123 McKinley Avenue
Kellogg, ID 83837-2501
Facsimile: (208) 783-1232

Lloyd A. Herman
Lloyd A. Herman & Associates, P.S.
213 N. University
Spokane, WA 99206
Facsimile: (509) 922-4720

☐ U.S. MAIL
☐ FEDEX GROUND
☐ HAND DELIVERED
☐ OVERNIGHT MAIL
☒ FACSIMILE

Charles R. ~~Dean, Jr.~~

STATE OF IDAHO
COUNTY OF SHOSHONE/SS
FILED

2009 AUG 17 PM 1:03

PEGGY WHITE
CLERK DIST. COURT
BY [signature] DEPUTY
By Fax

LLOYD A. HERMAN
LLOYD HERMAN & ASSOCIATES, P.S.
213 N. University Road
Spokane Valley, WA 99206
(509) 922-6600 * fax (509) 922-4720
ISB No. 6884

IN THE DISTRICT COURT OF THE FIRST JUDICAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTYOF SHOSHONE

IN THE MATTER OF THE ESTATE OF NATALIE PARKS McKEE Deceased.	CASE NO. CV 2006-40 RESPONSE TO THE MEMORANDUM IN OPPOSITION TO AMENDED MOTION FOR RECONSIDERATION

I. INTRODUCTION

Comes Now Maureen Erickson, Personal Representative of the Estate of Natalie Parks McKee pursuant to IRCP 11(a)(2)(b), and responds to Jerome McKee's Memorandum in Opposition to the Amended Motion for Reconsideration. Clearly Jerome McKee Affidavit is contradictory and supports Maureen's position that Natalie's will was sent to Jerome by Bill. See Jerome's Exhibit 3.

II. FACTUAL BACKGROUND

There is a purpose behind detailing for the Court a factual background of the case. It is done for the purpose of laying out the FACTS. Jerome McKee is unable to formulate a single sentence that would fall under this category. He had dreamed up a scenario that he wants to fit to his plan of action, which is to strip his father and sister, and his deceased mother, of all assets for his own personal gain regardless of how he goes about accomplishing his goal.

The facts have been laid out for the court in prior pleadings, but reiterated here to bring forth the key issues before the Court.

FACT #1. The Motion to Dismiss was decided on facts outside the official record in this matter, and not the record established by the UNCONTRADICTED affidavits submitted. The affidavits and other information in the file establish that there are material questions of fact.

FACT #2. The Court decided a question not before it on motion; there was a motion to dismiss the estate and a motion for partial distribution before the Court. There was no motion for summary judgment before the court. The Court's decision resulted in a summary judgment.

FACT #3. In a summary judgment motion the moving party has the burden of showing the absence of any genuine issue as to all the material facts.

FACT #4. To satisfy his burden the moving party must make a showing that is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine material facts.

FACT #5. A motion for summary judgment all doubts are to be resolved against the moving party.

III. FACTS

The bottom line in this case is the FACT that Bill McKee hid the MUTUAL WILLS from all his children for a number of years, and specifically from Maureen Erickson who was not only appointed to be Natalie's personal representative, but who stood to gain Natalie's entire estate. Bill delivered and disclosed Natalie's will for the first time to Jerome as revealed in Jerome's Exhibit 7 to this motion (a letter dated 11/25/02). Exhibit 7 establishes three things: 1) that Maureen wanted to cut the timber on what she thought was her property; 2) that the will was delivered as part of the letter when Bill says, "there is no mention of Craig and Sylvia in Mother's will"; and 3) that Bill suggests that they not disclose the will.

The true date when Maureen discovered the will is actually supported by accident in Jerome's Affidavit and Bill's letter to Jerome in November 2002, when he claims that

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

Maureen told him about discovering the will in her father's safety deposit box in November 2002. The letter of November 2002 clearly demonstrates that Bill sent the will to Jerome as a means to influence Jerome to work out an agreement with Maureen about the property. In truth and in FACT, the safety deposit box did not exist until February 14, 2003, shortly after Bill sent the will to Jerome. See Exhibit 1 attached hereto. This means that there was NO safety deposit box in existence for Maureen to get the will out of in 2002. Exhibit 13 of our Amended Motion for Reconsideration, a portion of which is attach to this short memorandum as Exhibit 2 (Jerome's deposition under oath, pages 70, 71 and 72), admits that he had conversations about his mother's will with his father, and admits that he discussed it with his brother even though his father asked him not to.

It is important when judging factual matters that the Court consider and think about why it was necessary for Jerome to enter and reenter his father's safety deposit box three times, and after his many entries many of Bill's documents, including the copy of Natalie's holographic will and Bill's original holographic will, disappeared. In answers to interrogatories in Bill McKee v Jerome McKee, CV 07-469, Jerome McKee admits entering the safety deposit box three times. On the first occasion, 8/13/04, he admits seeing the original holographic will of Natalie McKee. Maureen Erickson entered the safety deposit box on 8/17/04 and found her mother's will when she copied it and took the original. Jerome entered the safety deposit box on 8/19/04 and admits that all the documents were there with the exception of Natalie's original holographic will. On the third occasion on 8/30/05, Jerome stated there were no documents other than silver certificates. Bill's deposition taken in the guardianship hearing, CV 07-120, and his suit against Jerome, CV 07-469, state that he was removed from his home on August 30, 2005 and taken to Sandpoint, Idaho (page 2 of the Complaint in CV 07-469 attached as Exhibit 3). On pages 9 and 10 of Bill's deposition attached as Exhibit 4, Bill states that while in Sandpoint he saw papers scattered from here to there, which he believed to be from his safety deposit box.

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

IV. CONCLUSION

There has been contradictory evidence provided by the parties to the litigation, all of which raises an issue of material fact as to whether Bill and Natalie McKee mutually agreed to rescind their community property agreement and enter into a contract to make a will with Maureen Erickson. The documentary evidence provided supports the contentions of Maureen Erickson. Once again, I must remind the Court when it ruled on the Motion to Dismiss there were no opposing affidavits, which supported Jerome McKee's contentions in this matter. Especially significant is that no affidavit has been submitted denying the existence of Bill McKee's holographic wills that he has testified he entered in to at the same time as Natalie and evidenced by his letters to both Jerome and his attorney.

Dated this 14th day of August, 2009.

LLOYD A. HERMAN
Attorney for Maureen Erickson
Personal Representative,
Estate of Natalie Parks McKee

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

PERSONAL SIGNATURE CARD AND IRS CERTIFICATION STATEMENT 08082055

Account Name/Title: McKEE, Bill E.

Exhibit 1

Account Number: 80662950

1 Bill E. McKee 513-05-0278
SIGNATURE (Primary Account Holder) SOCIAL SECURITY NUMBER

CHEXSYSTEM Sl or before Id
YEAR ISSUED/STATE MANAGER OVERRIDE APPROVAL

2 _____ _____
SIGNATURE SOCIAL SECURITY NUMBER

CHEXSYSTEM _____ _____
YEAR ISSUED/STATE MANAGER OVERRIDE APPROVAL

3 _____ _____
SIGNATURE SOCIAL SECURITY NUMBER

CHEXSYSTEM _____ _____
YEAR ISSUED/STATE MANAGER OVERRIDE APPROVAL

—Fold 4—

Account Type

Classic Interest	Classic Rewards	FirstChoice™ Gold	MyAccess	FirstChoice™ Interest	FirstChoice™ Minimum Balance	Varsatel•	ATM Card	Check Card	Market Rate Savings	Money Market Savings	3 - 12 Month CD	1 - 10 Year CD	Jumbo CD	Opt Up CD	Risk Free CD						
		X						X	X												

—Fold 3—

As evidenced by the signature(s) above:

I ("I" hereafter meaning "we" if more than one signer above) request that you open the type of deposit account(s) with the form of ownership designated on this agreement as of date shown. I acknowledge that if I request that a change be made to an account identified on this agreement such as removing a signer from the account, or adding a new signer to the account, that request may result in a change to the form of ownership originally designated on the agreement. I agree that I will authorize any changes of this nature by completing a Change Authorization form. I also acknowledge receiving a copy of the Deposit Agreement and Disclosures, Personal Schedule of Fees and agree to the terms.

Type of Ownership

☒ Single Name

☐ Joint Account with Right of Survivorship

☐ Joint Account without Right of Survivorship

☐ Agency Account

☐ Payable On Death—Revocable

- ☐ Single Name, Single Beneficiary
- ☐ Single Name, Multiple Beneficiaries
- ☐ Joint Tenants, Right of Survivorship, Single Beneficiary
- ☐ Joint Tenants, Right of Survivorship, Multiple Beneficiaries

Beneficiary Name(s)

_____

_____

—Fold 2—

Certification
Under penalties of perjury, I certify that:
1. **The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and**
2. **I am not subject to backup withholding because:**
   a. **I am exempt from backup withholding, or**
   b. **I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or**
   c. **the IRS has notified me that I am no longer subject to backup withholding, and**
3. **I am a U.S. person (including a U.S. resident alien).**

You must cross out item (2) above if you have been notified by the IRS that you are currently subject to backup withholding because of underreporting interest or dividends on your tax return. (See IRS Instructions for Form W-9.)

☐ **Nonresident Alien Status (if applicable). If all beneficial owners are considered Nonresident Aliens under United States tax law, check here and complete and sign the applicable Form(s) W-8.**

The Internal Revenue Service does not require your consent to any provision of this document other than the certification required to avoid backup withholding.

☐ Uniform Transfer to Minor—Irrevocable

MINOR NAME (Primary Account Holder)

CUSTODIAN NAME AND RELATIONSHIP TO MINOR

SUCCESSOR CUSTODIAN SIGNATURE AND RELATIONSHIP TO MINOR

SUBSCRIBING WITNESS SIGNATURE OF SUCCESSOR CUSTODIAN

☐ **Agency**
☐ Notarized Agency Letter of Appointment or Agency Agreement ☐ R

☐ **Estate**
☐ Certified copy of the court order appointing the representative for the estate "Personal Representative." Photocopy document and note on the photocopy, "Certified copy viewed by (name of staff member) and date viewed." ☐ R

—Fold 1—

☐ **Guardianship**
☐ Letters of Guardianship ☐ R
☐ Affidavit of Guardian ☐ R WA Only
☐ Postage-paid envelope pre-addressed to Clerk of Court ☐ R WA Only

☐ **Trust**
Affidavit of Trustee(s) (Bank form 93-14-5282B) ☐ R

☐ **Other** _____

OPENED BY: M. Martin SOURCE OF FUNDS: existing DDA

COMMENTS:

SERVICING R/C: 97600 MANAGING R/C: 97600

SOLICITOR: M. W. A PORTFOLIO MANAGER

Bank of America

Bank of America

Safe Deposit Box Rental Agreement

BANK OF AMERICA, N.A. "The Bank"

P No. 609 Annual Rental (Initial Term) 60.00

Name of Renter: Bill E McKee	[redacted]	Birth [redacted]
Name of Renter	Social Security Number	Birth Date
Name of Renter	Social Security Number	Birth Date
Billing/Notice - Name/Address	I.D. No. (For Primary Renter) [redacted]	I.D. No. (For Co-Renter) [redacted]
Billing/Notice Address: PO Box 242	Home Phone: (208) 753-9415	Business Phone
City, State, Zip: Wallace, Id 83873	Business/Occupation of Primary Renter: Retired	
Mother's Maiden Name [redacted]	Birthplace: Mt	Relationship of Co-Renter to Primary

Designation of Renters

☒ Personal ☐ Business

☒ Sole Renter ☐ Co-Renters
☐ Sole Proprietor ☐ Partnership
☐ Not For Profit Organization ☐ Corporation
☐ Last Named Person Is Additional Signatory (For Power of Attorney Only)

☐ Other _____

Subject to the Safe Deposit Box Rules and Regulations furnished on separate copy and incorporated by reference into this Safe Deposit Box Rental Agreement, Bank of America, N.A. hereby rents the above indicated Safe Deposit Box ("Box") to the Renter(s) for an initial term of one ye- -ommencing as of the date hereof, and thereafter from year to year until this Rental Agreement is terminated as provided. The amount of th .t shall be as indicated above unless the Bank notifies Renter in writing prior to any rental anniversary date that the annual rental for the next year shall be different. The Renter(s) by signing this Rental Agreement, accept(s) this Rental Agreement pursuant to the terms hereof and hereby acknowledges receipt of two keys to such Box and a copy of the Safe Deposit Box Rules and Regulations for said Box.

Payment Authorization

☒ Check if you want annual rents automatically charged against your account as indicated below:

You are hereby authorized to charge my ☒ checking ☐ savings account number 709358 53 for safe deposit rental payments in accordance with the above schedule. This authority is to remain in effect until revoked by me in writing, and it is agrees that until you actually receive such notice of revocation you shall be fully protected in making any such charge.

☐ Please bill me for the annual box rentals. (A billing fee may be charged for the billing service.)

Discount & Key Deposit

☐ Advantage (Gold/Prima) ☐ Money Manager (MRA) Key Deposit $ —
☐ Associate ☐ Premier Bank (Preferred /Small Business)
☐ Private Bank ☒ Classic Rewards

Bill E McKee
Individual Box Renter Signature

Individual Box Renter Signature

Individual Box Renter Signature

Name of Non-Individual Box Renter (Business Name)

By: _____
Signature of Non-Individual Box Representative

Title of Non-Individual Box Representative

Box Surrender

Box drilled as both keys were lost

Safe deposit box number 609 in the vault of Bank of America located at Silver Valley

branch center in Osburn ID (city/state), with 0 keys is hereby surrendered. All property stored in the box has been removed and received by the undersigned and all liability of the Bank is hereby released.

Key Deposit Refunded ☐ Yes ☒ No

X Bill E McKee
Signature of Renter

11-9-05
Date

Associate Name Marlene Martin Date Box Opened: 2-14-03 Number of Pages: 1

93-14-5572NSB 7-2001

Exhibit 2

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Q. Did he take trips around the world?
A. I believe -- I don't know whether he went completely around the world, but I think he's been on most of the continents, yeah.
Q. Do you know if your sister enabled any of that travel?
A. Well, she was an airline employee, so I think they got a discount for their travel.
MR. ROSE: E.
(Exhibit E was marked.)
BY MR. ROSE:
Q. Showing you what's been marked as Exhibit E, do you recognize the handwriting there first?
A. Well, it looks kind of like my mother's, yes.
Q. And do you recognize the signature at the bottom of the page?
A. Looks kind of like my mother's, yes.
Q. Do you recall having seen this document before?
A. Yes, I have.
Q. When's the first time that you recall seeing it?
A. I believe in 2000 -- late 2002.
Q. And what was the occasion that you saw it then?
A. A copy was mailed to me.
Q. By whom?
A. By my sister, I believe.

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Q. Had you had any knowledge of this will prior to that being mailed to you?
A. No.
Q. You deny any conversation about it with your father?
A. Yes, I do.
Q. Deny any conversation about it with your mother?
A. Yes.
Q. Deny any conversation about it with Maureen?
A. Maureen and I had conversations about it after she sent it to me, yes.
Q. You deny seeing it in your father's safety deposit box?
A. I did see it in my father's safety deposit box two years later.
Q. Two years later than when?
A. Than the first time I saw it.
Q. And when do you first recall seeing it?
A. In late 2002.
Q. Did you have any discussions with your father about it?
A. Probably.
Q. Do you recall what they were?
A. I know initially he told me he didn't know it existed either.

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Q. Did he change that?
A. He has changed it here recently, yes.
Q. Did you discuss this Exhibit E with any members of your family that you can recall other than Maureen after she sent it to you as you testified?
A. Yes, I did.
Q. And what members?
A. I certainly would have discussed it with my wife.
Q. Other than that?
A. I'm sure I discussed it with my brother.
Q. Other than that?
A. Well, not that we haven't already covered.
Q. I'm going to turn now to the verified petition for appointment of guardian/conservator, the document I showed you just moments ago. Are you familiar with that document?
A. I can't say I'm intimately familiar with it, but --
Q. Well, look at it and tell me if that's the document that you signed to be presented to the Court, please.
A. (Witness complies.)
Q. The document I showed you, that was the petition for guardianship that you signed?
A. That's correct.

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Q. Okay. In paragraph two it states: The alleged ward is being taken advantage of financially by his daughter, Maureen.
What evidence did you base that statement on?
A. Most of the evidence is financial, and I will defer to our accountant.
Q. Well, what financial information did you have at the time you signed this petition?
A. Well, we had copies of some of his -- some of his financial records that we made.
Q. What finan -- that you made?
A. Yes, with his approval.
Q. Are those from the records that you returned to him?
A. Some were and some were made from right there in his house, with his approval, once again.
Q. And when were those records made?
A. Probably over the course of a couple years.
Q. Okay. What evidence did you have about your father's finances between when you turned his records back, or you mailed those records back to when you filed this petition?
A. State that question again. I want to make sure I understand that one.
Q. What evidence did you have other than those

Exhibit 3

4. On August 30, 2005, the plaintiff was a lessee of safety deposit box number 106, at Bank of America, Osburn, Idaho. The plaintiff had $150,000.00 in United States currency stored in said safety deposit box and other valuable documents.

5. On August 30, 2005, the defendants entered into the plaintiff's safety deposit box # 106 and took possession of $150,000 United States Currency and other valuable documents belonging to the plaintiff, without authority of the plaintiff, and without instituting legal proceedings.

6. On August 30, 2005, the defendants removed the plaintiff from his home in Osburn, Idaho against his will, and removed the plaintiff to Bonner County, Idaho.

7. On approximately August 31, 2005, the defendants continued to hold the plaintiff against his will. As a result thereof, the plaintiff sickened from the mental distress caused by the defendant's conduct and required hospitalization. The plaintiff's sickening continued and subsequent hospitalization was required.

8. From approximately August 31, 2005 through September 3, 2005, the defendants held the plaintiff against his will in Bonners County, Idaho, at the defendants Idaho place of residence.

9. On approximately September 3, 2005, the defendant, Mina McKee, removed the plaintiff to Spokane, Washington and Salt Lake City, Utah. Mina McKee was aided and abetted by the defendant, Jerome McKee, and acted as an agent of Jerome McKee. The removal of the

EXHIBIT 4

fence through the bottom of my fingernail on my left hand little finger, and it was painful, to say the least, but I wasn't going to do anything about it. I have been hurt a lot of times. I never had any worse pain than I was having with that.

But the dog, before I got the wire out, got excited and pulled me 10 feet across the room with that wire, and I am reasonably tough, I think, but I just really screamed.

And about then an ambulance showed up and I didn't know anybody had called one.

Q. Did you require some hospitalization? Did you have to go to the hospital?

A. Yes, I went to the hospital and they appreciated what it was, and everything, and gave me a lot of care.

Q. Have you been having some heart problems lately?

A. Seems like I always at my age have a few, particularly -- pretty much standard.

Q. Have you been seeing some heart doctors lately?

A. Yes, I have been having some heart problems and I am scheduled for some heart work in the next week or so.

Q. Now, do you have any children, Bill? Do you have any children?

A. Yes, I have three.

Q. And what are their names?

A. Maureen McKee -- Erickson, excuse me, I haven't gotten used to her being married yet, and Jerry, Jerome is his proper name, and Craig, who lives in Salt Lake.

Q. Now, where does Jerome live? Where does Jerome live?

A. In Thibadaux, Louisiana.

Q. You call him Jerry? Is Jerome called Jerry?

A. Yeah, pretty much commonly.

Q. So you have been married in the past? You were married?

A. Yes, my wife passed away.

Q. And what was your wife's name?

A. Natalie, N-a-t-a-l-i-e.

Q. How long were you and Natalie married?

A. Fifty-three years.

Q. Now, are you aware that Jerry is trying to get guardianship of you?

A. Yes, I am.

Q. How do you feel about that?

A. I can think of nothing worse.

Q. And why?

A. We used to get along but we don't at all any more, he is such a changed individual that I don't want anything to do with him.

Q. Has Jerry attempted to control you in the past?

A. More and more as time has gone on. He kidnapped me.

Q. Tell me about that.

A. Well, they stopped by my house in the afternoon and they had a new car I hadn't seen before, and said, "Come on, get your hat and coat and we are going up to Pend Orellie Lake."

I said, "Well, I'm not sure I want to."

He says, "Oh, yeah, you want to, we have got something up there we want to show you."

So I decided what the heck, so I went up there and we arrived -- oh, and his two children were in the car, a boy and a girl. And his wife was just -- it was just a new house which I hadn't seen or heard of, and my other son was there with his wife and they had two guests that -- they live in Salt Lake and they brought two guests up to enjoy the doings.

Q. So it was Jerry that came by your house and wanted you to go up to Pend Orellie with them?

A. Insisted that I do, yeah.

Q. And what did you do when you got up there?

A. Well, we went out boating all day long, he had a big new boat along with his big new house, and it was big, I don't know how many bedrooms it had. He was very proud of it. And they had papers scattered from here to there and half way back again, and they asked me to help his wife with them.

I did, but we didn't get along really well so I quit.

Q. What is Jerry's wife's name?

Bill, you can't rely on anybody for help.

A. Who?

Q. Jerry's wife.

A. Mina. M-i-n-a.

Q. When you were going through papers up there did you see anything from your safety deposit box?

A. Yes, I did.

Q. What did you see?

A. Well, I have trouble right at the moment recalling exactly what, but they were business

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papers.
Q. Of yours?
A. Of mine, yes.
Q. And they had -- where were they before you saw them up there at Jerry's? Where were they before you saw them up there at Pend Oreille?
A. What is the first word?
Q. Where had those papers been before you saw them up at Jerry's?
A. Yeah.
Q. Where were they before then?
A. They were in my safety deposit box in Osburn.
Q. Was that at a bank? Was that at a bank in Osburn?
A. Yes, Bank of America in Osburn.
Q. Do you know if Jerry had a -- had you given Jerry a key to your safety deposit box?
A. I had not and I had no knowledge that he had one, but he had talked the manager out of it and she had given him a key and I wasn't notified, and he had been using that box for some time, I don't know how long.
Q. Now, how long were you up there at Pend Oreille?

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A. I think probably seven or eight days. Then it came over the air that they were having hurricanes and all kinds of trouble in southern Louisiana and he decided he had to go back and see how things were doing.
Q. Who is "he"?
A. Jerry.
Q. Oh, okay.
A. And --
Q. And did he leave? Did Jerry leave and go back?
A. Yes, he left, and in a day or two Mina said, "Well, we have got to get going now."
And I said, "Where are we going?"
She said, "Well, over to Louisiana, we are going down there."
And I knew right away that they were planning on kidnapping me and putting me in a nursing home in southern, and I do mean southern, Louisiana.
Q. So what happened?
A. We had the first stage of our flight leaving Spokane. She drove us to Spokane, and she and I both put our baggage in a building provided for that if you were changing. And I got mine, and

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that's when I told her that I wasn't going any further and I was going back to Osburn.
Q. Where were you at that time?
A. What?
Q. Where were you then?
A. Oh, we were still in that building. She was just blazing mad.
Q. Did you leave Spokane? Did you leave Spokane?
A. The plane took off and I called Maureen, who lives real close to the airport, and she came up and got me and I have been there or at home or at my place.
Q. I'm talking about when Jerry wanted to take you down to Lousianna, did you get on a plane with Mina?
A. Yeah, we went from Spokane to Salt Lake together.
Q. What happened in Salt Lake?
A. I had told her before, when we were getting our bags is when I told her that I wasn't going.
Q. What happened then?
A. Oh, gad, she flew into a rage and called Jerry, and what have you, and he knew me well enough

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to know that that was final.
And where was I?
Q. So what happened when you told him he weren't going to go on from Salt Lake?
A. Well, there was a lot of black looks at me, not only from Mina but from Craig, my other son, and his wife, they were all siding with Jerry and wanting to get me to a nursing home in southern Louisiana.
Q. So what happened from Salt Lake?
A. My son finally came to me and he said, "I am going to drag you home tomorrow."
Q. Which son is that? Which son?
A. This is the other one, I only have the two.
Q. What is his name?
A. Craig.
Q. And did he do that, did he bring you home? Did Craig bring you home?
A. Yeah, we had quite a lot trouble. He had a brand new car and it acted up and had to have a lot of doing to keep us going but we got there. And he spent the night at my house, not very happy about it, he was missing work and mad about his brand new car and -- but that was the end of that.

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

IN THE MATTER OF THE	)	Case No. CV06-40
ESTATE OF	)	
NATALIE PARKS MCKEE:	)	DECISION AND ORDER ON AMENDED
_____	)	MOTION FOR RECONSIDERATION

Hearing on the Personal Representative's Amended Motion for Reconsideration took place on August 18, 2009. Mr. Lloyd A. Herman, attorney, appeared on behalf of Maureen Erickson, Personal Representative of the Estate of Natalie Parks McKee. Charles R. Dean, Jr., attorney, appeared on behalf of Jerome McKee. The matter was taken under advisement so that briefing, affidavits, and submitted cases could be fully reviewed.

The Amended Motion for Reconsideration relates to a ruling on a Motion for Partial Distribution file stamped on April 19, 2007. In Findings of Fact, Conclusions of Law and Order, the Court denied partial distribution of the subject property for the reasons announced by the Court and set forth in the Order. On April 30, 2007, Michael F. Peacock, attorney, filed a Motion for Reconsideration on behalf of the estate. Mr. Peacock did not notice the motion for hearing, nor did the motion contain any request for hearing. The original Motion for Reconsideration was served by facsimile to Mr. Branstetter, but copies were not provided to the Court as required by Idaho Rule of Civil Procedure 7(b)(3)(F). The Amended Motion for Reconsideration was not filed until July 29, 2009, some 27 months after the Court denied the Motion for Partial Distribution.

Most of the affidavits and briefing submitted in support of the Amended Motion for Reconsideration assert facts that the community property agreement between Bill McKee and Natalie Parks McKee was revoked by mutual holographic wills. There has never been produced any writing (including any purported holographic will) signed by Bill McKee. Petitioner, Maureen Erickson, had plenty of time and opportunity to present these matters to the Court during the evidentiary hearing which took place on March 16, 2007 and she failed to do so. The property the subject of the original Motion for Partial Distribution is not as a matter of law part of the estate of Natalie Parks McKee. Insufficient showing has been made to grant the Amended Motion for Reconsideration and the motion is denied.

The Court also denies the Amended Motion for Reconsideration on grounds that it was not timely. The original Motion for Reconsideration was filed within the time limits set forth in Idaho Rule of Civil Procedure 11(a)(2)(B), but that motion was not properly noticed for hearing by the Petitioner. Bringing the amended motion 27 months after the Court ruled and after the original Motion for Reconsideration was filed is unfairly prejudicial to Jerome McKee.

DATED this 16th day of September, 2009.

Patrick R. McFadden

PATRICK R. MCFADDEN – 367
DISTRICT COURT MAGISTRATE

Certificate of Mailing

I hereby certify that copies of the foregoing were mailed first class, postage pre-paid or hand delivered to the following parties on this 17 day of September, 2009.

LLOYD A HERMAN
Lloyd Herman & Associates, P.S.
213 N. University Road
Spokane Valley, WA 99206

CHARLES R. DEAN, JR.
Dean & Kolts
2020 Lakewood Drive, Suite 212
Coeur d'Alene, ID 83814

Marla Anson

Deputy Clerk

LLOYD A. HERMAN
LLOYD HERMAN & ASSOCIATES, P.S.
213 N. University Road
Spokane Valley, WA 99206
(509) 922-6600 * fax (509) 922-4720
ISB No. 6884

IN THE DISTRICT COURT OF THE FIRST JUDICAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

IN THE MATTER OF THE ESTATE OF NATALIE PARKS McKEE

Deceased.

CASE NO. CV 2006-40

NOTICE OF APPEAL OF THE FIRST DECISION AND THE DECISION IN THE AMENDED MOTION TO RECONSIDER MADE BY MAGISTRATE JUDGE MCFADDEN ON APRIL 16, 2007 AND SEPTEMBER 17, 2009

12-#53.00-pd.

TO: THE ABOVE NAMED RESPONDENT AND THE PARTIES ATTORNEY, CHARLES DEAN, COUER D'ALANE, IDAHO, THE HONORABLE JUDGE PATRICK R. MCFADDEN, ST. MARIE'S, IDAHO, AND THE CLERK OF THE ABOVE ENTITLED COURT, SHOSHONE COUNTY COURTHOUSE, WALLACE, IDAHO.

NOTICE IS HEREBY GIVEN THAT:

1. Maureen Erickson, Personal Representative of the Estate of Natalie Parks McKee, appeals against the Final Judgment and Decision, Findings of Fact, Conclusions of Law and Order dated April 16, 2007, and the Final Judgment and Decision on the Motion to Reconsider entered in the above entitled action on the 17th day of September 2009, by

Magistrate Judge Patrick R. McFadden in the Judicial District of Idaho, in and for the County of Shoshone, Magistrate Division. Said appeal is taken to the First Judicial District of the State of Idaho, in and for the County of Shoshone.

2. This appeal is taken upon both matters of law and matters of fact.

3. The testimony in the hearing on March 16, 2007 and April 11, 2007, which resulted in the Judgment and Decision dated April 16, 2007, were reported by the means of a court reporter, Bryl Cinnamon, CSR, who remains in possession of a copy of both the transcript of the hearings on March 16, 2007 and April 11, 2007, and the Decision on April 16, 2007. The hearing on the Motion for Reconsideration on August 18, 2009 was recorded by Flo Holbart, the clerk present at the time of hearing and is in possession of the Clerk of the Court of Shoshone County.

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

1. Did the Magistrate Court error in upholding the validity of the community property agreement between Bill McKee and Natalie Parks McKee that entered into on July 11, 2988, and basing that holding on the following facts: finding that the holographic will executed by Natalie Parks McKee was insufficient to revoke the community property agreement; any action of Bill McKee to assent or agree to the rescission of the community property agreement was insufficient as a matter of law.

2. Did the Magistrate Court error in its finding that the community property agreement between Bill McKee and Natalie Parks McKee was not revoked by mutual holographic wills of the above named parties on the grounds that the will of Bill McKee was never produced even though Bill McKee testified under oath that he and his wife signed mutual holographic wills of like intent.

3. Did the Magistrate Court commit further error by placing the burden on Maureen Erickson of having to produce Bill McKee's holographic will at the March 16, 2007 hearing, when the sworn testimony at the Motion for Reconsideration indicated she nor her lawyer were aware of the existence of the will at the time the original Motion for

Partial Distribution was heard, and it was new evidence brought to the Court at the time of the hearing on the Amended Motion for Reconsideration.

4. Did the Magistrate Court error when it ignored the new evidence sworn testimony of the existence of the will by Dirk Erickson, 1stLt, USMC, who saw the will in his grandfather's safety deposit box on August 17, 2004.

5. Did the Magistrate Court further error when the Court ignored the testimony of Bill McKee that he had done a mutual holographic will as so indicated in his sworn testimony before the same Court in a prior hearing, and as indicated in letters to Michael Peacock, attorney for the estate, and in letters to Jerome McKee who was the last known person, along with Bill McKee, to have access to the safety deposit box where the mutual holographic will of Bill McKee was stored.

6. Did the Magistrate Court error in failing to require a full hearing involving testimony of all parties to this will contest, which would have allowed the proponents of the mutual holographic wills to prove as a matter of law the intent of Bill McKee and Natalie Parks McKee to make mutual wills rescinding their community property agreement.

7. Did the Magistrate Court error in failing to require a full hearing because the existence of Natalie Parks McKee's will and the testimony of Bill McKee agreeing to the revocation of the community property agreement raised an ambiguity or an issue of fact as to the mutual intent of Bill McKee and Natalie Parks McKee. At such a hearing the opposing parties would have had the burden of establishing lack of testamentary intent to cancel the community property agreement.

8. Did the Magistrate Court error in ruling the Motion for Reconsideration was not set for hearing timely by moving party, and therefore to bring that motion on 27 months later was unfairly prejudicial to Jerome McKee when no prejudice has occurred, no evidence of prejudice was offered, and no claim of prejudice was made, especially in light of Rule 7(d)(3)(D) which allows the Court to deny such motion when it's been filed without a brief.

9. Did the Magistrate Court error in failing to consider the newly discovered evidence and judgments of fraud against Bill McKee for hiding, with Jerome McKee's help, the will of Natalie Parks McKee from appellant resulting in preventing the appellant from inheriting from her mother in accordance with the will.

5. The appellant requests the preparation all of the portions of the reporters transcript. The entire reporters standard transcript as defined in Rule 25(a), I.A.R. The entire reporters transcript in this case the full transcripts of the hearings of March 18, 2007 and April 11, 2007 hearings. All arguments of the attorneys heard by the Court prior to rulings on motions in questions and the Motion for Reconsideration and the Amended Motion for Reconsideration.

6. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rules: The entire file in this matter under CV 06-40; all motions and affidavits in support of motions; appellant's Motion to Reconsider; and the Amended Motion to Reconsider, Findings of Fact and Conclusions of Law signed by the Court.

7. I certify:

(a) That a copy of this Notice of Appeal has been served on the Official Court Reporter; however, a copy of the transcript of the Motion for Partial Distribution heard on March 18, 2007 and April 11, 2007, has already been transcribed by and purchased from the court reporter and is attached to this appeal.

(b) A copy of this Notice of Appeal has been served upon the Clerk of District Court in Shoshone County with a request for the recorded transcript from the Amended Motion for Reconsideration heard on August 18, 2009. The cost of said transcript will be paid when billed by the court reporter.

(c) A copy of this Notice of Appeal has been served on Magistrate Judge Patrick R. McFadden, First Judicial District of the State of Idaho, St. Maries, Idaho, and attorney Charles R. Dean, and Coeur d'Alene, Idaho.

Dated this 23rd day of October, 2009.

LLOYD A. HERMAN
Attorney for Maureen Erickson
Personal Representative,
Estate of Natalie Parks McKee

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Appeal was served by the method indicated below, and addressed to the following this 23rd day of October 2009.

Magistrate Judge Patrick R. McFadden Benewah County Courthouse 701 West College Avenue Saint Maries, ID 83861	X U.S. Mail _____ Hand Delivered _____ Overnight Mail _____ Facsimile_____
Charles R. Dean, Jr. Dean & Kolts 1110 West Park Place, Suite 212 Coeur d'Alene, ID 83814	X U.S. Mail _____ Hand Delivered _____ Overnight Mail _____ Facsimile_____
Shoshone County District Court Clerk First Judicial District Court 700 Bank Street, Suite 120 Wallace, ID 83873	_____ U.S. Mail X Hand Delivered _____ Overnight Mail _____ Facsimile_____
Byrl Cinnamon, CRS Official Court Reporter PO Box 2821 Hayden, ID 83835	X U.S. Mail _____ Hand Delivered _____ Overnight Mail _____ Facsimile_____

Sheral Kirk

Sheral Kirk, Legal Assistant

COPY

STATE OF IDAHO
COUNTY OF SHOSHONE/SS
FILED
2006 APR 21 AM 10: 38
PEGGY WHITE
CLERK DIST. COURT
BY /s/ BONNIE JOHNSEN
DEPUTY

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

--oOo--

IN THE MATTER OF THE ESTATE OF	)	
	)	
NATALIE PARKS McKEE,	)	Case No. CV 06-40
	)	
Deceased.	)	
	)	
	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

AT: Shoshone County, Wallace, Idaho

BEFORE: The Honorable Fred M. Gibler, District Judge

BYRL CINNAMON, CSR 466, Official Court Reporter

A P P E A R A N C E S:

For Maureen Erickson:

Michael F. Peacock
123 McKinley Avenue
Kellogg, Idaho 83837

For Jerome McKee in case 06-40:

Michael K. Branstetter
HULL & BRANSTETTER CHARTERED
Post Office Box 709
Wallace, Idaho 83873

For Jerome McKee in case 07-0120:

Pamela B. Massey
PAMELA B. MASSEY, P.C.
500 North Government Way, Suite 600
Coeur d'Alene, Idaho 83814

For Bill McKee:

John J. Rose, Jr.
708 West Cameron Avenue
Kellogg, Idaho 83837

For Bill McKee (court appointed):

Charles L.A. Cox
Evans Keane
P.O. Box 659
Kellogg, Idaho 83837

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I N D E X

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4

MARCH 16, 2007

PROCEEDINGS

THE COURT: This is the Magistrate Division of the District Court. I'm Judge Patrick McFadden. I have two case files on the bench with me. These are case files 06-40, which is In the Matter of the Estate of Natalie Parks McKee. I also have on the bench with me Shoshone County case file 07-0120, which is entitled In the Matter of the Guardianship and Conservatorship of Bill McKee.

There are a number of parties and attorneys present today. Maybe in the first case I'll recite who's here. The application for probate was filed by Ms. Maureen Erickson through her attorney, Mr. Mike Peacock. Mr. Mike Branstetter, attorney at law, is present today.

And, Mr. Branstetter, your client is Jerome McKee in that proceeding; is that correct?

MR. BRANSTETTER: Correct, Your Honor.

THE COURT: Okay. And I think that that's the -- all the parties that are involved in that case; is that right?

MR. BRANSTETTER: That's correct.

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THE COURT: Okay. And then in the application for the guardianship case file, present are -- in this case are Ms. Massey, who is the attorney for the petitioner, Jerome McKee; is that correct?

MS. MASSEY: That's correct.

THE COURT: All right. Ms. Massey's here. She's filed the petition seeking appointment of a guardian and conservator for Mr. McKee in this case.

Mr. McKee apparently is here today as well, and he was given court-appointed counsel, Mr. Charlie Cox, who is present.

However, there is a motion pending by Mr. Jack Rose, who has apparently been hired by Mr. McKee to represent him in these proceedings. So there's a motion pending to excuse Mr. Cox and to excuse Terry Spohr as the visiting mental health professional.

There was also an application made by Ms. Massey for an injunction to prohibit distribution of property of the estate of Bill McKee until things are sorted out. Is that correct, Ms. Massey?

MS. MASSEY: Until we can determine his competence, yes.

THE COURT: All right. So that's kind of where we are, I guess, and that's the parties that are present.

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Maybe I will inquire of you lawyers if you -- if there's been any discussion on the best way to proceed with these matters today or the most efficient way to deal with it. We've got a little bit of time this morning to sort through these. So --

MR. BRANSTETTER: There's been no discussions on the Natalie Parks McKee estate process and procedure. I -- there are two matters pending, one a motion to dismiss that entire proceeding and then an objection to a motion for partial distribution of the asset that's in controversy, if you will, therein. Those I don't think are extensive matters, Your Honor. I think it's a matter of law, from my perspective, in any event, and I don't think argument would take long on that.

THE COURT: Are you -- I guess, are any of the parties planning on making an evidentiary showing in any of these proceedings today?

MR. BRANSTETTER: Not Jerry McKee in the motions I just described.

MR. PEACOCK: And we don't either. We'll proceed on the pleadings and affidavits.

THE COURT: Okay. Mr. Rose, what's your thought on the motion in the guardianship proceedings?

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I guess primarily on your proposal to be substituted in or to excuse Mr. Cox and the visitor.

MR. ROSE: I don't care to hear -- do not wish to hear today the motion in regards to Terry Spohr, the physician's assistant. Our position might change on that.

THE COURT: Okay.

MR. ROSE: In regards to the excusal of Mr. Cox, I believe that would be appropriate. The statute provides that Mr. McKee has -- can have counsel of his own choosing. I have been his counsel since way before the initiation of this petition. And we would ask that Mr. Cox be relieved of his duties. And I think Mr. Cox was appointed to those duties because the matter was started without any notice or information about the process being provided to Mr. McKee.

THE COURT: All right. Mr. Cox, what's your position as far as the motion made by Mr. Rose? Did you have a position today on that?

MR. COX: I do. We haven't (inaudible) issue, and I have some concerns about Mr. Rose substituting in for me in terms of protection of Mr. McKee because of various allegations I understand are being asserted against Mr. McKee. I'd be glad to address that.

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THE COURT: Why don't we -- and I guess, Ms. Massey, what's your position on the application by Mr. Rose to substitute or to excuse Mr. Cox's counsel? Do you have a position on that one?

MS. MASSEY: I do. I oppose that, Your Honor, just because of some of the previous motions that have been filed, and Mr. Rose has been involved in some other matters --

THE COURT: Okay.

MS. MASSEY: -- (inaudible) counsel.

THE COURT: All right. Why don't we -- let's -- let's hear the argument on that case first, and then I'll give Mr. Peacock and Mr. Branstetter a chance to argue your motions in the estate file next. But let's take the matters up on the guardianship case first. And the parties can come forward and deal with those issues.

And there is a motion that I'll give Ms. Massey an opportunity to address as well, and that is the motion for the temporary injunction that we'll deal with. But let's -- let's hear argument in the parties' position at least on Mr. Rose's application to excuse Mr. Cox as counsel for Mr. McKee. And, Mr. Rose, I'll give you the first opportunity to address the Court on that issue.

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MR. ROSE: Thank you, Your Honor.

My motion is straightforward. And it's based on the procedure for going ahead with the guardianship. And in 15-5-303, subsection (b), it says, "On the filing of a petition, the Court is to set a hearing, and unless" -- and this is unless -- "the alleged incapacitated person has counsel of his own choice," which I am, "the Court should then appoint an attorney to represent him who has the powers and duties of a guardian ad litem."

Now, not only is Mr. McKee's right to counsel of his own choice set forth in the statute, we submit it's a matter of constitutional magnitude and supported by the Sixth Amendment of the United States Constitution and the similar Idaho provisions.

Now, I don't think that there is necessarily leeway to keep Mr. Cox in here. The statute doesn't provide for that. And --

THE COURT: What about -- I guess I'm curious maybe hearing your response to a concern that I have is Mr. McKee's -- you know, the ultimate issue that we have is whether he is competent. And, you know, am I going to be able to make a decision whether he's competent to select you as his own attorney without getting to the ultimate issue in the case?

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MR. ROSE: Well, I was selected as his own attorney long before the initiation of this proceeding. I mean, are we going to -- are we going to go back in time to say, well, he wasn't competent to select me last September or that he wasn't competent to make his will at some other point in time?

And we need to consider here, Judge, this petition is initiated by Jerome McKee, who's represented by Ms. Massey. As you know, Ms. Erickson is a person who's alleged to have maybe doing something wrong with Mr. McKee's property. She's represented by Mr. Peacock. I'm representing Mr. McKee. I can take care of Mr. McKee's interests. I don't need Mr. Cox to be looking over my shoulder. I've known Mr. McKee for a long time. I've spent a lot of time with him. And -- and Mr. McKee and we object to the manner in which this proceeding was initiated without any notice to him and having apparently counsel and visitors and people of Ms. Massey's choice and persuasion having been appointed to get involved in the affairs of Mr. McKee.

And the other thing that I set forth in my affirmative defense is that, you know, I think it's a -- it's a first-line defense to Ms. Massey or Mr. Jerome McKee's motion here is Mr. McKee has already

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made his own choices on who he wants to have assistance and who he wants to have assist him. And he's done that with the designation of a power of attorney. He's done that in his living will and his durable power of attorney for health care provisions. I'm here to look after Mr. McKee's interests. I'm separate from Maureen McKee and Mr. Peacock. And we don't -- and Mr. McKee wants me, doesn't want Mr. Cox.

THE COURT: Thank you, Mr. Rose.

Mr. Cox, your position?

MR. COX: Thank you, Your Honor.

I didn't ask to get involved in this proceeding. In fact, I don't believe Pam Massey needed to do with it either. I think Flo Copman was up here one time. But having said that, I take it seriously when I'm appointed guardian ad litem by the Court. And I view it as my duty to look into things, and the things I have learned worry me about having Mr. Rose represent him in this proceeding.

And the reason -- not because Mr. Rose is not competent. But what worries me is Mr. Rose has worked with Michael Peacock in terms of an affidavit where he gets Mr. McKee to say he committed fraud. And I think, before he's allowed to testify, before he's allowed to admit something like that, it ought to be

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determined first if he's competent, we should hear the visitor's report, so on.

I don't have any problem with Jack looking over my shoulder, per se. But I'm just -- I just -- I worry about it. I just worry about protecting Mr. McKee's interests. I just -- I don't think that -- to me it would almost be like malpractice if I were to allow that to go forward without trying to stop it. At least before he's been found competent to make these kind of (inaudible). And he filed an affidavit, for example, where he details all this stuff that -- this fraud he committed on his daughter. I don't think the affidavit's probably admissible, but if he testifies in court or if his own attorney doesn't stop him, then I think it's a problem. And that's the only reason I have any objection. Otherwise, I have nothing personal in this thing. I just try to do my job.

THE COURT: Thank you, Mr. Cox.

Ms. Massey, your position?

MS. MASSEY: Your Honor, I would just like to say for the record that, prior to Mr. Cox's appointment by the court, I'd never met Mr. Cox. I did not hand choose him. The reason that the visitor was chosen was simply because that is the only known entity in the county that does visitor reports. So I have no reason

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to choose Mr. Cox over Mr. Rose.

However, because of the other proceeding, I am concerned --

THE COURT: When you say "other proceeding," are you talking about the estate proceeding that we're dealing with?

MS. MASSEY: I am. I am.

THE COURT: Okay.

MS. MASSEY: And some information has been provided to me, you know, that's on the record including the affidavit that perhaps it would be better to have a neutral party, someone who's not involved in this probate proceeding, to represent Mr. McKee's interests in this matter. My client is really interested in Mr. McKee's best interests, and those would be served by a neutral party.

You know, I found out, Your Honor, that Mr. Rose drove Mr. McKee, Bill McKee, to Maureen's house. I think that's a conflict of interest in this -- in this proceeding.

THE COURT: Why? I mean, why would that be -- what, in your perception about that, would be a conflict in this action? And I may want to apologize to all of you because -- I'm from St. Maries. I didn't have a chance to look at the full files until I got up

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here today. I do appreciate the advance briefing and faxes that came in this week. It kind of got me up to speed. But this is the first morning that I've ever seen the file.

I guess I'm just kind of curious about what you perceive in that activity that is a conflict in the case.

MS. MASSEY: Well, because we are making accusations that Ms. Erickson has not had her father's best financial interests in mind. One of the reasons the visitor report is not done, Your Honor, is because the visitor contacted me and said she could not get ahold of Mr. McKee. She left several messages for Ms. Erickson to return her calls. And Ms. Erickson apparently just -- according to the visitor returned one call two days ago. And so to me that just -- it gives the appearance of them trying to isolate the proposed ward, not giving the ward access to all of the parties.

THE COURT: All right.

MR. ROSE: Well, let me -- let me correct something here.

THE COURT: Go ahead.

MR. ROSE: She says it's her information that I drove Mr. McKee to Maureen's house. I'm here to say

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under oath that never happened. I don't know where Maureen Erickson lives. And that's just -- that's just some of the -- some of the things that are flying around in this case that are just unsupported accusations. So I want the record clear on that point. And I don't know where she gets her information.

MS. MASSEY: My apologies to Mr. Rose if that's misinformation. I guess it just makes my point, Your Honor, that, if there is that kind of misinformation floating around, then we do need to have some very clear boundaries on who is representing who in what proceeding.

THE COURT: Okay. Thank you, Ms. Massey.

All right. Well, I'll tell you what I'm going to do on this issue. I have reviewed the provisions of 15-5-303 subpart (b). It is very common, in these guardianship/conservator type proceedings, that a proposed ward or a person that's making an application for guardianship or conservatorship on behalf of the ward, the individual, seems to me in more cases that I've been dealing with, is that they don't have a specific attorney in mind or the ward doesn't have their own attorney to represent them.

In this case there has been a notice of appearance. There's been an affirmative defense.

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There's been an answer filed to the petition -- all by Mr. Rose. I think Mr. McKee has a right to select counsel of his own choice and not to be, you know -- and certainly nothing against Mr. Cox in this case because Mr. Cox is a fully competent and qualified Idaho attorney that could represent Mr. McKee's interests in these proceedings. But I do think that Mr. McKee has a right to select his own attorney. Mr. Rose has represented to the Court a prior relationship and involvement with the affairs of Mr. McKee.

For all those reasons, I do believe also that Mr. Rose is a duly licensed and qualified and competent attorney that can handle the interests and the affairs of Mr. McKee in this proceeding. I think that it would not be appropriate for the Court to leave both Mr. Cox on to look over Mr. Rose's shoulders or -- otherwise, you know, I think if -- that's part of the Court's job to look at this and determine the competency issues ultimately in this conservatorship and guardianship case. And, you know, I think that that's something that the Court will be able to see from all of the evidence that will ultimately be presented from the visitor's reports that are ultimately submitted to the Court for a determination

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to be made.

But what I'm going to do today is I am going to grant the motion made by Mr. McKee through his attorney to excuse Mr. Cox as counsel in the guardianship proceeding in this case. Mr. Cox, it is the Court's intention, of course, that you are entitled to be paid and compensated for whatever services that you have incurred up to this point, but I am going to grant that motion.

Mr. Rose, I'm going to ask that you prepare an order that excuses Mr. Cox as counsel for Mr. McKee, and you will assume those responsibilities and duties in full, I guess, without Mr. Cox's further involvement in that guardianship procedure. Are there any questions about that order or anything, Mr. Rose?

MR. ROSE: No, Your Honor.

THE COURT: All right. Ms. Massey, as long as you're here and ready to go, what are the issues relative to your motion for the injunction today? And let's hear that motion.

MS. MASSEY: Thank you, Your Honor.

The motion for the temporary injunction is just to protect the property that's currently pending to be transferred to Ms. Maureen Erickson. And, you know, the code is clear that, if there's property that

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is to be wasted or dissipated, it needs to be protected. And I feel like, with the current guardianship proceeding, there's really no urgency in that application to transfer. We should set aside that land transfer until such a time that we can show that Mr. McKee is competent or incompetent to make that.

THE COURT: All right. Any other argument at all on that topic, then?

MS. MASSEY: Well, Your Honor, just additionally, Mr. McKee needs his resources. He is advanced in age and likely to continue to need increased medical assistance. That's costly. And so if he is to lose an asset, it could just further affect his ability to qualify for Medicaid, if he needs that, or to privately pay for his own care.

THE COURT: All right. Thank you, Ms. Massey.

Mr. Rose, what's your position on the request for the injunction today?

MR. ROSE: First of all, Your Honor, I -- the transfer is not attached to any of the affidavits, and it's my understanding that the actual transfer of the interest of the property occurred some time ago and that what Ms. Massey is referring to is similar to what a recordation would be with a county recorder if you

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were dealing with a regular deed. So it's my understanding that the transfer of the interest in the Priest Lake property has occurred prior to the initiation of -- of this motion.

So -- and along those lines, if that transfer has already occurred, we don't have the appropriate parties in this action to -- and we don't have any authority in this action right now to buy Maureen -- or Maureen Erickson. There's a problem there. Plus I haven't seen anything about the bond -- one of the requirements to obtain a temporary injunction is that the applicant show a clear right to relief. And based on the record here and some notes from people from the Department of Lands, I don't -- I don't think that's been shown. I -- well, I'll leave it at that, Your Honor.

Thank you.

THE COURT: Well, I don't know what may have happened in the past, if there's been a transfer that's already been accomplished that's water under the bridge now or whether that's an issue ultimately that might be something that would be subject to some sort of an action to set aside a transfer previously made because of any irregularities. But I think that the motion made by Ms. Massey, at least for the current time until

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the competency of Mr. Bill McKee can be determined, is appropriate. That does not mean to say that I am undoing in any way any transfer that may have already happened, any activities that may have occurred in this case.

But I think, for purposes of future disposal of any assets, I am going to order that there be a temporary injunction for the sale or transfer of any other property of Mr. McKee until that issue is determined or until there is a proper motion made before the Court that specifically authorizes a distribution by Mr. McKee. So, I guess, let me look at the proposed order that has been submitted by Ms. Massey on that topic.

(Counsel complied.)

THE COURT: Do you have a copy of that proposed order in front of you now, Mr. Rose?

MR. ROSE: I'm trying to turn to it.

MS. MASSEY: It was faxed to your office.

MR. ROSE: I think it needs -- the order should recognize somehow, Your Honor, that there's a continued right to --

THE COURT: Are you thinking about what I said about petitioning the Court for authorization for a sale or --

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MR. ROSE: No. It says, "Is competent to transfer properties to other parties or in the alternative Bill goes to the grocery store and writes his own checks or Maureen writes checks for him." I think we need to make some provision for other than his living expenses, necessities --

THE COURT: Day-to-day living expenses.

MR. ROSE: -- of life, medical expenses, that sort of thing.

THE COURT: What if we did -- what if I just added to the very bottom of the order, "excluding day-to-day routine expenses"?

MR. ROSE: Sure. I think we're -- we understand the spirit of the order and are willing to, you know, accommodate that, Judge. Just so we don't get into some technicality that we can't keep moving on taking care of Bill.

MS. MASSEY: Absolutely.

THE COURT: All right. What I've done is, the very bottom of the first page of the proposed order, I put in parentheses, "excluding day-to-day normal living expenses" and initialed that. So I will sign the order as presented previously by Ms. Massey. And that will address that topic in that manner, then, today.

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And, again, we had vacated the hearing on the application for the appointment of a guardian today. I guess -- and there's been an answer filed. I guess I'm curious and will inquire of the parties what your thought is as far as having that guardianship matter scheduled for hearing. Do you have a preference or a time frame on how lengthy of a hearing that might be or --

MS. MASSEY: If I might address that.

THE COURT: Go ahead, Ms. Massey.

MS. MASSEY: The visitor thinks that, once she can get access to Mr. McKee, it won't take her more than a week or so to pull all of her reports together and write her report for the Court.

Now, there's been some concern about medical experts on each side. And so I would like to propose, Your Honor, as well that perhaps we -- Mr. Rose and I talk about having some cognitive testing done of Mr. McKee. There's some psychologists, Dr. Hayes and Dr. Wolf, that do these things regularly that have some availability the next couple of weeks where they could see Mr. McKee, do some in-depth cognitive testing, and then we'd have something more to rely on as far as from the medical professionals.

THE COURT: Okay. Mr. Rose, what's your

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thought as far as scheduling issues and the ideas that Ms. Massey has talked about?

MR. ROSE: Mr. McKee has a cardiologist that's been providing care for him for some time. And also a family physician, Dr. Wiger (phonetic). We're going to take their depositions. They're both physicians licensed in Washington and living in Washington. I anticipate it's going to take probably about three weeks to be able to corner those physicians. Then we'll also need to take the deposition of -- of Terry Spohr.

THE COURT: Okay.

MR. ROSE: So as far as calendaring, we have -- we have a preservation of the assets order in place. I would suggest 60 days out to allow the discovery to occur.

THE COURT: All right. Ms. Massey, what's your thought on that?

MS. MASSEY: Well, Your Honor, I appreciate the physicians that Mr. McKee has been seeing. However, a cardiologist is -- I would argue that cardiologist is not qualified to give a full report on someone's cognitive status. And so I guess I would request that the Court -- and was hoping to be able to work with Mr. Rose on this -- that we would get a

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specialist in this area.
THE COURT: Well, I'll tell you what I'm going to do today. I'm going to order that this matter be scheduled for guardianship hearing. I'll order that it be set no sooner than May 1 of 2007 with notice being provided to all of the interested parties in this proceeding.
You know, I think there's certainly a place for expert witnesses and persons that know Mr. McKee. I also think that maybe getting, as Ms. Massey suggested, some cognitive testing done by someone that's competent in that field would probably be helpful. I'm reluctant today to require that or to make it a specific requirement of this case. It might help frame the issues and narrow the issues as to whether or not Mr. McKee is competent or not competent. So I guess I would encourage counsel to work together to some extent just to simply hopefully get the facts before the Court that will help me make a decision as to the ultimate issue that we need to make in the case. So I'm not going to order specifically a specific cognitive testing, psychologist, or anyone else today, but we'll try to calendar things according to the schedule that the Court set here today and hopefully deal with that.

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I am available. I guess, Ms. Massey and Mr. Rose, I'm available. If I'm not up here in Wallace, I'd be available by conference telephone call from St. Maries. We can even go on the record with matters if we needed to go on the record with things. So I just encourage the two of you to cooperate to that end to get hopefully the issues properly before the Court.
MS. MASSEY: Thank you, Your Honor.
THE COURT: Okay?
MR. ROSE: Thank you, Your Honor.
THE COURT: Anything else we need to deal with in the guardianship case, then, today?
MR. ROSE: No. Not from our (inaudible).
THE COURT: All right. Sounds good.
Let's take the matter of the estate issues that are before the Court.
And thank you, Mr. Cox, as well for your help today.
MR. COX: May I leave, too?
THE COURT: You may.
MS. MASSEY: May I be excused?
THE COURT: You may as well, Ms. Massey. Thank you.
Okay. Now we're on the record in the

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matter of the estate of Natalie Parks McKee. In this proceeding today there were a number of motions that had been pending. I think the first motion made was a motion by Mr. Branstetter in application to dismiss the case. There was a later motion submitted by Mr. Peacock for partial distribution of the estate assets. There was an objection filed to the partial distribution. There's also been a motion made by Mr. Branstetter to strike an affidavit of Bill McKee. So we've got those matters pending before the Court.
I think, since the first motion was the motion to dismiss, I'll give Mr. Branstetter an opportunity to make argument on that matter first.
MR. BRANSTETTER: Thank you, Your Honor.
And may it please the Court, however, I think that the motion to dismiss is certainly related to the motion for partial distribution and my objection to that as well as the motion to strike. So if it's all right with the Court, I can proceed with all of them.
THE COURT: All right. Sounds good.
MR. BRANSTETTER: Thank you, Judge.
This is certainly not a matter requiring any factual hearing. I would submit that this is a matter that the Court can resolve on the basis of the

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applicable law. We certainly, by way of background, have some allegations of competency of Mr. Bill McKee, and therefore a motion to strike was filed on behalf of Jerry McKee regarding that affidavit as well as other grounds set forth in the affidavit.
But the first thing here, the motion to dismiss the probate. And, Your Honor, I am not going to go into the failure of notice and the failure to provide accurate and truthful mailing lists and representations to the Court. I would note that in the application there's a provision that says, who are the children, spouse, heirs, and devisees? And Jerry McKee, one of the children, and Craig McKee, one of the children, were completely omitted. And there was no qualification of why they were omitted. And they didn't get notice. But I'm not going into that, Your Honor.
And the statute requirements for notice, I think, are clear. They're entitled to it, and I'm not going to spend time on the statutory references.
The motion to dismiss was supported by a memorandum, and I filed a supplemental memorandum to that. And there are various grounds set forth in the motion to dismiss as well as the demand for notice. But the one I want to talk about here today, Your

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Honor, because I feel it's dispositive, is 15-3-108. And that's the provision that says one must file a probate within three years of death or else it's time barred.

The death of Natalie McKee occurred on December -- in December of 1994. Not 1996, but 1994. In the various affidavits that Mr. McKee has been signing, it's a reference by him that she died in 1996. That isn't true. It's 1994. That's what's in the initial application, and that's what certainly is in the death certificate that we've also filed with the court.

So, therefore, death having occurred in 1994, the probate must occur within three years of that date. And, of course, we know that the probate was not filed until January of 2006. The reason advanced for that failure, as asserted by Maureen Erickson, is that there was fraud and that there was fraud on behalf of Bill McKee to her. And he was -- he signed an affidavit prepared by Mr. Peacock and notarized by Mr. Rose saying, "Yes, I committed a fraud. I concealed it from her. I hid it from her." And that's in the affidavit containing some 27 paragraphs, I believe. The affidavit was dated January 26, 2007, contains 34 paragraphs. And in that affidavit he says,

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"I concealed that will from her. I knew about it, and I didn't want her to see it because I wanted to take care of it, myself." And that was also in the initial application. Now, I have objected to such an affidavit, but that's who the fraud is, and that's who Maureen is claiming committed the fraud, was Bill McKee.

So does that excuse the late filing? 15-1-106 provides that for "The effect of fraud and evasion. Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this code or if fraud is used to avoid or circumvent the provisions or purposes of this code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud" -- the perpetrator of the fraud -- "or restitution from any person benefitting from the fraud, whether innocent or not. Any proceeding must be commenced within two years after discovery," but it cannot be presented against somebody not the perpetrator of fraud later than five years after commission of the fraud.

So my position here, Your Honor, is that the commencement of a probate of the estate of a deceased person, Natalie Parks McKee, is not a proper proceeding to bring an action against a person who

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perpetrated the fraud. And by their own affidavits that they've had prepared for Mr. McKee to sign and that he has signed, they allege that Bill McKee is the perpetrator of the fraud. So the action for the fraud is against Bill McKee. It's not against Natalie Parks McKee. It's against Bill McKee. So that's who the fraud action should be against.

Ms. Erickson also attempted to file an independent action, and it was a Rule 27 prelitigation deposition against Bill McKee --

MR. PEACOCK: Your Honor, I guess I object to relevance. This other --

MR. BRANSTETTER: I'll show --

MR. PEACOCK: That didn't proceed because we were never able to serve Jerry McKee because he avoided service.

MR. BRANSTETTER: Well, Your Honor, this --

THE COURT: Well, wait just a minute. I've got to deal with that. I'm going to at least overrule the objection at this point. If I need to strike something that I hear in this argument, the result that it's not relevant, I can strike it at a later time.

So go ahead, Mr. Branstetter.

MR. BRANSTETTER: Thank you, Your Honor.

The only point I'm showing you this, this

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was filed in District Court, Shoshone County, in January of 2007. And it's Case No. CV 2007-016. And Mr. Peacock's right. Jerry McKee never got served. He wasn't avoiding service. They just couldn't find him. Regardless, the petition is for the deposition of Bill McKee before action. The petitioner, Maureen Erickson, expects to be a party to an action in Idaho law, and it goes through these type of things that I'm talking about. The potential expected adverse parties to an action brought by the petitioner would be Bill E. McKee. Then she lists Jerome, Mina, and Craig, the children and the spouse of Jerome.

My point is, Your Honor, every representation that I've seen is that Bill McKee perpetrated a fraud upon his daughter by concealing a will. That is who the fraud action is against. It's not against Maureen McKee. She didn't perpetrate any fraud, according to the application on file and the affidavits filed, which are not admissible, Your Honor, but form the background about what's going on here. Therefore, the probate of Natalie's estate is not a proper vehicle for any action involving fraud by Bill McKee.

Whether there is or isn't fraud by Bill McKee will be potentially resolved in an independent

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action because one has to plead all the nine elements of fraud and the requirements there and prove their case. But opening of probate does not constitute an appropriate action for fraud against Bill McKee.

The Cahoon case is about the only case I could find involving the claim of fraud in connection with a probate. And the court allowed a probate to be reopened. It was a pending probate with various orders being issued. And while that case was still open but property had been distributed, but while the case was still open, a party claiming they had been frauded brought an action to reopen to assert that fraud in that proceeding. And the court allowed it.

So turning though, now, to the motion for partial distribution of property and our objection, the subject property is known as the river property. That's -- that's one of the properties involved here. That's the only property that I think my client is asserting any interest for the time being in. But it's called the river property.

Whatever happened in this probate of Natalie's estate in reality won't have any bearing upon the river property anyway. And, Your Honor, I wrote a supplemental brief on this, and I've submitted an affidavit, and I've attached certified copies of the

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relevant chain of title to the property. And there's no counteraffidavit or contrary position being asserted that that's an inaccurate chain of title. That is the chain of title.

The river property is the subject of a valid community property agreement. And I've supplied that to the Court. And it was filed in, I believe, 1988. The river property was acquired by Bill and Natalie and Jerry and Mina as joint property, mom and dad having an undivided one-half interest and Jerry and Mina having an undivided one-half interest. All of this is in the record, Your Honor.

Then in 1988 a community property agreement was duly executed and recorded. It referred to the property that was purchased jointly in 1971. In 1994 Natalie passed away. In 1995 a death certificate was recorded proving the death of Natalie to complete the chain of title pursuant to the community property agreement. And then Bill in 2000 deeded his surviving interest to Jerry and Mina.

Community property agreements are well recognized in Idaho. They are covered under 15-6-201. There was a predecessor section referred to in one of the cases, but 15-6-201 is the operative statute. And that's what this community property agreement was based

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upon. It has all the formalities required under the statute. Agreements to pass property are valid, enforceable, and recognized by the court. They have to be executed in writing, acknowledged or approved in the same manners as deeds to real property, contain a description of the real property, be altered or amended in the same way. And the only way these are revoked by operation of law is by subsequent divorce of the parties. (d) of 15-6-201, no such agreement shall be effective until it has been recorded prior to the death in the recorder's office where the parties reside in each county where the property is located. This is river properties in Shoshone County. This is in Shoshone County, the recording of it.

And here's what's important, Your Honor, and why the Prater case really doesn't have any bearing in reality. But "nor shall any amendment to such agreement be effective for any purpose until such amendment has been recorded in like manner prior to the death of any party thereto." So the legislature of Idaho has said, we're going to allow these nontestamentary agreements and the nonprobate of property, but here's the rules: You have to do a community property agreement. You have to observe the formalities. And if you want to revoke it or if you

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want to alter it or amend it, you've got to do it in the same fashion required for the creation of it. And that didn't happen here. Nothing was filed revoking, altering, or amending the community property agreement.

The Suchan case I cited, Your Honor, is a divorce case, but it simply said community property agreements are valid. Miller versus Prater -- there have not been any cases on this, Your Honor, because it is so clear. But in Miller versus Prater, that had to do with a mutual will, a contract to execute mutual wills, and transmution of property also. That case isn't applicable here because we have a sequence of events which includes the acquisition of property, the creation of a community property agreement according to law, the death of a party with no revocation of that agreement, the vesting of that property, the subject of the community property agreement, and the surviving spouse, Bill McKee, and in 2000 he deeded it.

The Miller versus Prater case talks about a fact situation where there was a written agreement signed by children and spouses to execute mutual wills. And then there was a community property agreement. And then, as sometimes happens, mom died, and then dad married a third party, and the children from the marriage got squeezed out. So the ensuing litigation

against what we'd often call the interloper ensued. And the Idaho court had to apply Washington law or did look at Washington law and considered what Washington law has of the effect of subsequently executed mutual wills. So if there were a mutual will executed, there might be a shred of an argument that it could alter the community property agreement. But there is no mutual will. The will is a holographic will or alleged holographic will by Natalie. There's nothing mutual about it. It says I, I, I. But that still isn't important, Your Honor, because it's not a mutual will.

And, secondly, there's no evidence in the Prater case, of what the community property agreements in Washington required or didn't require. We know in Idaho what they require, and that is the formalities that I've just described, none of which were met. So not only don't we have a mutual will, mutual agreement to revoke something, but even if it was, it's not recorded, and it can't be recorded. It's not a revocation of that agreement. These are contracts. 15-6-201 is a community property agreement to pass property upon the death of a surviving spouse. That's an agreement, and that's what happened. Natalie died, and it passed to Bill, and Bill conveyed it.

And it's extremely important that there's

been no alteration of it. And that's easy to do. With a mutual agreement, you record it, you either revoke it or alter it. Or if you get rid of property prior to the death, that's a deeding signed by both parties. That's a revocation of that provision of it. None of that happened here.

This property is clearly, under a chain of title, completely vested in Jerry and Mina McKee, who were previously owners of an undivided one half and now are owners of the entirety of it. The river property, therefore, is not an asset of Natalie's estate even if -- even if the probate of Natalie's estate is allowed to commence under -- under some theory, which I of course contend, Your Honor, it should not be able to.

The -- I won't discuss the Prater case anymore, Your Honor. It's kind of a convoluted factual pattern, but it's important in there that they were referring to a Washington community property agreement. But beyond that a contract to execute mutual wills signed by everybody and a violation of that. So we clearly are distinguishable here on all corners and all parts.

The motion to strike, Your Honor -- competence is certainly an issue here. It's been

alleged in the guardianship proceeding that Mr. McKee is not competent. I don't know if that's true or not true. That will be resolved presumably at some point. The factual matters set forth in there or attempted to be set forth are actually irrelevant to the arguments that I just presented. This community property agreement is unambiguous. It's very clear. When I die, it goes to my surviving spouse. So the facts attempted to be brought out in the motion -- or in the affidavit of Bill McKee are not relevant to that determination. And I put a detailed paragraph-by-paragraph objection to it, and I won't go into those, Your Honor. Suffice it to say, when serious questions of competence are involved, any affidavit is questionable.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Branstetter.

And I guess, Mr. Branstetter, for your benefit and Mr. Peacock's benefit, I did look at your briefing briefly today. I didn't have time to read everything before I came into court. I am likely going to be taking this file back with me to St. Maries to read the briefing and the affidavits from both sides. So I guess I'm probably not going to be ruling from the bench on the issues that are before the court today.

Best anyway, Mr. Peacock, with that being said, your turn.

MR. PEACOCK: Your Honor, along those lines of the briefing, Mr. Branstetter submitted his last brief -- I don't know -- yesterday or the day before. Obviously I could object to it as not timely. I don't want to do that. We need to get through this thing at some point in time. So I just ask to be able either to submit my notes from my argument or I don't want to burden the Court with a lot of those points that already had been argued in my briefing, especially about the community property agreement. So if I could have leave to maybe seven days to file.

THE COURT: That would be fine with me.

MR. PEACOCK: And I'll try to get it submitted.

I have to start off by apologizing. Somehow in my mind I transposed Craig with a Gary. I still have trouble with this and call Craig Gary all the time. You if you would just note that, when I mention Gary, I'm really talking about Craig.

THE COURT: Okay.

MR. PEACOCK: On the first full paragraph of page 2, it says --

THE COURT: And which document are you

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referring to now?
MR. PEACOCK: Of my brief.
THE COURT: Okay. Let me --
MR. PEACOCK: On both of them. The factual statements are exactly the same. The first full paragraph an page 2, it says, "1994 after." It should say "prior." Those aren't major changes, but --
MR. BRANSTETTER: I don't understand --
MR. PEACOCK: Well, it says -- if you read the first full paragraph, it says something something something occurred on -- page 2 there, first paragraph. Says "in 1994 after." It should have said "prior to or before."
Can you find it, Your Honor?
THE COURT: I'm looking at your memorandum right now. And so tell me where you're --
MR. PEACOCK: Just go to the -- the first full paragraph on page 2.
THE COURT: Okay.
MR. PEACOCK: About the third word, says --
THE COURT: "After"; right.
MR. PEACOCK: Should say "before."
THE COURT: All right.
MR. PEACOCK: The second full paragraph says 19 -- it should say 1994.

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THE COURT: All right.
MR. PEACOCK: And then on page 3, the first full paragraph should say August 17, 2004.
THE COURT: At the very top there?
MR. PEACOCK: Yeah.
THE COURT: Okay. So August --
MR. PEACOCK: 17.
THE COURT: -- 17 of '04.
MR. PEACOCK: Uh-huh.
THE COURT: All right.
MR. PEACOCK: Okay. That's it. (Inaudible) what happened there.
I'd kind of like -- this is kind of a convoluted mess. And I'd like to try to put it sort of into a logical sequence that I think makes it a little easier to follow.
The first thing is a motion to strike Bill McKee's affidavit. And I'd note there's no motion to strike his first affidavit, which was made over a year ago. And as a comment from my own perspective, when I filled out that first affidavit, I tried to be as careful as I could. When Mr. McKee's son challenged it, I was aware at that time he had retained Mr. Rose. My client said he was willing to fill out an affidavit. I filled out the affidavit, sent it to Mr. Rose. I

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have not talked to Mr. McKee since he retained Mr. Rose about any of these matters. And I asked Mr. Rose to go over it with him. It was my understanding this is what he wanted to say, and he was free to change anything he wanted. And I could provide the Court with correspondence. Anyway, there is no motion to strike the first affidavit. And so we have to first address the issue of admissibility under 56(e). So that's the threshold before we start applying the liberal construction and reasonable inferences rule.
So the trial court has to look at the affidavit or deposition testimony and determine whether it alleges facts which, taken as true, would render the testimony admissible. That's Shane versus Blair, which is 139 Idaho 126. It's a 2003 case. In order to consider on a summary judgment motion -- to be considered on a summary judgment motion, affidavits have been to be based on personal knowledge, set forth facts that would be admissible in evidence at trial, and show that the affiant is competent to testify to the stated matter. And that's R Homes Corp. versus Herr, 142 Idaho 87, 2005 case, and Rule 56.
So the question is, is he competent to give an affidavit? I mean, it's obvious that everything in that affidavit was his personal

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experience, his personal memory, and -- and so there is nothing in the record to say he's not competent. We can't just go around and presume that people are not competent before a court's found it. There's nothing to show that he's not competent to testify in the past. He hasn't been determined to be incompetent as incorrectly asserted in Mr. Branstetter's brief in support of his motion to dismiss.
In fact, if the Court wants to go down that road and look at the other case to see what's going on in that case, as it stands now, my understanding of the file is that you have one affidavit from a physician's assistant who saw Mr. McKee last November who says he's not competent and two affidavits from medical doctors who have recently examined him to say he's competent. The point is that there is no allegation, even in the guardianship hearing, that he's not competent to testify to what he did in the past. The allegations are that he may not be competent to do all the things that he needs to do to take care of himself on a daily basis. It doesn't say he can't remember what he did. It doesn't say he doesn't know what he wants. It just says he may not be able to do the things he needs on a daily basis.
I'd also point out that he has submitted

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the second affidavit, which is entirely consistent with the first affidavit, which was submitted over a year ago. So if we accept that there was an affidavit, the next thing is that the affidavit is sufficient. The next thing is, was there fraud such that a statute of limitations should be tolled? Well, I briefed that. I don't want to go through all that. I know you've got better things to do than hear what I've already told you. But just briefly it establishes that -- that he concealed the will. He didn't give it to Maureen. That he did it for his own purposes so he could use the assets.

Now, there's a kind of an ambiguity here, I think, because he did that, but he also acknowledges that he knew of the will, he agreed to the will, and he -- he felt that that was proper. Now, if he didn't feel that, all he had to do was take the will and do this. (Demonstrating.) We have no case because there is no will.

He didn't do that. Why would he leave that will sitting around? Because eventually I think he felt that that's what had to be straightened out and done. So it's clear that he did this so he could do what he wanted with the assets. He's an elderly guy. Who knows what his motivations are. Maybe he's looking

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at his maker and saying, "I just might want things to be right before I'm gone."

So we know that, from his own affidavit, who says people can't incriminate themselves? How many criminal cases does the Court sit on a day where people come in and admit, "Yes, I did this. It was wrong. I'm ready to make right whatever there is." Well, there's nothing wrong with that. If you want to say he's incompetent because he admits that he did something wrong, then I guess we might as well just cancel all criminal hearings because they're all incompetent if they admit something wrong.

Then we come to the issue of whether filing the estate is the proper remedy. Well, in this case it's not as simple as saying, "Oh, she can just sue Bill or this or that." It's like there's a question of, what are these assets? I mean, I don't think we know for sure what all the assets are. The estate is the right place. The job of the estate is to collect the assets, to find out what the proper thing is.

And so why is it that opening this estate's the right thing? It's very similar, I think, to what happened in the -- in the -- I want to say -- it's not Miller, but it's the Cahoon case, I believe --

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where they were concealed, they were made unavailable. The assets were, and the representative was committing fraud. Well, the estate -- reopening the estate to reshuffle the assets was the appropriate remedy rather than institute a bunch of actions against different people who had different interests or even one person who had a different interest. So in this case allowing the estate to reopen is actually the proper remedy. It allows an entity that exists to sort of try to find out what assets there are and how to go about dealing with them. It doesn't say that -- the idea is that, a fraud's been committed, how can the person be made whole? Maybe the action against Bill, itself, is not enough to be made whole because assets have been transferred around.

A couple of other issues. One is the burden on a motion to dismiss, motion for summary judgment, and these are the kind of the standard things. The standard apply to a motion to dismiss are the same as those used in a summary judgment motion. That's Gibson versus Ada County, 142 Idaho 746. 2006 case. So that's our standard. It's the same as a judgment, summary judgment.

So under the Idaho Rules of Civil Procedure, summary judgment will be rendered only when

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pleadings, depositions, admissions on file, together with affidavits, if any, show that no genuine issue of any material fact and the moving party is entitled by a judgment by a -- as a matter of law. And I think that's 56(c). All disputed facts are to be construed liberally in favor of the nonmoving party, and all reasonable inferences that can be drawn from the record are to be drawn in favor of the nonmoving party. That's Sprinkler Irrigation Company at 139 Idaho at 695.

Summary judgment is not appropriate where reasonable people could reach different conclusions or draw conflicting inferences from the evidence regarding a genuine material -- issue of material fact. And that's Kalange, K-a-l-a-n-g-e, versus Rencher, R-e-n-c-h-e-r, 136 Idaho 192, 2001.

And in this case the ambiguity is inherent. We have a community property agreement. We have a holographic will. There's an ambiguity in what the parties intended just by virtue of the -- of the clash of those two documents say different things.

Now, I very much disagree with Mr. Branstetter. I believe he added an extra word into the -- into the code where it says, "Nor shall any amendment to such agreement be effective for any

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purpose." I certainly think that any parties can cancel, vacate, renege on any will by mutual assent. And as I'll get into later, Bill McKee's affidavit states that he assented, he knew Natalie made this will, he agreed with it, he assented to it, he didn't follow through like he should have, but he agreed with it. Which is, I think, evidenced by the fact that he didn't throw it away. He kept it. Why would he keep it? And I think that anytime you can have a de facto cancellation of a contract.

Now, if we look at the community property agreement, Mr. Branstetter cited 15-6-201 in his briefing. And it's clearly not applicable. The statute doesn't say the only way to revoke a community property agreement is. What -- if you read the comments, the comments say the sole purpose, the sole purpose of the statute is to authorize a variety of contractual arrangements which have in the past been treated as testamentary. It does not invalidate other arrangements by negative implication. That statute just doesn't apply to what we're doing here.

What should apply is what was applied in the Miller estate: general rules of contract construction, to interpret and decide whether a later instrument rescinds an earlier one. If there's no

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ambiguity on the issue of whether an instrument revokes an earlier one, it can be decided as a matter of law. However, if an inconsistency between instruments creates an ambiguity, a factual inquiry is required to determine the intent of the parties. And we're talking about Miller now. The Miller case. And what it says is, in determining whether the later -- whether a subsequent instrument rescinds an earlier instrument, the two are to be read together, and if the composite contract is ambiguous, extrinsic evidence is appropriate in order to determine the true intent of the parties. That's what we're really here about is, what was the true intent of Bill and Natalie McKee? What did they really want to do?

So you look at these two documents. You've got the will of Mrs. McKee and the community property agreement. They're inconsistent. There isn't any question they're inconsistent. It creates an ambiguity. We don't know what it is that was going on. And a factual inquiry has got to be required to determine what the parties intended. So the general issues of material fact as to whether the husband and wife intended -- this is a quote, I think, from Miller -- "genuine issues of material fact as to whether the husband and wife intended the community

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property agreement to rescind an earlier contract as to distribution of their estates precluded summary judgment." So the will of Mrs. McKee makes it clear she intended to revoke the community property agreement.

If we then look at the affidavit of Bill McKee, it at least establishes a factual question as to what his intent was and what he assented to and what he agreed to and what he said he'd do when Mrs. McKee executed her -- her holographic will. Now, he didn't follow through with that until long after the fact. But he's the party who's agreed, he's the party who should have given up part, and he was in total control of the will and he didn't reveal it. Well, maybe he's -- maybe he's had a change of heart. You know, it could be that actions of one of the other or both of the other children or something has had -- made him think that maybe he should do the right thing. I don't know. But he's come forward. He said this is what happened. And it at least creates a material question of fact about what in the world these people intended.

And I think it's even furthering our argument and makes it clear that it really resolves the ambiguity against the position that Mr. McKee, Mr. Jerry McKee, takes. And the fact that they didn't

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officially revoke the community property agreement, you know, that doesn't have to be done. If they executed a deed together, that revoked it. If they were divorced, that revokes it. If they agreed orally, that would revoke it.

So I think that, if there -- I don't think there's much of a material -- question of material fact that that's what these parties intended to do. Both of them have now spoken. Mrs. McKee through her will -- and unfortunately she's deceased -- and Mr. McKee, through the affidavit he submitted, has finally -- has said, "This is what we intend. She wanted to do it. I wanted to do it. She wrote out a will. I agreed that I would -- you know, with it," and he concealed it. I mean, maybe it's understandable, but now he's willing to say that wasn't the right thing to do and try to make it right.

Thank you.

THE COURT: Thank you, Mr. Peacock.

Mr. Branstetter, any brief rebuttal?

MR. BRANSTETTER: Yes, Your Honor. Mr. Peacock absolutely wants the Court to ignore the stated law in the State of Idaho. "Community property agreements. No such agreement shall be effective to pass property until it's been recorded" and all the

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other formalities. "Nor shall any amendment to any such agreement be effective for any purpose until such amendment has been recorded in the like manner prior to the death of any party thereto."

Mr. Peacock is confusing the clear requirements of the law and the effort now for some second-guessing, I guess. I don't know. But it doesn't matter. Mr. McKee cannot -- or Mrs. McKee could not change it by herself, the community property agreement. Neither could Mr. McKee. The law is clear. The statute is clear. It takes a mutual act by the same parties who execute it to change it. There isn't any serious, valid dispute over the meaning of the statute.

What did Bill and Maureen want to do? They wanted to have the community property agreement. They did it; they filed it. And the law says -- and it's for good reason, Your Honor. The law says, once you do that, there's only certain ways to change it so that you don't have something occurring seven, eight years down the road after events have taken place and since at least 1994, for thirteen years down the road. So the death occurred in 1994. And now you have a man 92 years old filing these affidavits saying, "This is what I meant to do. This is what I wanted to do."

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It's all parol, and it's not admissible.

Also, Your Honor, with the Miller case, it was speaking in terms of a mutual act. And it's an entirely different factual setting. And if Your Honor hasn't read it, the Court just needs to. And I'm not going to read it to you and give you my take on it. I briefed it. And it's clear that the factual pattern does not apply to this case. There was a contract to do something signed by everybody, and one person tried to change it on their own, and the Court would not allow it. And that's exactly what we have here. We have a contract signed by two people, and one person is trying to change it, and they can't.

The argument that there's inherent ambiguity is a complete red herring. There's no ambiguity in the community property agreement. And that's what the Court needs to focus on. Is the community property agreement, the contract, ambiguous? No, it's not. It says exactly what I've argued, that upon Natalie's death it vested in Bill, and that's that. There's nothing ambiguous about that. The holographic will has no effect on the community property agreement under 15-6-201. No effect whatsoever. There is no de facto cancellation. I -- (inaudible) think of Warren's discussion, Your Honor.

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The summary judgment standards certainly, I would submit, Your Honor, they -- we are not in a summary judgment case. But in order for any of the contents of the Bill McKee affidavit to even be applicable, all the requirements of the Rule 56(e) would have to be met. And they simply are not met. For instance, Mr. McKee in the earlier affidavit states that his wife died in 1994. In paragraph 11 it states that she died in 1996. I mean, the affidavit is -- and I can go through all of them -- is just full of inaccurate representations.

But more importantly, there is nothing in here where the affiant -- and there's authority for this -- the affiant states, "I have personal knowledge of the facts set forth herein and am competent to testify to these matters." That's a requirement under Rule 56(e). And under Rule 56(e), the facts to be considered by the Court must be admissible into evidence or they can't be considered. But my position is, Your Honor, they do not create genuine issues of material fact in the context of who was the fraud against. And the argument here is that the fraud is against -- it was committed by Mr. McKee. Exactly what I said. And that's what we heard here in argument. And it isn't disputed that he's the one who committed

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the fraud. So if -- if there's fraud by Mr. McKee, how on earth does it involve Natalie's estate in the first instance? It should be an independent action against Mr. McKee.

This is just something that I think Mr. Peacock probably misspoke himself. In the guardianship proceeding which the Court considered this morning, there was an affidavit, I believe, of Terry Spohr. But I don't think there were affidavits of the doctors. I think the two doctors from Spokane were simply letters. I did not see those when I looked this morning through the guardianship file that they were affidavits of physicians. So I would urge the Court to be very careful in considering the affidavit of Mr. McKee prepared by Mr. Peacock, from what I can see. It's under his title, his caption, his name. And issues of competency, I believe, do loom.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Branstetter.

And, Mr. Peacock, you do get the last opportunity to address the Court if you had anything else you wanted to tell me.

MR. PEACOCK: Your Honor, not -- I don't want to belabor these things, but, first of all, considering the procedure in the other case is -- I mean, it's just

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probate, alleging that the time for probate of will was barred by statute. A memorandum in support of the motion was filed.

On January 16, 2007, the personal representative of the estate, Maureen Erickson, made a motion for partial distribution of an undivided one quarter interest in and to Government Lot 2, Section 17, Township 49 north, Range 2 east, Boise meridian, Shoshone County, Idaho.

An objection to the partial distribution was filed. Each party submitted affidavits and memorandum in support of or in opposition to their respective positions. The court has read the pleadings, affidavits, and memorandum. I've also reviewed the applicable statutes.

Bill E.. McKee and Natalie P. McKee executed a community property agreement on July 11, 1988. It was recorded as instrument No. 333566, records of Shoshone County, Idaho. Paragraph 5 of the community property agreement provides that, upon the death of either of the parties hereto, the property described in here shall vest in the survivor absolutely subject to the liabilities imposed by Section 15-6-201, Idaho Code.

For purposes of the decision, the

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affidavit of Bill McKee dated January 26, 2007, has been considered. Even if the court accepts the affidavit of Bill McKee in full, the allegations fail to lawfully revoke, rescind, or terminate the legal effect of the community property agreement, which was to transfer the community property interest of the parties to Bill McKee upon the death of Natalie Parks McKee on December 19, 1994. The deed from Bill E.. McKee to Jerome S. McKee and Mina C. McKee dated March 13, 2000, and recorded as Shoshone County instrument 392931, was to transfer the real estate from Bill E.. McKee to Jerome S. and Mina McKee.

The provisions of Idaho Code section 15-6-201 require the same formalities to alter or amend a community property agreement. The holographic will executed by Natalie Parks McKee was insufficient to revoke the community property agreement. Any action of Bill McKee to assent or agree to rescission of the community property agreement was insufficient as a matter of law.

Based upon that analysis, the motion for partial distribution of the asset is denied, and the asset for which distribution was requested is not part of the estate of Natalie Parks McKee.

Mr. Branstetter had moved to dismiss the

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probate, having alleged that the provisions of 15-3-108 preclude the probate of will after three years from the date of death. I think that there is good reason for that law; that is, to provide some measure of certainty and finality in matters of probate, especially as it relates to real property.

There are other options available for relief from this three-year limitation, and they may be available, including independent legal action for fraud, if those elements can be proved. In this case I have dealt with the disputed river property. There may be other reasons or other assets that may be dealt with in the framework of the estate. For that reason I decline to order dismissal of the state -- of the estate at this time.

In summary, the court's rulings today are limited to upholding the validity of the community property agreement. Other potential remedies may be pursued by Ms. Erickson against Bill McKee for fraud based upon his actions as set forth in his affidavit or possibly against Jerome McKee if he was complicit in any fraud that may have been perpetrated against Ms. Erickson. Any potential cause of action does not affect the title to the land, the subject of the motion for partial distribution.

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The court will also order today that each party in this case will bear and assume responsibility for their own attorney fees and costs.

That will be the court's order.

Mr. Branstetter, I'll direct that you prepare an order consistent with that. Mr. Branstetter, do you have any questions about the language or the terms of the order?

MR. BRANSTETTER: No, I don't, Your Honor.

THE COURT: Mr. Peacock, do you have any questions or -- about the order?

MR. PEACOCK: No. I don't believe so.

THE COURT: All right.

MR. BRANSTETTER: Your Honor, would the Court be opposed if we asked for a copy of the oral decision? And frankly I don't know the procedure anymore for doing that.

THE COURT: I guess it'd have to be transcribed. I didn't draft a decision anyway, I guess. So if you wanted to listen to the tape or if you wanted to get a transcript of the pronouncement that I made from the bench, I suppose you'd be welcome to do that as well.

MR. BRANSTETTER: Okay. Thank you, Your Honor.

THE COURT: Okay. All right. Good day,

then. We'll be in recess on this matter.

MR. BRANSTETTER: Thank you, Judge.

MR. PEACOCK: Thank you.

(The hearing was concluded.)

CERTIFICATE

STATE OF IDAHO)
) ss.
COUNTY OF KOOTENAI)

I, BYRL CINNAMON, a duly certified court reporter of the State of Idaho, DO HEREBY CERTIFY:

That the foregoing transcript, contained in pages 1 through 64, is a complete, true, and accurate transcription, to the best of my ability, of the electronic tape recording of said proceedings and of all thereof.

I FURTHER CERTIFY that I am not related to any of the parties or attorneys to this litigation and have no interest in the outcome of said litigation.

IN WITNESS WHEREOF, I have hereunto set my hand on April 20, 2009.

BYRL CINNAMON, CSR
Official Court Reporter
CSR No. 466

C E R T I F I C A T E

STATE OF IDAHO)
) ss.
COUNTY OF KOOTENAI)

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IN WITNESS WHEREOF, I have hereunto set my hand on April 20, 2009.

Byrl Cinnamon

BYRL CINNAMON, CSR
Official Court Reporter
CSR No. 466

Charles R. Dean, Jr, ISB # 5763
Dean & Kolts
2020 Lakewood Dr., Suite 212
Coeur d'Alene, Idaho 83814
(208) 664-7794/(208) 664-9844 FAX

Attorney for Respondent, Jerome McKee

DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT

STATE OF IDAHO, COUNTY OF SHOSHONE

IN THE MATTER OF THE ESTATE OF NATALIE PARKS McKEE: Deceased.	Case No.: CV 06-40 MOTION AND NOTICE OF MOTION TO DISMISS APPEAL

Respondent Jerome McKee, hereby moves the Court for an order dismissing the appeal of appellant, Maureen Erickson, from the orders of Judge McFadden entered July 19, 2007 and September 17, 2009.

The motion is made pursuant to IRCP 12(b) 83(o) on the grounds that the appeal is taken from a non-appealable order and is untimely.

The motion will be heard in the courtroom of the Honorable Fred Gibler at the Shoshone County Courthouse, Wallace, Idaho on December 14, 2009 at 2:00 p.m.

Dated: 11/17/09

Dean & Kolts

By _____
Charles R. Dean, Jr.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of November 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Michael F. Peacock
123 McKinley Avenue
Kellogg, ID 83837-2501
Facsimile: (208) 783-1232

Lloyd A. Herman
Lloyd A. Herman & Associates, P.S.
213 N. University
Spokane, WA 99206
Facsimile: (509) 922-4720

☒ U.S. MAIL
☐ FEDEX GROUND
☐ HAND DELIVERED
☐ OVERNIGHT MAIL
☐ FACSIMILE

Charles R. Dean, Jr.

Charles R. Dean, Jr, ISB # 5763
Dean & Kolts
2020 Lakewood Dr., Suite 212
Coeur d'Alene, Idaho 83814
(208) 664-7794/(208) 664-9844 FAX

Attorney for Respondent, Jerry McKee

DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT

STATE OF IDAHO, COUNTY OF SHOSHONE

IN THE MATTER OF THE ESTATE OF NATALIE PARKS McKEE:	Case No.: CV 06-40
Deceased.	MEMORANDUM IN SUPPORT OF MOTION TO DISMISS APPEAL

INTRODUCTION

Petitioner, Maureen Erickson ("Maureen"), who became the Personal Representative of her mother's estate in this action by trickery and deceit, appeals to this Court from the order issued by Judge McFadden on *April 19, 2007* denying her motion for partial distribution and his order of *September 17, 2009* denying Maureen's untimely motion for reconsideration. Neither order can be challenged before this Court on appeal. The first is final and the second is not appealable.

PROCEDURAL BACKGROUND

Natalie Parks McKee died in 1994. She was survived by her husband Bill McKee, sons, Jerome ("Jerry") McKee and Craig McKee, and daughter, Maureen.

After having exhausted virtually all of her father's estate on herself and her family in the 10 years following Natalie's death, Maureen turned her attention to Jerry as her next source of

funding. In 2005, she hired attorney Michael Peacock to threaten Jerry with litigation if he did not voluntarily return the half interest in acreage on the North Fork of the Coeur d'Alene River their father had deeded to Jerry and his wife in March of 2000 (the "Property").[1] The basis for their threat was an alleged holographic will in which Natalie supposedly left her entire estate to Maureen. While negotiating with Jerry and his attorney, Michael Branstetter, in the later half of 2005, Maureen and her attorney hatched a new plan to give them some tactical advantage – this probate proceeding.

Obviously thinking that they could sneak something past Jerry and Mr. Branstetter, Maureen verified as true an Application for Informal Probate that Mr. Peacock prepared that affirmatively averred that ***Natalie had no heirs or children other than herself and her father.***[2] No notice of the Application was accordingly sent to Jerry, his brother or Mr. Branstetter. Maureen and her counsel thus hid from the Court when seeking her appointment that she, in fact, had two brothers, brothers she did not want to know about this proceeding.

Maureen's objective was to secure an order of distribution from this Court as to an interest in the Property before Jerry or Mr. Branstetter knew or could do anything about it. Fortunately, Jerry and Mr. Branstetter discovered what Maureen tried to pull and appeared in the action. ***A year later, on January 16, 2007,*** Maureen nevertheless filed a petition for partial distribution of a ¼ interest in the Property (ostensibly her mother's interest) without advising this Court of the fact Bill and Natalie McKee had executed and recorded a Community Property Agreement that passed title to the Property to her husband upon her death as a matter of law.

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[1] Natalie McKee and her husband, Bill McKee, jointly purchased with Jerry and his wife unimproved land on the North Fork of Coeur d'Alene River in 1971. Bill McKee became the sole owner of a half interest in that property after his wife's death by virtue of a recorded Community Property Agreement.

[2] The Application was filed herein on January 24, 2006.

She also did not disclose that her father had deeded his (and Natalie's) interest in the Property to Jerry and his wife over 5 years earlier and that the estate thus had no interest in the Property to distribute.

Days earlier, Jerry filed a Motion to Dismiss this probate proceeding based on the statute of limitations and later filed opposition to the motion for partial distribution premised upon the Community Property Agreement. Judge McFadden heard both motions on April 11, 2007. Following argument, Judge McFadden correctly saw that Maureen was not entitled to an order of partial distribution because the Community Property Agreement trumped the alleged holographic will, whatever its terms may be. He accordingly denied the motion for partial distribution and announced that he need not decide the statute of limitations issue at that time.[3] Judge McFadden's order denying Maureen's motion for partial distribution was then filed of record on April 19, 2007.

On July 29, 2009, some 27 months later, Maureen filed what she claimed was an "Amended" motion for reconsideration of the order denying her motion for partial distribution. On September 17, 2009, after briefing and argument, Judge McFadden denied that motion by formal order.

ARGUMENT

A. Orders Denying Motions For Reconsideration Are Not Appealable. Idaho Code §17-201 lists the judgments and orders that may be appealed to a district court in probate actions. Orders denying a motion for reconsideration are not included in that list.

B. An Appeal of the 2007 Order is Time Barred. The denial of Maureen's motion for a partial distribution was appealable in 2007 pursuant to Idaho Code § 17-201(7). An appeal

[3] Maureen came up with the preposterous argument that her father had defrauded her by concealing her mother's holographic will from her for a decade after her mother's death.

of that order, however, had to be filed within 42 days of the date of its entry (i.e. by May 31, 2007) (IRCP 83(e)).

IRCP 83(e) also lists the motions or proceedings that will toll the running of that time limit. Motions for reconsideration of appealable orders are not included in that list. Accordingly, even if Maureen had timely filed a motion for reconsideration, the time for challenging Judge McFadden's order has long passed.

C. Maureen's Claim is Barred by the Statute of Limitations. The issues Maureen indicates she intends to address on this appeal are mooted by the applicable statute of limitations, a defense that the Affidavit filed by Maureen in support of her motion for reconsideration puts to rest.

Maureen asks this Court to treat her motion for partial distribution as an action to set aside the deed given by her father to Jerry and his wife in March of 2000. While Jerry disputes that a motion for partial distribution of an asset from an estate constitutes such an action, Maureen is, in any event, time barred.

In her affidavit, a copy of which is attached for the Court's convenience,[4] Maureen unequivocally asserts that she first learned of the fraud that supposedly deprived her of the interest in the Property she should have inherited under her mother's will in August of 2004 (See Affidavit ¶ 12). The motion for partial distribution was not filed until January of 2007, some 29 months after she supposedly discovered the fraud. However, Idaho Code § 15-1-106 provides that any action by a person injured by any fraud used to avoid or circumvent the provisions of the probate code must be filed ***within 2 years of the date of discovery of the fraud***. Accordingly, even if her motion for the distribution of an asset that had not been in her mother's estate for

[4] Exhibit h to Affidavit of Lloyd Herman filed July 29, 2009.

almost 7 years qualified as an action to redress the fraud she alleges, Maureen was 5 months to late in her filing her action.

Setting aside Judge McFadden's orders on either or both motions challenged in this appeal would thus be a wasted effort since the claims Maureen wishes to pursue are time barred as an absolute matter of law.

Dated: November 17, 2009

Dean & Kolts

By _____
Charles R. Dean, Jr.

IN THE DISTRICT COURT OF THE FIRST JUDICAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTYOF SHOSHONE

IN THE MATTER OF THE ESTATE OF NATALIE PARKS McKEE Deceased.	CASE NO. CV 2006-40 AFFIDAVIT OF MAUREEN ERICKSON

I, Maureen Erickson, being first duly sworn on oath, deposes and says:

1. That I am now and, at all times material hereto, a citizen of the United States, resident of the State of Washington, over the age of 18 years, and am competent to be a witness herein, and all the facts of my affidavit are made with personal knowledge.

2. During the summer of 1994 I was staying in Osburn, Idaho with my children so that I could care for my mother who critically ill, and I did not want her to go to a hospice environment. In June 1994, my parents informed me they were changing their estate planning and that they were leaving all their property to me. They told me it was because I came as promised and cared for my Mother throughout her illness, and that I was to agree to care for my Father in his old age. I agreed to move to the area when necessary and care for my Father in his old age, and help him care for his property that my sons and I were going to inherit.

3. In November 1994, my parents called a family meeting. At the meeting were Jerome, Mina, and Craig McKee, as well as myself and my two older sons, Garth and Dirk Erickson. My parents announced that they had changed their plans and were leaving their entire estate to me so that I could care for my family and provide them with college educations. My brothers were informed that this was because of the care that I had given my Mother and was agreeing to provide for my Father in his old age. My brothers Jerome and Craig both agreed to honor my parents' wishes that my parents' entire estate would be my sole inheritance. My parents explained to my brothers that this

was also because of Jerome and Craig's relative wealth, and that they loved all of their children equally, but that I had financial needs that they did not.

4. In 2000, my Father, Bill McKee, announced to me that he was selling the Moyie Lake property in Canada. I was very upset, and asked him not to do so. I told both my Father and my brother Jerome that I did not want that property sold and reminded them that it had been promised to me. Jerome told me it was none of my business if Father sold it, and I wasn't entitled to anything until after Father died, and then only if he had anything left. I argued with both of them but the property was sold for only a fraction of what it was worth.

5. In the Fall of 2000, I called both my father and Jerome, and told them I needed to sell my share of the river property on the North Fork of the Coeur d' Alene River. They both refused and told me it was not a good time to sell. I told them that I was putting three boys through college and that Mother had told us all that the river property was to be sold for that purpose in 1994, and that Father had agreed, and that Jerome had promised to honor that. Both Jerome and Father told me they would honor that, but we couldn't sell right now because the market was down. Jerome told me he might be able to buy it from me in the future and didn't want it sold to anyone else. I had no knowledge of the fact that Father had quit claimed it to Jerome several months earlier and they both purposefully concealed that from me.

6. In the Summer of 2001, Jerome and his family came to visit and my family went to Priest Lake to spend time with them. When we arrived, Father pulled me aside and told me Jerome was taking him to Lake Pend Oreille and wanted him to sell Priest Lake to finance a home on Pend Oreille Lake for Jerome and his family. I immediately confronted Jerome, and told him Priest Lake was not going to be sold, and that they had all promised it to me. Jerome apologized and told me he was sorry, but that he knew I could not afford to keep Priest Lake, and he was only trying to make sure my family would have access to a lake property. Jerome, his family and Father went to Sandpoint for the day, and when they returned, Jerome brought me a nice bottle of wine and apologized again. He told me Priest Lake would be mine someday, but I wasn't entitled to anything until Father died.

7. In the Fall of 2002, I called Father and told him we needed to sell the river property to finance my son's educations. I told him I could wait no longer. He seemed worried and told me I needed to talk to Jerome as there might be a problem. I wrote Jerome a letter and asked him if he wanted to buy Fathers and my interest, that we were going to sell or selectively log the property. Jerome called me in a rage and told me that I didn't even know who owned the property, that Father had quit claimed it to him. I called my Father in Osburn and told him I was terribly upset, and that he had better straighten this out and get back the property I had been promised. He told me he was going to go to the safety deposit box, and see if Mother had left anything in writing. Father called me a few hours later and told me that he had faxed a letter to Jerome, left by my Mother and that Jerome had agreed to give the property back. He told me Jerome was so enraged that he had not been rational and that the conversation finally calmed down, and Jerome agreed to honor his promise to my Mother and give the property back. I asked Father if Mother had a will that he faxed Jerome and he told me no, it was a letter. Later that day Jerome called me and told me he was going to honor his promise to Mother and give the property back. He was terribly upset, but reasonable during the conversation. He said, "I don't give a damn if you sell it or cut down all the damn trees." Jerome agreed and told me he was going to put the property back in Father's name right away so we could sell it or log it. I asked him what Father had faxed him, and if Mother had left a will. He told me no, that it was a note left by our Mother. (He has since acknowledged in deposition and also in interrogatories that he had seen the will as early as 2000, or 2002, but he denied to me that a will existed on that day even so.)

8. Father and I subsequently advised Jerome that we were going to keep our share of the property but selectively log the hillside. Jerome decided he did not want his half logged and advised Father he wanted the property divided by the logging company so his half would remain undisturbed. When we decided to log the property, Mr. Smith got the necessary permits and divided the property in half. I saw and signed the contract, and read the permit from the Department of Lands listing the property owner as Bill McKee. I believed Jerome had completed the transfer of the property back as he had promised to do so that we could log our half. Based on that information, I believed Jerome had deeded it back as he had promised me orally he would.

9. The logger, Mr. Smith, informed me some of the trees on the property were diseased and should be cut because the disease would continue to spread. We called Jerome and he told the logger that he did not want any trees cut on his half. Dirk Erickson was there that day and he told Dirk as well, that he wanted no trees cut on his half of the property.

10. In 2004, Father had knee replacement surgery in Kellogg and suffered serious complications. I had company from California, Rhonda Fay, and we went to lunch with my brother Jerome and his wife Mina. We talked about the river property that we owned and then went out to show the property to Rhonda who wanted to see it again. During that lunch and time on the property, Jerome represented to everyone that he owned the half not logged and that Father and I owned the other half.

11. A few weeks later when Father was out of rehabilitation and had returned to his home, Jerome and Mina were visiting him again. Jerome had told me that they would take Father to Louisiana with them for a few weeks so I could recuperate. I had just had my second spinal fusion in Seattle. On August 16th, after several days in the hospital, my sons drove me home to Spokane. That night we received a phone call from my father telling us we needed to come up there in the morning, because Jerome had an attorney coming over and he was worried. I was confused due to the pain medication I was on, so had him speak to Garth, who promised his grandfather we would come to Osburn the following morning. Even though I was supposed to be in bed and was on strong pain medication, my two older sons and I felt it necessary to go to Osburn the following morning.

12. When we arrived at my Father's house on August 17, 2004, Jerome was shocked to see us and seemed upset by our arrival. I told him that we were there at the request of Father who had called and asked us to come regarding a new will that Jerome was having prepared. Jerome told me it was totally unnecessary, that I should be home in bed and that it was only a medical directive that the attorney was bringing over. I knew he already had one in place, and felt distrustful of my brother. I decided I needed to stay for the meeting with the attorney. I requested Father take me to the safety deposit box so that I could see the letter that Mother had left regarding her wishes. My son Dirk

accompanied us since I was weak and using a walker. When we opened the safety deposit box, it was very full. On top I saw the title to the Isuzu Rodeo, some insurance papers and an envelope. Dirk opened the envelope and handed me a hand written will of Mother's. I began to cry and was shocked because both my father and brother had denied my mother had left a will. I left my son and my father with the safety deposit box, and went to get a copy of the will. When I returned with the copy, I gave it to Dirk to place in the safety deposit box and took the original. Dirk later stated that he placed the copy I handed him of Mother's will in the same envelope as a will written by Father, and left them in the safety deposit box with all the other contents, which included checks, cash, and miscellaneous other papers. Dirk said that the will written by Father stated the exact same thing as Mother's will.

13. We left for the house in Osburn, where I confronted both Father and Jerome about lying to me about a will. My sons were so upset to see me upset so I assured them I would be fine and sent them to play golf. The woman attorney arrived, and Jerome and Mina tried to get Father to sign a new will, which they continued to represent as simply a medical directive. It gave the river property to them after Father's death. Father refused to sign it and told Jerry that we had all agreed the river property was going to my family and once again we discussed the family meeting in 1994. Jerome also told us in 2002 that he had returned the river property. I confronted them again about the will I had found that day. There was a very heated discussion taking place when Garth and Dirk returned. They both confronted Jerome and Mina about the promises made at the family meeting and Jerome backed down. Father continued to refuse to sign the will, and the attorney left. Jerome then stated that he never returned the river property to Father and me in 2002. Garth, Dirk and I returned to Spokane that evening.

14. I did not think I could care for both myself and Father after the operation and had considered postponing my surgery. Jerome told me to go ahead and have my surgery in Seattle, and that he would take Father to Louisiana for a few weeks so I could recover. The morning following the discovery of my Mother's will and the confrontation with my brother, my brother, his wife and my Father, unannounced, arrived unexpectedly at my home in Spokane. My sons and I were surprised because it was our belief that Father was flying to Louisiana that morning to recover from his knee replacement surgery, allowing

me to recuperate from my back surgery. Father was very angry with them and refused to go to Louisiana to visit as planned. He stated that they had continued to pressure him into signing the new will and that when he refused they became increasingly unpleasant. Father told them that he would not go to their home for a visit and asked to come to my home in Spokane instead.

15. In January of 2005, my friend and neighbor in Osburn, Michelle Kilbourne told me she had observed a couple she believed to be Jerome and Mina McKee in and out of my father's house for a couple of days around Christmas carrying boxes to their car. Bill McKee, my father was staying in Spokane with my family over the Christmas holidays as usual. She was unconcerned because they she believed it was family and they had a key. I was surprised to hear this and asked Father. He had no knowledge that they were in the area or had been to his house. Father had talked to Jerome before the holidays and told him that he felt bad for harming my family by Quit Claiming the river property to him, and selling the Moyie property, and asked again that he return the river property as Father was in a position of also losing the Priest Lake property that had been promised to me. Jerome was angry with Father and never bothered to contact him at Christmas or for his birthday on December 28th.

16. In 2005, when we were discussing the river property, Jerome told me that it was too late for me to get it back now, that he had had it for five years and there was nothing I could do about it.

17. In August 2005, I became very concerned about my Father. Because of his advancing age and the fact that he lived alone, I contacted him by telephone several times daily. After being unable to reach him at his home in Osburn, I decided that an emergency must exist, and was going to drive from Spokane to Osburn to check up on him. I tried his neighbor again, and was successful in reaching him, and he told me that Father was fine and had taken a trip with Jerome. I was terribly upset because I had been so concerned, and since I was the only child of Father's who was in regular contact with him, and my brother's knew it, I felt it was terribly thoughtless of them to come and remove him from Osburn without notifying me. Father called me and was frantic, telling me that he was in Sandpoint against his will, and that they (Jerome and Mina) would not let him use the telephone. I was shocked to learn that Father had been kept at the home

of Jerome and Mina's in Sandpoint, as I had never been advised that they had purchased a home in the area. Father had only learned this as well when they removed him from his home in Osburn and told him they were taking him for a drive. While I was on the phone with Father, he informed me that he had observed several documents in their home that had been removed from his safety deposit box without his knowledge or permission. He stated he first noticed the contents from his safety deposit box in a box when he saw my birth certificate, and he investigated further. Father further told me that they were moving him to Louisiana against his will. I told him under no circumstances was he to get on an airplane with them because I was fearful they would prevent me from bringing him back home to live. I then heard Mina come in and loudly inform him he was not to be on the phone and the phone was disconnected. I had no way to recontact him, as the number was not available on caller ID. I was also shocked to learn that they were planning on moving him to Louisiana without even discussing it with me. This was particularly strange because Jerome knew I had moved to the area solely so that my sons and I could care for my Father. It was also curious because neither of my brothers had ever demonstrated any interest in caring for their Father in his advancing years.

18. Several days later I was increasingly frantic and had been unable to reach my Father or brothers when I received a call from my Father. He informed me that he had refused to go to Louisiana with them, that he had caused a scene at the Spokane airport, but they were able to get him as far as Salt Lake City before he refused to go any further. My brother Craig returned him to his home in Osburn. He was terribly upset from the entire ordeal, and informed me he was missing his checkbooks, his debit card, and he had no cash or groceries on hand. I immediately drove from Spokane and brought him back from Osburn to my home in Spokane.

19. On November 1, 2005, Father asked that I take him to see Mr. Peacock, as he wanted to show him a letter that he had written to Jerome. I did not participate in the meeting. When they came out from the meeting, Mr. Peacock had his assistant notarize the letter written to Jerome, and a letter that he had written to Mr. Peacock. We stopped at the post office on the way back to Father's house so that I could mail the letter to Jerome for him. When I returned to Spokane later that evening, Father called me and told me he was missing the key to his safety deposit box. He called Jerome and asked for it to

be returned to him. He went to the bank and informed them he did not have his key, and on November 9, 2005 he was charged to have the safety deposit box drilled. He was terribly upset to find that it had been completely emptied without his permission. He continued to plead with Jerome through phone calls for the return of his property and the contents of his safety deposit box. The original of Father's will and the copy of my Mother's will, which Dirk had read on August 17, 2004, were stolen out of the safety deposit box along with all of the other contents. In answers to interrogatories in Father's lawsuit against Jerome, Mina McKee admits to mailing the title to the Isuzu Rodeo back to Father after they were called by Spike Angle from the Sheriff's Office. Mina and Jerome had said in conversations that he ordered a new copy from the Department of Motor Vehicles and it was forwarded to him in Louisiana by the Post Office. In their interrogatories they claim that the reason they had possession of the title to his Isuzu Rodeo was because it had been forwarded with his mail. Linda Hogamier, who works for DMV in Wallace, checked the records and at that time only one copy of the title had ever been issued and it was in 2000, and was mailed to Bill McKee's Post Office box. I also spoke with Sherrie Michalski at the Osburn Post Office. Her records only go back as far as August 5, 2005. On that date all mail was being delivered to my Father at his Osburn Post Office box, and there was not a forwarding address. At no time since then in their records is there a request from anyone to have Father's mail forwarded to Louisiana or in care of Jerome McKee. I do not believe it is possible that the title to the Isuzu Rodeo I saw in the safety deposit box on August 17, 2004 made its way to Louisiana through the U.S. mail.

20. Following that, I was visiting Father with my youngest son Dane. He wanted to go target practicing so he went to retrieve the guns. None of the guns were in their usual places, so we believed Father had been robbed. We opened the hidden compartment behind the fireplace, and discovered that Father's valuable coin collection, silver bars, more guns etc. were missing. Father then told Dane where his most prized possession, an antique Colt 45 in a velvet box, was hidden in the basement under a seat in an old toy car. It was missing also. Father called the sheriff, Spike Angle, and he came to the house. Father told Spike that it was his belief that Jerome had taken his Colt 45, because he was the only person who knew where it was hidden and Jerome had been hinting that he

wanted it. Father stated that Jerome had placed it in hiding for him, and no one else knew of its location. Spike said that he believed the robbery was an "inside job", because whoever took Father's possessions knew of the secret compartment behind the fireplace, and the location of the Colt 45. Spike also pointed out nothing else appeared out of place, and the fact that Father had a lot of pain medication in the kitchen and bathroom, and alcohol on the kitchen counter that would have been taken if kids were involved. On that day Spike contacted Jerome by phone and informed me that Jerome denied taking any of the contents of the safety deposit box, or any of the possessions from Father's home. Two days later an overnight letter was delivered to my Father's home in Osburn from Jerome McKee postmarked Thibodeaux, LA. Inside were the title to his Isuzu Rodeo and his debit card. The title to the Isuzu Rodeo was in the safety deposit box on August 17, 2004, which was the one and only time I visited Father's safety deposit box at Bank of America in Osburn, ID.

21. In early 2007, I called Jerome and asked him if I could facilitate reconciliation between Father and him. He said it was nice I had called, but he would have to think about it. He never called me back as promised, but instead filed to become his guardian. Both of my adult sons, Garth and Dirk Erickson, tried to reconcile with Jerome through telephone conversations. Jerome told both Garth and Dirk that I was a terrible person and that I had taken a "man" on vacation using their Grandfather's money and that he had proof. Both Garth and Dirk were furious because they knew this was not true and told him he had better stop slandering their mother. The proof, or the records that Jerome produced, were airplane tickets, hotel and room expenditures. The charges were indeed mine, although I had repaid my Father, and the "man" who had accompanied me was my oldest son Garth. I had gone to Garth's NFL tryouts with him, where we spent the night along with some other parents and players. This attempt to harm my good name hurt me very deeply.

22. I have taken care of my father over the years and we have enjoyed having him at my home in Spokane for all of my sons' athletic activities, all holidays, and his birthday celebrations. Father has had spinal surgery, two knee surgeries, a stroke, aortic valve replacement surgery, and hip replacement surgery since my return to the area. I have cared for him through all these surgeries and assisted him with all of his rehabilitation

following his operations. He currently is unable to live on his own as he needs full time assistance with meal preparation, marketing, housekeeping, laundry, personal care, and transportation to all appointments. I meet with all of doctors and currently am the guardian of his person. My brothers have benefited from all the care I have provided Father. It was never necessary to hire someone to care for him following his numerous surgeries, or while he was recuperating. My brothers never had to be concerned about Father being alone on holidays or his birthday, knowing he would be with my family. The trips that they made to the area under the guise of seeing Father were really to spend time in the Sandpoint area participating in seasonal recreational activities, all while staying at a home that my brother, Jerome, had purchased in 2004.

23. I am currently suffering financially because of the loss of the majority of the estate promised me for the education of my three sons the care of my family and myself. I was deprived of the inheritance of a waterfront resort property in Canada, which was thirty-three acres and promised me for the care of my parents. It was sold in the year 2000 and I received none of the funds. The $150,000 that was left me by my Mother disappeared along with the other contents of the safety deposit sometime between August 17th, 2004 and August 30th, 2005. The valuable river property, 17.09 acres on the North Fork of the Coeur d'Alene River, my brother claims to own even though he returned it to me in 2002. I've had to refinance my home to save Father's Osburn home for him in 2005 because he was not making his house payments during the period in which Jerome represented that he was managing his finances. Before the Priest Lake property was transferred to me, I had to make two years worth of lease payments that were in arrearage totally approximately $14,000. The Osburn house had to be sold to save Priest Lake and to pay for some of Father's legal bills since he did not want Jerome or Craig as his guardian(s). I am 62 years old, and cannot recoup these losses. I would have had to have worked all these years while caring for Father had I known that I was going to be deprived of the money from the Canadian property. My Father and I have insurmountable legal bills from having to defend all the lawsuits my brothers have brought trying to gain control of Father and his property. My Father does not have sufficient income for bills and living expenses, and I provide him 24-hour care. This makes it impossible to work, and my savings have been depleted while legal bills

continue to mount, and Father's financial and personal needs increase. It harmed me financially having been led to rely on my brother's promises to honor my parents' wishes. Had I known I would not receive the property promised me, I would have made the decision to work rather than keep my Father living with me versus placing him in a nursing home. I was awarded my home in Mission Viejo, California in my divorce. There was very little equity in my home when I sold it for approximately $230,000 and we moved up to the area to care for Father. My neighbor and friend, Donna Sessions, informed me that my home in Mission Viejo sold a few years later for over $750,000. I would have made a great deal on my property there had I not moved to the area to care for Father in accordance with our oral agreement. My three sons, Garth, Dirk, and Dane, were promised again by Father in 1997 that enough of the property would be sold to pay for their college educations if they moved up to the area to care for him, and that all the property was going to be theirs some day. Father did pay for some of their auto insurance over the years, but has not paid for any of their college educations, which has depleted my savings. The three boys together have well over $120,000 in student loans still outstanding, and Dane has one more year at the University of Washington. I feel this is a terribly unfair way for them to start their adult lives when they moved up the area as promised and have provided so much care, love and affection to their Grandfather and the property. I would like to be able to pay off their student loans, sell my home in Spokane and live on the river property, which had been my plan for many years. My sons and I all love the area where they have spent all their summer and every Christmas but one throughout their childhood. I continue to care for my father whom I love very much. Today, because he needs so much care, I have had to hire people to watch him if I have plans and need to be away from the home. Often that expenditure is a hardship on me.

24. On January 20, 2006, an Application for Informal Probate of Will and Informal Appointment of Personal Representative was filed in Shoshone County, Cause No. CV 2006-40.

25. The river property is currently being disputed as it was left to me by my Mother, Natalie Parks McKee, in her will dated June 29, 1994, and both my parents' oral promise made in June 1994, and agreed upon at the family meeting in November 1994. It was later confirmed when my son, Dirk Erickson, read Father's will that he found in the same

envelope as Mother's will in the safety deposit box on August 17, 2004. Because both my Father and my brother Jerome concealed Mother's will from me, the bulk of my promised estate has been dissipated. Jerome agreed to give us back the river property in 2002 in honor of his promise to my parents in 1994.

26. I had an agreement with my parents and my brothers that I would receive all the property in my parent's estate because of the care I had given Mother and was going to provide to Father. My parent's intent was to leave all their property to me in return for their care as we agreed in June 1994. My Mother's testimony is in her will. My Father's testimony was in his deposition and affidavit. That testimony is consistent with a letter he wrote Mr. Peacock in January 2005, and a letter written to Jerome.

27. Jerome has for years prior to, and in the guardianship hearing, talked about his substantial wealth and income. I do not believe my parents loved me any more, but that their actions were reasonable in light of the fact I was a single mother, had cared for Mother, promised to care for Father, and had three boys I promised to educate. I did keep my promise by moving back to the area and have cared for Father for the last twelve years. I never agreed to any changes in the oral contract made with my parents in June 1994, and with my brother's understanding and agreement to honor that contract in November 1994 that I was to receive all the property. I believe I have earned the property I was promised as I have performed on all aspects of the agreement.

Maureen Erickson
MAUREEN ERICKSON

GIVEN under my hand and official seal this 29 day of July 2009.

Notary Public
State of Washington
LYNN WORTHINGTON
MY COMMISSION EXPIRES
May 1, 2013

Lynn Worthington
NOTARY PUBLIC in and for the State of WA, residing in Spokane
MY COMMISSION EXPIRES: 05-01-13

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of November 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Michael F. Peacock
123 McKinley Avenue
Kellogg, ID 83837-2501
Facsimile: (208) 783-1232

Lloyd A. Herman
Lloyd A. Herman & Associates, P.S.
213 N. University
Spokane, WA 99206
Facsimile: (509) 922-4720

☒ U.S. MAIL
☐ FEDEX GROUND
☐ HAND DELIVERED
☐ OVERNIGHT MAIL
☐ FACSIMILE

Charles R. Dean, Jr.

LLOYD A. HERMAN
LLOYD HERMAN & ASSOCIATES, P.S.
213 N. University Road
Spokane Valley, WA 99206
(509) 922-6600 * fax (509) 922-4720
ISB No. 6884

IN THE DISTRICT COURT OF THE FIRST JUDICAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTYOF SHOSHONE

IN THE MATTER OF THE ESTATE OF NATALIE PARKS McKEE Deceased.	CASE NO. CV 2006-40 RESPONSE TO THE MEMORANDUM IN SUPPORT OF MOTION TO DISMISS APPEAL

I. INTRODUCTION

Comes Now Maureen Erickson, Personal Representative of the Estate of Natalie Parks McKee, and responds to Jerome McKee's Motion to Dismiss Appeal. It is Jerome McKee's position that a judgment as a result of a Rule 11(a)(2)(b) – Motion for Reconsideration – is not one of the judgments based on said Motion that is appealable from Magistrate Court to District Court under Rule 83(4)(e), and under Idaho Code §17-201.

II. FACTUAL BACKGROUND

Natalie Parks McKee died in 1994. She was survived by her husband Bill McKee, sons, Jerome McKee and Craig McKee, and daughter, Maureen Erickson. Bill McKee and Natalie Parks McKee had entered into a Community Property Agreement on July 11, 1988 (see Exhibit 7, Tab G, in the Brief on Appeal). On June 26, 1994 Natalie Parks McKee entered into a holographic will (see exhibit 9, Tab I, in the Brief on Appeal). Judge McFadden ruled that the Community Property Agreement had not been revoked by both parties because there were no mutual holographic wills. Judge McFadden further stated that there has never been produced any writing including a proported holographic will signed by Bill McKee, and therefore the revocation of the Community Property Agreement was not established. The court went on to rule that the property subject to the

original Motion for Partial Distribution is not as a matter of law part of the estate of Natalie Parks McKee. The evidence to support a mutual will or revocation was presented to the court by means of a letter to Bill McKee's lawyer, Michael Peacock (*see* Exhibit 1, Tab A, in the Brief on Appeal); Bill McKee's letter to Jerome McKee (*see* Exhibit 2, Tab B, in the Brief on Appeal); Bill McKee's videotaped deposition (*see* Exhibit 11, Tab K, in the Brief on Appeal); Affidavit of Dirk Erickson (*see* Exhibit 15, Tab O, in the Brief on Appeal). The critical document itself had been established to be in Bill McKee's safety deposit box by the Affidavit of Dirk Erickson, which confirmed that both Natalie Parks McKee and Bill McKee's wills were in the same envelope. Jerome McKee himself has confirmed the existence of Natalie Parks McKee's will in his deposition (*see* Exhibit 13, Tab M, page 71, lines 9-22, in the Brief on Appeal), and Admissions to Interrogatories served upon him in Bill McKee's suit against Jerome McKee for theft of $150,000 out of his safety deposit box, which is filed in this court under CV2007-469 (*see* Exhibit 1, attached to this Memorandum). Jerome McKee revealed by way of letter from Bill McKee dated November 25, 2002 that he knew of the existence of Natalie Parks McKee's will, which he provided in his Affidavit in Opposition to Amended Motion for Reconsideration (Exhibit 7 – letter from Bill McKee to Jerome McKee). Negotiations over the return of the river property carried on over a period of time from 2005, when all parties knew of the existence of Natalie Parks McKee's holographic will. When it became apparent that the property would not be returned voluntarily by Jerome McKee pursuant to his mothers will, the will was filed for probate. The potential for filing the will for probated was known by all parties during the negotiations as one of the avenues to seek restoration of the property. The counsel for Maureen Erickson, Michael Peacock, took the legal position that since the only devisee in the will was Maureen Erickson, no notice was required to be sent to the two brothers.[1] These known facts clearly remove the Natalie Parks McKee will from the contention of Jerome McKee's counsel that the holograph will was an alleged holographic will or that it somehow did not exist as an accurate legal document as the legal intentions of Natalie

[1] This issue was dealt with in the *In the Matter of the Estate of Natalie Parks McKee* (Case No. CV-2006-40), Memorandum in Opposition to Dismissal, filed March 9, 2007

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

Parks McKee. The statements under oath and the letters produced in this litigation established that there were mutual wills in existence in Bill McKee's safety deposit box. Jerome McKee admits seeing the original holographic will of Natalie Parks McKee on August 13, 2004, and a copy of her will on August 19, 2004, when he entered his father's safety deposit box on those two occasions (Exhibit 1 attached hereto, Jerome McKee's Answers to Interrogatories, Case No. CV07-469, pgs. 5-6, Interrogatory No. 14). It has been established by sworn testimony of Dirk Erickson that both Bill McKee's and Natalie Parks McKee's holographic wills were in the same envelope in the safety deposit box. Exhibit 14, Tab N, of the original brief establishes that Jerome McKee entered his father's safety deposit box on August 13, 2004, August 19, 2004 and August 30, 2005. When Bill McKee next attempted to enter his safety deposit box on November 9, 2005, his key(s) had mysteriously disappeared and he was required to have the box drilled in order to open it. (*See* Exhibit 2 attached hereto) Exhibit 11 (*see* Tab K in the Brief on Appeal, pgs. 14-15) establishes that all of his documents and money were gone. Especially important to this litigation was the fact that Bill McKee's original will and the copy of his wife's will along with everything else was gone and the last one to have entered the box on August 30, 2005 was Jerome McKee. The subject of the disappearance of the money ($150,000—*see* Appellate Brief, Exhibit 11, Tab K, pgs. 44-45) and the documents and the attempt to take Bill McKee against his will to Louisiana are part of the litigation brought by Bill McKee against Jerome McKee that is before ths court under Cause Number CV 2007-469.

The opposing counsel attempts in the Memorandum in Support of Motion to Dismiss Appeal to accuse Maureen Erickson of exhausting her father's estate but fails to mention to the court that the river property in question in this litigation was transferred to Jerome McKee at his request and for no consideration during a time Bill McKee was confused and depressed. (*See* Exhibit 6, Tab F, paragraphs 13-14 and 18-21; Exhibit 11, Tab K, pgs. 16-17.) Counsel also fails to mention to the Court that Bill McKee is in litigation with Jerome McKee to return the $150,000 taken from his safety deposit box.

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by Michael Peacock, counsel for Maureen Erickson.

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

III. ARGUMENT

Under IRCP 11(a)(2)(B), a motion for reconsideration of any interlocutory orders of the trial court may be made at any time before the entry of final judgment but not later than 14 days after entry of final judgment. Idaho Appellate Rule 14(a) provides that the time for an appeal from any civil judgment, order, or decree in an action is terminated by the filing of a timely motion which, if granted, could affect any findings of fact, conclusions of law, or any judgment in the action. Idaho Appellate Rule 11(a)(7) states that an appeal may be taken to the Supreme Court from such judgments and orders of a District Court in a civil action as "(a)ny order made after final judgment including an order denying a motion to set aside a default judgment" but excluding orders "granting a motion to set aside a default judgment."

In the above cited rules, it is clear in Idaho that judgments on motions for reconsideration are appealable under Idaho Appellate Rule 14(a) and that the time for appeal from said motion or judgment is terminated by the filing of the timely motion. IRCP 83(a), which concerns appeals from decisions of magistrates, says that an appeal must be first taken to the District Court from any of the following judgments, orders, or decisions made by the magistrate. In IRCP 83(a)(1), this would be a final judgment in a civil action or a special proceeding commenced or assigned to, the magistrate's division of the District Court. IRCP 83(a)(2) states these include orders, judgments, or decrees in action "in the magistrate's division which would be appealable from the District Court to the Supreme Court under Rule 11 of Idaho Appellate Rules."

Under IRCP 83(b), all appeals from the magistrate's division shall be heard by the District Court as an appellate proceeding and goes on to define those types of motions that can be appealed.

For example, IRCP 83(e)(2) states that a timely motion to amend or make additional findings of fact or conclusions of law, whether or not alteration of the judgment is

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

required if the motion is granted. The rules futher provide under IRCP 83(e)(3) timely motions to alter or amend the judgment.

In this case, the motion for reconsideration is a request that the judge alter or make additional findings or conclusions of law and/or alter the judgment. The motion asks the court to overturn its judgment that the Community Property Agreement is, as a matter of law, valid and enforceable. That is a timely motion to alter the court's judgment under IRCP 83(a) and (e)(2).

This Motion for Reconsideration clearly falls into the category of a timely motion to alter or amend the judgment as provided in IRCP 83(a)(1-2) and (e)(3). Opposing counsel is attempting to claim that the motion has to be made as a motion to amend, make additional findings/conclusions, or a timely motion to alter judgment. However, this refers to the content of the motion and not the title of motion. Clearly, the motion for reconsideration in this case was to change the court's mind and change its judgment and change its findings of fact—all of these are obviously appealable. (*See* IRCP 83(e).) The Notice of Appeal itself succinctly states it is for "the First Decision and the Decision in the Amended Motion to Reconsider." The Notice directly requests the court to reverse the magistrate court's decision and findings as required under IRCP 83(f).

IRCP 83(u)(1) provides that the scope of appeal to District Court from the magistrate court shall be determined as an appellate court in the same manner as the same standards of review as an appeal from the District Court to the Supreme Court. This rule makes it clear that all the rules cited regarding motions for reconsideration and appeals therefrom are part of and tied to the civil court rules and the rules on procedure which allow motions for reconsideration and determination of the timelines for filing an appeal to be terminated upon such a motion.

Opposing counsel futher asserts that Idaho Code § 17-201(7) does not list motions for reconsideration as appealable judgments and orders under the code. However, as they did when they discussed IRCP 83, the opposing counsel confuses the title of motion with the content. Idaho Code § 17-201(7) is concerned with the content of the pleading rather than its caption. Idaho Code § 17-201(2-4) and (7) provides for appeals to be taken to the

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

District Court from judgments of the magistrate division in probate matters. In Idaho Code § 17-201(2), admitting or refusing to admit a will to probate is appealable ; Idaho Code § 17-201(3) says that orders against or in favor of the validity of a will is appealable; Idaho Code § 17-201(4) states that orders against or in favor of setting off property are appealable; and Idaho Code § 17-201(7) declares that refusing, allowing or directing the distribution or partition of any part of an estate is appealable.

The court, in its original decision and the motion for reconsideration, clearly refused to admit a will and refused the validity of Bill McKee's will and, in so doing, refused to set aside or apart property and/or refused to allow or direct the distribution of part of the estate. All of these are appealable after a timely filed motion for reconsideration that tolls the time of appeal until the motion for reconsideration is determined.

Regarding the opposing counsel's contention that the Maureen Erickson's Motion for Partial Distribution was barred by the statute of limitations set forth in Idaho Code § 15-1-106, the critical facts are as follows:

(1) the deed to the property in question from Bill McKee to Jerome McKee was dated 2000;

(2) the discovery by Jerome McKee of the existence of his mother's will was in 2002 according to his deposition on May 29, 2007;

(3) the discovery by Jerome McKee of this father's will was on November 1, 2005 by way of a letter written to him by Bill McKee stating he and his wife, Natalie, had changed their wills and gave all of their property to Maureen Erickson;

(4) the discovery of the community property agreement was on January 23, 2007 when it was filed in this matter as part of an Objection to Partial Distribution;

(5) the hearing on partial distribution was held on March 26, 2007 and the decision of the court upholding the validity of the community property agreement was on April 11, 2007, and,

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

(6) during a videotaped deposition on May 15, 2007, Bill McKee informed the parties other than Jerome McKee that he had prepared a mutual holographic will with his wife, Natalie Parks McKee, that gave Maureen Erickson all of their property.

At no time prior to or during the hearing on March 26, 2007 did Jerome McKee or his counsel, Michael Branstetter, inform the court that Jerome McKee knew that his father, Bill McKee, and this mother, Natalie Parks McKee, made mutual wills leaving all their property to their daughter Maureen Erickson. In fact, Branstetter, in argument to the court, took advantage of that fact when he stated:

> So if there were a mutual will executed, there might be a shred of an argument that it could alter the community property agreement. But there is no mutual will.

(*See* a copy of the Reporter's Transcript of Proceedings, March 16, 2007, p. 36, lines 5-8 attached to the Notice of Appeal of the First Decision and the Decision in the Amended motion to Reconsider made by Magistrate Judge McFadden on April 16, 2007 and September 17, 2009.)

The question as to when the fraud was discovered by Maureen Erickson occurred when her father, Bill McKee, testified under oath in a videotaped desposition on May 15, 2007. This action to probate the will and the decision by the magistrate court that the Community Property Agreement controlled the distribution only involved the disclosure of the mother Natalie Parks McKee's will and that decision was on March 26, 2007. The original fraud committed in this case by Bill McKee was disclosed to Maureen Erickson when she found her mother's will in her father's safety deposit box in August 2004. The action to probate the will was on January 20, 2006. This was within two years of the discovery set forth in the statute, Idaho Code § 15-1-106. To add further clarification, Comment to the Official Text of Idaho Code § 15-1-106 states in part:

> This is an overriding provision that provides an exception to the procedures and limitations provided in the Code. The remedy of the party wronged by fraud is intended to be supplementary to other protections provided in the Code and can be maintained outside the process of settlement of the estate. Thus, if a will which is known to be a forgery is probated informally, and the forgery is not discovered until after the period for contest has run, the defrauded heirs still could bring a fraud

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

> action under the section. Or if the will is fraudulently concealed after the testator's death and its existence not discovered until after the basic three year period (section 3-108) has elapsed, there still may be an action under this section.

Comment to Official Text of Idaho Code 15-1-1-6 (emphasis added.)

The concealment and fraud allows an additional two year period within which to file the appropriate action to remedy the fraud; in this case the filing of Natalie Parks McKee will for probate was the appropriate action. In *Matter of Cahoon's Estates*, 102 Idaho 542, 546, 633 P.2d 607 (1981), the Idaho Supreme Court found that violations and fraud in the case were sufficient to justify opening the estate. Here, the fraud certainly should excuse the filing of the will more than two years after the death of Natalie Parks McKee and the appropriate action was the admission of the will to probate within the two years of discovery of the will so that the estate could determine its assets and remedies for those wrongfully conveyed.

Additionally, the fraud committed by Jerome McKee occurred during the actual hearing on the Motion for Partial Distribution on March 26, 2007 when he allowed his counsel to argue that there were no mutual wills in existence when he knew otherwise. That fraud was simultaneous with the hearing for distribution. Idaho Code § 15-1-106 allows a proceeding to commence within five years of the committing of the fraud. If the court finds that the filing of the probate action is not the proper procedure to deal with the fraud committed by Jerome McKee, there is presently 2 ½ years left under the statute to file an action.

IV. CONCLUSION

The opposing counsel's contention that the Motion for Reconsideration is not proper grounds to appeal a probate is misplaced because the rules on appeal and the Idaho Rules of Civil Procedure clearly distinguish between the title of a pleading of the content of a pleading. The Idaho Probate Code and Idaho Rules of Appellate Procedure establish that final order are appealable and that requests to change the court's findings and/or judgment are appealable. In *Bunn v. Bunn*, 99 Idaho 710, 587 P.2d 1245 (1978), the Idaho Supreme Court determined that the application of the rules that govern legal proceedings in Idaho must be liberally construed and while liberal construction "cannot

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

alter compliance which is mandatory and jurisdictional, will ordinarily preclude dismissal of an appeal for that which is but technical noncompliance." *Id.* at 712. The court goes on to say that "this will be especially so where no prejudice is shown by any delay which may have been occasioned." *Id.* Futhermore, IRCP 83(s), "which governs appeals from magistrate court to district court, does not require dismissal for failure of an appellant to punctually take the required steps." The court goes on to emphasize the following:

> The object of statues and rules regulating procedure in the courts is to promote the administration of justice. Those statues and rules which fix the time within which procedural rights are to be asserted are intended to expedite the disposition of cause to the end that justice will not be denied by inexcusable and unnecessary delay. But, except as to those which are mandatory or jurisdictional, procedural regulations should not be so applied as to defeat their primary purpose, that is, the disposition of causes upon their substantial merits without delay or prejudice.

The court goes on to say, "They (court rules) shall be liberally construed to secure the just, speedy and inexpensive determination of every action and proceeding." The court then disapproves of procedural technicalities when it states, "A "determination" of an action within the meaning of Rule 1 is meant to be a Determination of the controversy on the merits not a Termination on a procedural technicality which serves litigants not at all."

The opposing counsel's Motion to Dismiss the Appeal must be denied by the court.

Dated this 24th day of November, 2009.

LLOYD A. HERMAN
Attorney for Maureen Erickson
Personal Representative,
Estate of Natalie Parks McKee

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

Charles R. Dean, Jr.
Dean & Kolts
1110 West Park Place Suite 212
Coeur d'Alene, Idaho 83814
(208) 664-7794 / Fax (208) 664-9844
ISB #5763

Attorney for Defendants

DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT

STATE OF IDAHO, COUNTY OF SHOSHONE

BILL E. McKEE, Plaintiff, vs. JEROME McKEE and NINA McKEE, husband and wife, Defendants	Case No.: CV 07-469 DEFENDANT'S ANSWERS PLAINTIFF'S FIRST SET OF INTERROGATORIES PROPOUNDED TO DEFENDANT JEROME MCKEE

Defendant Jerome McKee responds to Plaintiff's First Set of Interrogatories Propounded to Defendant Jerome McKee as follows:

INTERROGATORIES

INTERROGATORY NO. 1: Identify each person who assisted in the preparation of your responses to these interrogatories other than in a purely clerical role.

ANSWER: Responding defendant, his wife and counsel.

INTERROGATORY NO. 2: Please state if you were present at a meeting at your parents home in Osburn, Idaho in 1994, and if so, please state:

a. Who all was present at the meeting;

b. The purpose of the meeting; and

Exhibit #1

c. A detailed account of what was said at the meeting.

ANSWER: No meeting occurred as that word is apparently intended. The family gathered in Osburn because of Natalie's failing health.

INTERROGATORY NO. 3: Please state whether you were informed by Bill and Natalie McKee in 1994 that their wishes were for all their assets, including all their property, to be given solely to Maureen Erickson.

ANSWER: No such statements were made.

INTERROGATORY NO. 4: Please state all dates that you were in Osburn, Idaho during the last 10 years from the date of these interrogatories. For each date you identify, please indicate:

a. the duration of each visit;

b. the purpose of each visit, i.e. personal, business, etc.

c. all persons you were in contact with during each visit stating their names, addresses and phone numbers; and in detail, the specific reason for each visit.

ANSWER: Responding defendant's best recollection of when he was in Osburn during the time specified is contained in Exhibit A hereto.

INTERROGATORY NO. 5: Please state all dates that you were in Priest Lake, Idaho during the last 10 years from the date of these interrogatories. For each date you identify, please indicate:

a. the duration of each visit;

b. the purpose of each visit, i.e. personal, business, etc.

c. all persons you were in contact with during each visit stating their names, addresses and phone numbers; and in detail, the specific reason for each visit.

ANSWER: Objection, this interrogatory is overbroad and unduly burdensome and seeks information that is not relevant nor calculated to lead to the discovery of admissible evidence. The interrogatory is also vague as to the meaning of "in Priest River". Without waiving said objections and assuming Maureen's counsel is referring to plaintiff's Priest Lake cabin, responding defendant recalls one occasion around the year 2000 where he and his children visited the cabin with Bill while they were on a snowmobiling trip.

INTERROGATORY NO. 6: Please state all dates that you were in Moyie Lake, British Columbia during the last 10 years from the date of these interrogatories. For each date you identify, please indicate:

a. the duration of each visit;

b. the purpose of each visit, i.e. personal, business, etc.

c. all persons you were in contact with during each visit stating their names, addresses and phone numbers; and in detail, the specific reason for each visit.

ANSWER: Objection, this interrogatory is overbroad and unduly burdensome and seeks information that is not relevant nor calculated to lead to the discovery of admissible evidence. The interrogatory is also vague as to the meaning of "in Moyie Lake". Without waiving said objections and assuming Maureen's counsel is referring to plaintiff's Moyie Lake property, responding defendant recalls one occasion in the summer of 1998 or 1999 where he and his wife visited the property while on vacation. He cannot recall how long they stayed or if they had contact with anyone other than gas station attendants, waiters, shopkeepers, etc.

INTERROGATORY NO. 7: State whether you assisted your father in the sale of the Moyie Lake, British Columbia property, and if so, please state:

a. the purpose for selling the property;

b. the amount the property sold for,

c. the nature of the payment for the property, i.e. checks, cash, etc., and

d. the owner(s) of the Moyie property at the time of sale.

ANSWER: I gave my father no assistance whatsoever.

INTERROGATORY NO. 8: Did you give Bill McKee advice on how to handle the sale of the Moyie property? If so, please state in detail what advice you gave Bill McKee, including but not limited to, how to handle the money from the sale, where to deposit the money or where to place the checks, etc.

ANSWER: No.

INTERROGATORY NO. 9: State whether you gave Bill McKee any advise as to how to deal with the potential taxes owed on the income for the sale of the Moyie Lake, British Columbia property, and describe in detail the substance of the conversation(s).

ANSWER: No advice was given.

INTERROGATORY NO. 10: State whether Bill McKee gave you any of the money from the sale of the Moyie Lake property.

ANSWER: None.

INTERROGATORY NO. 11: If the answer to the preceding interrogatory is in the affirmative, please state the reason for receiving the money, the amount you received, and how the money was given to you, i.e., check, cash, money order, etc.

ANSWER: Not applicable.

INTERROGATORY NO. 12: Please state whether you have entered the safety deposit box belonging to Bill McKee that was located at Bank of America in Osburn, Idaho.

ANSWER: Responding defendant accompanied Bill McKee on three occasions when he entered his box.

INTERROGATORY NO. 13: If the preceding interrogatory is in the affirmative, please state:

a. each date you entered the safety deposit box located at Bank of America in Osburn, Idaho;

b. all persons who entered the safety deposit box at Bank of America in Osburn, Idaho with you;

c. whether you entered the safety deposit box at Bank of America in Osburn, Idaho without Bill McKee being present; and whether you remained in the safety deposit box at Bank of America in Osburn, Idaho by yourself or with another person without Bill McKee being present in the safety deposit box.

ANSWER: It is physically impossible for anyone to be in the safety deposit box, alone or with someone else. To respond to what Maureen's counsel appears to be asking, however, responding defendant accompanied Bill McKee and his wife to the safety deposit box on the three occasions in 2004 and 2005 referenced on the signature cards plaintiff produced. Bill was present each time and orchestrated the opening and inspection of the box. Responding defendant was never present, nor could he be under bank policy, without Bill.

INTERROGATORY NO. 14: Describe in detail each and every item witnessed by you to be contained in the safety deposit box belonging to Bill McKee.

ANSWER: The first time responding defendant recalls seeing what he assumed to be the original of what Maureen had reported to be Natalie's holographic will, Craig's birth certificate and Jerry's baptismal certificate. There were other papers in the box that responding defendant

cannot recall. On the second occasion, the original holographic will was missing and had been replaced with a copy. Most, if not all, of the other documents noted on the first visit were also present. On the third occasion, the only thing in the box was an unsealed envelope containing silver certificates with face values of $25-$30.00.

INTERROGATORY NO. 15: State whether you removed any items from Bill McKee's safety deposit box located at Bank of America in Osburn, Idaho with or without Bill McKee's knowledge.

ANSWER: Responding defendant removed nothing from the box.

INTERROGATORY NO. 16: Describe in detail each and every item you removed from Bill McKee's safety deposit box located at Bank of America in Osburn, Idaho.

ANSWER: Not applicable.

INTERROGATORY NO. 17: State whether you removed items belonging to Bill McKee from his residence in Osburn, Idaho with or without his permission.

ANSWER: Responding defendant removed nothing from the home.

INTERROGATORY NO. 18: Describe in detail each and every item you removed from Bill McKee's residence in Osburn, Idaho and where the item(s) were removed from, i.e., safes, storage areas, bedrooms, etc., and where each item is currently located.

ANSWER: Not applicable.

INTERROGATORY NO. 19: Did you or anyone acting on your behalf have a new will prepared for Bill McKee in 1999? If so, please identify each and every person you contacted, and the substance of the new will you wanted prepared.

ANSWER: No.

INTERROGATORY NO. 20: Did you or anyone acting on your behalf have a new will prepared for Bill McKee in 2005? If so, please identify each and every person you contacted, and the substance of the new will you wanted prepared.

ANSWER: No.

INTERROGATORY NO. 21: Did you or anyone acting on your behalf remove Bill McKee from the State of Idaho with the intent of relocating him to Louisiana?

ANSWER: No.

INTERROGATORY NO. 22: If the answer to the preceding interrogatory is in the affirmative, please state by what means he was transported out of the state, i.e., plane, train, or automobile. If he was transported by plane, please state whether his ticket was one way or round trip, and the route of travel.

ANSWER: Not applicable.

INTERROGATORY NO. 23: State whether you sent, via overnight mail, a package to Bill McKee from Louisiana to Osburn, Idaho containing the title to an Isuzu Rodeo and a debit card to his bank account.

ANSWER: Responding defendant recalls returning items Bill had mail forwarded to Louisiana that may have contained a title or debit card.

INTERROGATORY NO. 24: If the preceding answer is in the affirmative, describe in detail how the items came to be in your possession.

ANSWER: If such items were in responding defendant's possession, they were replacements that Bill had ordered and were forwarded to Louisiana pursuant to instructions Bill gave the Post Office in preparation for visiting Louisiana.

INTERROGATORY NO. 25: State whether you or someone acting on your behalf removed the key to Bill McKee's safety deposit box from his key ring.

ANSWER: Responding defendant did not remove a key from Bill's key ring or any place else.

INTERROGATORY NO. 26: State whether you used any money belonging to Bill McKee and/or Maureen Erickson to purchase your home in Sandpoint, Idaho. If so, state how the money came to be in your possession.

ANSWER: Of course not.

INTERROGATORY NO. 27: What properties do you currently own with clear title, have ownership interest or have mortgages with financial institutions? For each property you claim to own, have some ownership interest, or have mortgages with financial institutions, state:

a. the location of the property including parcel numbers;

b. the amount of property owned, i.e. number of acres, number of buildings;

c. the value of each property;

d. when such property was purchased or acquired; and

e. how such property was purchased or acquired.

ANSWER: Objection, this interrogatory seeks information that is irrelevant, not calculated to lead to the discovery of admissible evidence and is obviously intended to vex, harass and annoy defendant.

INTERROGATORY NO. 28: Describe all corporate properties you have an interest in, including stock in Laurel Valley Plantation, stock in any other Plantation, percentage of corporate interest owned, and identify the other corporate stockholders.

ANSWER: Objection, this interrogatory seeks information that is irrelevant, not calculated to lead to the discovery of admissible evidence and is obviously intended to vex, harass and annoy defendant.

INTERROGATORY NO. 29: Identify all sources of income for your household for the past 10 years, and the amount of income for each year.

ANSWER: Objection, this interrogatory seeks information that is irrelevant, not calculated to lead to the discovery of admissible evidence and is obviously intended to vex, harass and annoy defendant.

INTERROGATORY NO. 30: State each and every job you have held for the past 10 years (whether or not you have been compensated), detailing the position held, duties performed, name(s) of supervisors, rate of pay, any compensation received.

ANSWER: Objection, this interrogatory seeks information that is irrelevant, not calculated to lead to the discovery of admissible evidence and is obviously intended to vex, harass and annoy defendant.

INTERROGATORY NO. 31: If your response to any Request in Plaintiffs First Set of Requests for Admissions to you is anything other than an unqualified admission, identify each such Request by number and as to each Request so identified:

a. State each and every fact upon which you base your denial or qualified admission.

b. Identify each person or business entity you believe has or may have knowledge of any of the facts stated in response to subpart (a).

Identify each document in your possession or under your control which contains and record of or reference to any fact stated in response to subpart (a).

ANSWER: Objection, under IRCP 33(a)(3), plaintiff is limited to 40 interrogatories. With subparts, which are to counted as separate interrogatories, plaintiff has far exceeded the number of permitted interrogatories.

Dated: 10-17-08

Dean & Kolts

By: _____
Charles R. Dean, Jr.

EXHIBIT A

Year	Date	Duration	Purpose
2002	January	about a week	Family visit with Bill and ski
	August	about a week	Visit with Bill Helped with bookkeeping & housekeeping
2003	September	about a week	Accompanied Bill home from SLC wedding/visit Helped with bookkeeping & housekeeping
2004	January	about a week	Family visit with Bill and ski
	June-mid	about a week	Help Bill prepare for knee surgery/operation & recovery Helped with bookkeeping & housekeeping
	June-late	about a week	Returned to attend Bill in hospital due to severe pneumonia Make arrangements for Bill's rehab
	August	about a week	Check Bill out of Rehab, plan-take him to LA to recuperate Helped with bookkeeping & housekeeping Contact: Mrs. Nancy McGee
2005	March	couple of days	Visit with Bill Contact: Michael Peacock
	May/June	couple of days	Visit with Bill
	August	about two days	Visit with Bill Helped with bookkeeping & housekeeping
2006	March	about two days	Visit with Bill
	June	half day	Visit with Bill Contact: Kathy Shook

Contact was also had on one or more occasions with the following people during the foregoing visits on dates responding defendant cannot recall:

Bank of America, Osburn Branch: Marlene Martin and other Bank tellers- Osburn, ID,
Marlene Martin moved to American Western Bank, Kellogg, ID, 208-786-5000
Michael Peacock- 123 McKinley Ave., Kellog, ID, 208-783-1231
Osburn Chief of Police, Spike Angle- Osburn, ID, 208-753-9001
Randy/Judy Cloos- E. Idaho St., Osburn, ID, 208-556-4251
Wally Crandall- address & phone unknown
Kathy Shook- address & phone unknown
Dorothy Westbrook- 250 W. Spruce Ave., Osburn, ID, 208-752-9381

Generally, all contacts with the above were to deal with Bill's welfare, the financial disaster Maureen had created for Bill and the lies Maureen told about defendants.

VERIFICATION

Jerome McKee, being duly sworn, deposes and says:

That he is the defendant in the above-entitled action; that he has read the foregoing, knows the contents thereof, and that the same is true of his own knowledge, save and except as to the matters which are therein stated on his information or belief, and as to those matters, he believes them to be true.

Jerome McKee

State of Louisiana }
Parish of LAFOURCHE }

SUBSCRIBED AND SWORN to before me the 15th day of October 2008, at Thibodaux, Louisiana.

Harold M. Block
Notary Public for Louisiana
My Commission Expires With my Life

(Seal)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of October 2008, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

John J. Rose, Jr.
708 W. Cameron Ave.
Kellogg, ID 83837
Facsimile: (208) 786-8005

Lloyd A. Herman
Lloyd A. Herman & Associates, P.S.
213 N. University
Spokane, WA 99206
Facsimile: (509) 922-4720

- [x] U.S. MAIL
- [ ] FEDEX GROUND
- [ ] HAND DELIVERED
- [ ] OVERNIGHT MAIL
- [ ] FACSIMILE

Charles R. Dean, Jr.

merica

OF AMERICA, N.A. "The Bank"

Safe Deposit Box Rental Agreement

No. 609 Annual Rental (Initial Term) 60.00

me of Renter Bill E McKee	Social Security Number [redacted]	Birth Date [redacted]
ne of Renter	Social Security Number	Birth Date
ne of Renter	Social Security Number	Birth Date

ing/Notice - Name/Address	I.D. No. (For Primary Renter) [redacted]	I.D. No. (For Co-Renter) [redacted]
ing/Notice Address PO Box 242	Home Phone (208) 753-4415	Business Phone —
, State, Zip Wallace, Id 83873	Business/Occupation of Primary Renter Retired	
her's Maiden Name [redacted]	Birthplace Mt	Relationship of Co-Renter to Primary

signation of Renters

☒ Personal ☐ Business

ole Renter ☐ Co-Renters
ole Proprietor ☐ Partnership
lot For Profit Organization ☐ Corporation
ast Named Person Is Additional Signatory (For Power of Attorney Only)

ther

ect to the Safe Deposit Box Rules and Regulations furnished on separate copy and incorporated by reference into this Safe Deposit Box al Agreement, Bank of America, N.A. hereby rents the above indicated Safe Deposit Box ("Box") to the Renter(s) for an initial term of one ommencing as of the date hereof, and thereafter from year to year until this Rental Agreement is terminated as provided. The amount of t shall be as indicated above unless the Bank notifies Renter in writing prior to any rental anniversary date that the annual rental for the year shall be different. The Renter(s) by signing this Rental Agreement, accept(s) this Rental Agreement pursuant to the terms hereof and by acknowledges receipt of two keys to such Box and a copy of the Safe Deposit Box Rules and Regulations for said Box.

ment Authorization

heck if you want annual rents automatically charged against your account as indicated below:

are hereby authorized to charge my ☒ checking ☐ savings account number 709355853 for safe deposit rental nents in accordance with the above schedule. This authority is to remain in effect until revoked by me in writing, and it is agrees that until actually receive such notice of revocation you shall be fully protected in making any such charge.

ease bill me for the annual box rentals. (A billing fee may be charged for the billing service.)

count & Key Deposit

dvantage (Gold/Prima) ☐ Money Manager (MRA) Key Deposit $ —
ssociate ☐ Premier Bank (Preferred /Small Business)
ivate Bank ☒ Classic Rewards

Bill E McKee

dual Box Renter Signature | Individual Box Renter Signature | Individual Box Renter Signature

of Non-Individual Box Renter (Business Name) | By: Signature of Non-Individual Box Representative | Title of Non-Individual Box Representative

Surrender

Box drilled as both keys were lost

deposit box number 609 in the vault of Bank of America located at Silver Valley

center in Osburn ID (city/state), with 0 keys is hereby surrendered. All property stored in the ...s been removed and received by the undersigned and all liability of the Bank is hereby released.

Deposit Refunded ☐ Yes ☒ No X Bill E McKee (Signature of Renter) 11-9-05 (Date)

250

ciate Name Marlene Martin Date Box Opened: 2-14-03 Number of Pages: 1/1

572NSB 7-2001

Exhibit #2

Charles R. Dean, Jr, ISB # 5763
Dean & Kolts
2020 Lakewood Dr., Suite 212
Coeur d'Alene, Idaho 83814
(208) 664-7794/(208) 664-9844 FAX

Attorney for Respondent, Jerry McKee

DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT

STATE OF IDAHO, COUNTY OF SHOSHONE

IN THE MATTER OF THE ESTATE OF NATALIE PARKS McKEE:	Case No.: CV 06-40
Deceased.	REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS APPEAL

INTRODUCTION

Maureen's opposition to Jerry McKee's Motion to Dismiss her appeal is not only filed with irrelevant and often completely false factual assertions, but legally misses the mark. The opposition is also extremely perplexing in that it makes repeated reference to non-existent exhibits to a "Brief on Appeal" for supposed evidentiary support when no such brief has ever been filed or served.

MAUREEN'S TROUBLE WITH THE TRUTH

Jerry McKee need not address all of the blatant falsehoods contained in Maureen's opposition to his motion since they are completely irrelevant to any issue raised by this motion. However, a few bear noting. First, Maureen's counsel's comes assertion that Maureen's attorney, "Michael Peacock, took the legal position that since the only devisee in the will was Maureen Erickson, no notice was required to be sent to the two brothers" is unfathomable. Idaho

Code § 15-3-301(a)(2) clearly specifies that an application for an informal probate identify the names and addresses of the decedent's "spouse, children, heirs and devisees". Maureen's Application for Informal Probate of her mother's will (filed herein on January 23, 2006) recognizes that obligation. In her application, Maujreen under oath specifically recites that she and her father are the only people who were the "spouse, children, heirs and devisees" of Natalie McKee, a statement both she and her attorney absolutely knew was untrue. Since the statute is so clear and since Jerry and his brother so clearly were the children and heirs of Natalie, Maureen clearly omitted them intentionally so that notice of this proceeding would not have to be given as required by Idaho Code § 15-3-705.

Second, the claim that Jerry kept the existence of a holographic will signed by his father a secret at the hearing on Maureen's motion for a partial distribution is transparent nonsense.[1] Not only did Bill McKee file two affidavits in this matter (January 23, 2006 and March 8, 2007) in which he stated only that his wife had signed a holographic will without ever mentioning his, Maureen specifically fails to reveal to this Court Exhibit A to her motion for reconsideration – a letter she claims her father wrote to Mr. Peacock in January of 2005 (more that 2 years before she filed he motion for partial distribution) in which her father discloses that he and his wife had changed their wills (copy attached for the Court's convenience). Thus contrary to the "critical facts" she recites on page 6 of her opposition, her attorney knew about the supposed other will even before the application for informal probate was filed.

---

[1] Of greater nonsense is that allegation that Jerry had any knowledge of a holographic will signed by his father. The claim that one existed first came up 27 months after her motion for partial distribution was denied. The claim is just another in a growing line of "made-up" facts that Maureen concocts to fill holes in her legal arguments. The first was her claim that she did not know of her mother's will until August 17, 2004 when she found it in her father's safe deposit box. As set forth in the Affidavit of Jerry McKee filed in opposition to Maureen's motion for reconsideration, it was Maureen how first provided him with a copy back in 2002. She had to come up with something to avoid the three-year statute of limitations on probating the will so she got her father to sign an affidavit saying he had kept it hidden from her. The list could go on.

Mr. Peacock apparently recognized that his client was referring to the will Bill McKee did in 1999 that was drafted by Nancy McGee in which he left all of his property to Maureen except for the North Fork property which he bequeathed to Jerry and $5,000 he willed to his other son, Craig. As the Court will note from the affidavit of Nancy McGee filed in opposition to Maureen's motion for reconsideration (copy attached for the Court's convenience), Bill directed her to prepare that will without the involvement of other family members. [The affidavit was necessitated by the claim repeated by Maureen and her sons in affidavit after affidavit, including those filed in support of her motion for reconsideration, claiming Jerry and his wife were trying to get Bill to sign a new will in 2004 and had hired an attorney to do so. As Nancy McGee explained, it was just the opposite. Maureen was the one who asked her in 2004 to do a new will for her father, which she declined as a matter of professional responsibility to do because Bill being unduly pressured and influenced by Maureen. Jerry and his wife, contrary to the false claims since made by Maureen and her sons, stayed out of the issue and seemed embarrassed by what Maureen was doing.]

Finally, Maureen totally fails to acknowledge the grounds upon which Judge McFadden denied her motion to reconsider. Not only did he find that the motion was untimely, but that Maureen had still done nothing to establish that the property in question was part of Natalie's estate (it was not as a matter of law[2]) and had had plenty of time by the March of 2007 when her motion was heard to make the arguments voiced in her untimely motion for reconsideration.

ARGUMENT

A. Orders Denying Motions For Reconsideration Are Not Appealable. Maureen ignores the fact that this is an appeal from an order in a probate proceeding, not an appeal from a

judgment in District Court. While the denial of a motion for reconsideration may be appealable in other cases on an abuse of discretion standard, Idaho Code §17-201 specifically lists the judgments and orders that may be appealed to a district court in probate actions. Orders denying a motion for reconsideration are not included in that list.

B. An Appeal of the 2007 Order is Time Barred. Maureen's citation to the Idaho Appellate Rules in not appropriate. IRCP 83(x) provides that the Idaho Appellate Rules apply only when they are not contrary to IRCP 83. The denial of Maureen's motion for a partial distribution was appealable in 2007 pursuant to Idaho Code § 17-201(7). An appeal of that order, however, had to be filed within 42 days of the date of its entry (i.e. by May 31, 2007) (IRCP 83(e)).

IRCP 83(e) also lists the motions or proceedings that will toll the running of that time limit. Motions for reconsideration of appealable orders are not included in that list. Even it if could be considered to be a motion to amend a judgment, the motion Maureen purported to file in 2007 was, as Judge McFadden determined, not properly presented to the Court and therefore not properly filed. The "Amended" motion for reconsideration Maureen filed 27 months later was thus untimely under IRCP 11(a)(2)(B).

C. Maureen's Claim is Barred by the Statute of Limitations. Maureen completely twists the law as it applies to the statute of limitations. Under Idaho Code 15-1-106, the three-year statute of limitations for probating a will can be extended as a result of fraud. If extended, action must be taken within 2 years of the date the fraud is discovered. If the claim is made against a person who is not a party to the fraud, the claim is completely time barred if not brought within 5 years of the date of the fraud. Accepting as true Maureen's claim that she first learned of her mother's will in August of 2004, she may have had 2 years to seek to probate the

---

[2] A motion for partial distribution of an asset that is not part of the estate is not, as Jerry McKee has previously noted, not an action to set aside the deed that conveyed title to that property.

will if she could have proved fraud.[3] However, her motion for partial distribution was not filed until January of 2007, 2 years and 5 months after her she claimed to have discovered the will. After she was appointed as the personal representative, Maureen could then have taken action to set aside the deed her father had given Jerry and his wife back in 2000. She, however, did not. Instead, she waited until well after the statute of limitations had expired to seek any redress (if a motion for partial distribution is considered seeking redress against that deed).

Maureen's recently fabricated claim (made for the first time in her opposition) that Jerry committed fraud "during the actual hearing ... on March 26, 2007" and that she thus has "2 ½ years left under the statute" is comical at best.[4] Maureen's claim was already barred by then and nothing Jerry or his attorney did or said after the fact changes the fact that the statute had already run. Even if she could cogently claim that some applicable period began to run in March or when Bill testified in May of 2007 (forgetting he had said the same thing to Maureen's attorney in January of 2005 (see attached), the two year statute would apply, meaning that Maureen, as her mother's personal representative, would have had to file an action to set aside the deed 6 months ago at the outside.

Setting aside Judge McFadden's orders on either or both motions challenged in this appeal would thus be a wasted effort since the claims Maureen wishes to pursue are time barred as an absolute matter of law.

Dated: December 7, 2009

Dean & Kolts

By _____
Charles R. Dean, Jr.

[3] Judge McFadden decided that he did not need to address that issue given his ruling on the motion for partial distribution.

[4] Maureen must be counting using the 5-year provision that sets the outside limits for pursing an action against a party not responsible for the fraud. The statute is still 2 years from discovery, not 5 years.

January 14, 05

Mr. Peacock, Attorney at Law
Kellogg, Idaho

Dear Mr. Peacock:

My wife and I gave our word to Maureen and her three boys in 1994 that we had changed our wills and were going to leave all the real estate property to her family so that she could manage and educate the boys. Both Jerry and Craig gave their word that they would honor our wishes on that. This applies to only the downstream half of the entire lot.

When I sold the Canadian property for $300,000 after Natalie's death, I did not give Maureen her half share of it for my Natalie, nor did she ever ask for it.

When I gave Jerry the river property which was promised to Maureen, I owed him some money and had no other way and had no other way to repay it. When we did this neither Jerry or I kept our word to Natalie and Maureen.

Both of these deals harmed my daughter and her children terribly. It has now come back to hurt me.

Maureen is putting three boys through college by herself and without the money promised by her Mother and me.

As it stands I am going to lose Priest Lake property which is a heart breaker. I also need more money to live on. If the river property that I gave Jerry was returned I could keep Priest Lake property

and give some money to help Maureen's remaining grandchildren to help them finish college.

I understand your concern about my relationships with Jerry Thorpe and Ed Leach. I talked to both boys and told them I'd be at Maureens for Christmas. Neither has called here since including my birthday December 28.

Please let me know what you need for a retainer. Can you start immediately to get the silver property back soon.

Bill E McKee

Charles R. Dean, Jr, ISB # 5763
Dean & Kolts
2020 Lakewood Dr., Suite 212
Coeur d'Alene, Idaho 83814
(208) 664-7794/(208) 664-9844 FAX

DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT

STATE OF IDAHO, COUNTY OF SHOSHONE

IN THE MATTER OF THE ESTATE OF NATALIE PARKS McKEE:	Case No.: CV 06-40
Deceased.	AFFIDAVIT IN OPPOSITION TO "AMENDED" MOTION FOR RECONSIDERATION

I, NANCY W. McGEE, being first duly sworn, depose and say:

1. I am an attorney duly licensed to practice in the State of Idaho.

2. In 1999, Bill McKee, with whom I have been acquainted with for years, asked me to draft a will for him. I did so after meeting with Bill. No one else from his family participated in my consultation with Bill, and I was confident that he was competent to execute his will.

3. The will I drafted for Bill left his half interest in some property he and his son Jerry owned on the North Fork of the Coeur d'Alene River to Jerry. The will also left $5,000 to his other son, Craig. The balance of the estate was left to Bill's daughter Maureen with the clear statement that he was leaving her the bulk of his estate because she was the child in need, not because he loved his sons any less.

4. Bill left the executed will with me so that I could get copies. He failed to come by to pick it up as expected.

5. Five years later, I believe in August of 2004, I received a telephone asking if I had Bill's will. I do not recall if it was Bill or someone acting on his behalf that called with the inquiry regarding the will. I responded that I did and agreed to bring it to him at his home.

6. A day or so later, I received a telephone call from Bill's daughter Maureen advising me that her father wanted to do a new will and inquiring if I could do so when I dropped by with the first will I had done. I agreed to do so.

7. I went to Bill's house with his will. When I arrived, Bill was present. Also at the home were his daughter, Maureen and his son and daughter in law, Jerry and Mina. This was the first time that I had met Maureen, Jerry or Mina. I was also introduced to a couple of Maureen's children who were also present. I met with Bill at the kitchen table. Maureen, Jerry and Mina sat with us, and Maureen's children were in another room and not a party to the discussions that followed. During our discussion regarding what his will now had in it, Maureen would say to Bill, "you know mother wanted me to have everything." It became clear that whatever Bill stated that he wanted in his will was met with opposition by Maureen, and Bill would then nod and agree with Maureen.

8. It was my belief that Maureen was exerting undue influence on Bill. As a matter of professional responsibility, I declined to write a new will for Bill. I advised Bill that I could not ascertain what his wishes were, and that if he truly wanted me to do a new will he should contact me to make an appointment where I could talk to him alone. I advised him that his current will would remain valid, unless he revoked it. I also advised him that if he died without

a will his estate would be divided equally between his children. I never heard from him after that meeting, and no other will was prepared for him by me.

9. At no time did Jerry or Mina McKee contact me asking that I do a new will for Bill. Maureen was the only one who called indicating that Bill wanted to do a new will.

10. At the meeting I had with Bill where Maureen, Jerry and Mina were present, Jerry and Mina did not attempt to exert any undue influence on Bill. As I recall, both remained pleasant throughout and seemed embarrassed by what was happening.

NANCY W. McGEE

State of Idaho)
County of Shoshone)

SUBSCRIBED AND SWORN to before me the 11th day of August, 2009, at Kellogg, Idaho.

LINDA L. GATES NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho, residing at Pinehurst, Id.
My Commission Expires: 8/15/2014

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of August 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Michael F. Peacock
123 McKinley Avenue
Kellogg, ID 83837-2501
Facsimile: (208) 783-1232

Lloyd A. Herman
Lloyd A. Herman & Associates, P.S.
213 N. University
Spokane, WA 99206
Facsimile: (509) 922-4720

- ☐ U.S. MAIL
- ☐ FEDEX GROUND
- ☐ HAND DELIVERED
- ☐ OVERNIGHT MAIL
- ☒ FACSIMILE

Charles R. ~~Dean, Jr.~~

****
*** TX REPORT ***
****

TRANSMISSION OK

TX/RX NO	1732
CONNECTION TEL	7831232
SUBADDRESS	
CONNECTION ID	
ST. TIME	08/12 17:06
USAGE T	00'42
PGS. SENT	5
RESULT	OK

DEAN & KOLTS

1110 West Park Place, Suite 212
Coeur d'Alene, Idaho 83814
(208) 664-7794
FAX (208) 664-9844

MULTIPLE PARTY FAX COVER SHEET

TO: Michael F. Peacock Lloyd A. Herman

FAX NO: (208) 783-1232 (509) 922-4720

FROM: Charles R. Dean, Jr.

DATE: August 12, 2009

RE: In The Matter of The Estate of Natalie Parks McKee

NO. PAGES: 5 (including cover sheet)

DEAN & KOLTS
1110 West Park Place, Suite 212
Coeur d'Alene, Idaho 83814
(208) 664-7794
FAX (208) 664-9844

MULTIPLE PARTY FAX COVER SHEET

TO:	Michael F. Peacock	Lloyd A. Herman
FAX NO:	(208) 783-1232	(509) 922-4720
FROM:	Charles R. Dean, Jr.	
DATE:	August 12, 2009	
RE:	In The Matter of The Estate of Natalie Parks McKee	
NO. PAGES:	5 (including cover sheet)	

CONFIDENTIALITY NOTICE

☐ Original will follow by mail ☒ Original will not follow

If this fax is incomplete or difficult to read, please call (208) 664-7794.

****
*** TX REPORT ***
****

TRANSMISSION OK

TX/RX NO	1730
CONNECTION TEL	15099224720
SUBADDRESS	
CONNECTION ID	
ST. TIME	08/12 16:21
USAGE T	01'23
PGS. SENT	5
RESULT	OK

DEAN & KOLTS

1110 West Park Place, Suite 212
Coeur d'Alene, Idaho 83814
(208) 664-7794
FAX (208) 664-9844

MULTIPLE PARTY FAX COVER SHEET

TO: Michael F. Peacock Lloyd A. Herman

FAX NO: (208) 783-1232 (509) 922-4720

FROM: Charles R. Dean, Jr.

DATE: August 12, 2009

RE: In The Matter of The Estate of Natalie Parks McKee

NO. PAGES: 5 (including cover sheet)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of December 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Michael F. Peacock
123 McKinley Avenue
Kellogg, ID 83837-2501
Facsimile: (208) 783-1232

Lloyd A. Herman
Lloyd A. Herman & Associates, P.S.
213 N. University
Spokane, WA 99206
Facsimile: (509) 922-4720

- [x] U.S. MAIL
- [ ] FEDEX GROUND
- [ ] HAND DELIVERED
- [ ] OVERNIGHT MAIL
- [ ] FACSIMILE

Charles R. Dean, Jr.

LLOYD A. HERMAN
LLOYD HERMAN & ASSOCIATES, P.S.
213 N. University Road
Spokane Valley, WA 99206
(509) 922-6600 * fax (509) 922-4720
ISB No. 6884

IN THE DISTRICT COURT OF THE FIRST JUDICAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTYOF SHOSHONE

IN THE MATTER OF THE ESTATE OF NATALIE PARKS McKEE Deceased.	CASE NO. CV 2006-40 BRIEF ON APPEAL

I. INTRODUCTION

Comes Now Maureen Erickson, Personal Representative of the Estate of Natalie Parks McKee and submits the following Brief in support of her Appeal of the denial by Magistrate Judge McFadden on the 19th day of April 2007 for a partial distribution of property, and the subsequent Amended Motion for Reconsideration denied by Judge McFadden on the 16th day of September 2009. Natalie Parks McKee's will was discovered by Maureen Erickson on August 17, 2004, and filed for Probate on January 26, 2006.

II. INTRODUCTORY FACTUAL BACKGROUND OF THE ISSUE BEFORE THE COURT

Bill McKee and Natalie Parks McKee married in August 1941 and were the parents of three children, Jerome McKee, Maureen Erickson, and Craig McKee. Natalie died on December 19, 1994. On June 26, 1994, several months prior to her death, Natalie did a holographic will, which nominated Maureen Erickson as personal representative and left all of her property to her daughter, Maureen. Her will was never disclosed to

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

Maureen by her father until she found it accidentally in her father's safety deposit box on August 17, 2004. The will had been disclosed to Jerome ("Jerry") McKee by Bill two years prior on November 1, 2002, and Jerry failed to disclose the will to Maureen.

The one asset, which is subject to this probate that belonged to Bill and Natalie, has been referred to as the "River" property on the North Fork of the Coeur d'Alene. Bill and Natalie's ownership interest in that property had been transferred by Bill to Jerry without consideration, and without disclosure of Natalie's will on March 13, 2000. Maureen, as personal representative, seeks the return of that asset by means of this probate, having discovered the concealment of the will by her father and brother and her right to that asset.

Jerry's attorney, Mr. Branstetter, found at the Shoshone County Recorders Office a 1988 community property agreement on or about January 23, 2007, and filed it in the probate in Objection to Partial Distribution on the grounds that the title to the property had passed to Bill by way of the community property agreement. (Exhibit 37 – Affidavit of Michael Peacock) The magistrate court ruled that the community property agreement controlled, because there was no proof of a mutual agreement to rescind the community property agreement. A Motion for Reconsideration was filed and was brought on for hearing 27 months later after testimony in the guardianship hearing by Bill disclosed that he and his wife entered into mutual holographic wills leaving all their property to Maureen. Since that testimony letters from Bill to both Jerry and his attorney, Michael Peacock, written in 2005 assert that Bill did mutual wills with Natalie. Also, there was uncovered personal knowledge of the existence of Bill's will through affidavit testimony of Dirk Erickson, Bill's grandson. Dirk observed Bill's will in his grandfather's safety deposit box on August 17, 2004. Unfortunately, the contents of the safety deposit box went missing after Jerry entered it on three occasions, the last time on August 30, 2005. The three issues in this appeal are 1) whether Bill's testimony as to his intent to cancel the community property agreement was sufficient to cancel the agreement; 2) whether by entering into mutual holographic wills with Natalie leaving all their property to Maureen was sufficient to nullify the community property agreement, thereby preventing Bill from

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

transferring Natalie's property to his son contrary to Natalie's will; and 3) whether the delay in bringing the Motion for Reconsideration was prejudicial to Jerry.

CIRCUMSTANCES BEHIND MOTION FOR RECONSIDERATION

This Motion is based on the following:

1. The motion to dismiss was decided on facts outside the official record in this matter, and not the record established by the affidavits submitted.

2. The court decided a question not before it on motion; there was a motion to dismiss the estate and a motion for partial distribution before the court. There was no motion for summary judgment before the court. The court's decision resulted in a summary judgment.

3. In a summary judgment motion there must be no material question of fact.

4. The affidavits and other information in the file establish that there are material questions of fact.

A. There is a material question of fact regarding the intent of Bill McKee and Natalie Parks McKee to rescind the community property agreement and whether or not they were successful in their efforts.

B. There is a material question of fact regarding the intent of Bill McKee to transfer only his title to the "River" property and not the interest left to Maureen Erickson by virtue of the will of Natalie Parks McKee due to his belief that he did not own that interest or whether his intent was to transfer the entire title to the property.

C. Since the hearing, new evidence regarding the mutual intent of the parties to rescind the community property agreement has been discovered by way of testimony and admissions in depositions taken in the guardianship proceeding in this court under CV 07-120 on May 15, 2007. Said evidence is in the form of Admissions by Bill McKee confirming the intent of Bill and Natalie to rescind the community property agreement by entering into mutual holographic wills on June 26, 1994 leaving their property to Maureen, supporting his affidavit of the mutual intentions to cancel the community property agreement. Their decision to leave all their property to Maureen was later announced at the family meeting referred to in Bill's affidavit submitted in this matter.

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

D. There is new evidence overlooked and as a result not submitted at the time of the hearing of letter sent to Mr. Peacock on January 14, 2005, wherein Bill acknowledges that he and his wife entered into mutual wills rescinding the community property agreement.

E. There is new evidence overlooked and as a result not submitted at the time of the hearing of letter sent to Jerry by Bill on November 1, 2005 wherein Bill acknowledges that he and his wife entered into mutual wills rescinding the community property agreement. That evidence was critical because Jerry's attorney argued at the Motion for Partial Distribution on March 16, 2007 the non-existence of mutual wills by Bill and Natalie McKee after their discovery between January 16, 2007 and March 16, 2007 of the community property agreement.

F. There is new evidence and proof of breach of contract, and an admission by Bill about a contract referred to in his affidavit of January 26, 2007, regarding his agreement with his wife and Maureen to leave the entire estate to Maureen if she cares for her mother during her sickness, and move to Spokane to care for him.

G. New evidence and proof of fraud, and an admission of fraud by Bill about concealing the existence of his wife's will leaving all of her property to Maureen, and failing to initiate probate depriving Maureen of her rights under the will, suspected by Judge McFadden during this proceeding, has come to light by way of a judgment entered in Spokane County, Cause No. 07-2-02928-6, filed on January 28, 2008. Said judgment of fraud has also been filed in Kootenai County, CV 08-1329, dated February 20, 2008, Bonner County, CV 2008-00291 dated February 21, 2008, and in Shoshone County, Instrument # 443803, dated February 21, 2008. Said judgment is tantamount to a transfer in fraud of creditors, IC 55-901.

H. New evidence that Jerry admits in his deposition taken in the guardianship matter, CV 07-120, that he received a copy of Natalie's will in 2000 or late 2002, and a second admission that he saw it in his father's safety deposit box two years later on August 13, 2004, prior to Maureen becoming aware of the actual will on August 17, 2004.

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

I. New evidence by way of affidavit from Dirk Erickson, who accompanied his mother and grandfather to the safety deposit box on August 17, 2004, that he saw in the same envelope two handwritten wills by Natalie and Bill McKee. Both wills left all the property to his mother, supporting Bill's affidavit to the same effect.

J. New evidence by way of affidavit from Garth and Dirk Erickson that there was in fact the family meeting referred to in Bill's affidavit at which it was announced that both Natalie and Bill were leaving their entire estate to Maureen, supporting Bill's affidavit to the same effect.

K. New evidence by way of affidavit of Maureen supporting Bill's affidavit already considered by the court:

(1) Confirming the family meeting announcing the mutual intention of Bill and Natalie to leave their entire estate to Maureen.

(2) Confirming the oral contract to leave the entire estate to Maureen if she took care of her mother, took care of her father, and took care of the properties.

(3) Confirming the fact that Jerry had a copy of Natalie's will two years before Maureen found it, and concealed it from her.

(4) Confirming the fact that Jerry admitted that one half of the "River" property belonged to Bill and Maureen when he allowed them to cut the timber on their half.

(5) Confirming the fact that Jerry had promised to deed the "River" property back to Bill on several occasions.

L. Affidavit of Rhonda Fay

M. Affidavit of Van Smith

N. Affidavit of Michael Peacock

III. SIGNIFICANT FACTUAL CHRONOLOGY

July 1994	In July 1994, Bill and Natalie McKee told Maureen that they agreed to leave their entire estate to her to aid in the rearing of her sons. This was in consideration for Maureen taking care of Bill and Natalie in their later years. This was a contract that was entered into between the three parties.

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

Nov 1994	In November 1994, Jerry, Maureen, and Craig were advised of their parents wishes and reluctantly agreed.
3/13/00	Transfer of the river property to Jerry by Bill.
3/15/00	Bill received the funds for the sale of the Moyie property.
Nov 2002	Maureen wrote Jerry asking if he wanted to buy her portion of the river property. (Exhibit 31 - Letter from Maureen to Jerry.)
Nov 2002	Discovery of transfer of the river property by Maureen in 2002. (Exhibit 8 - Maureen's affidavit, page 2, paragraph 5, lines 9-17.)
Nov 2002	Maureen's attempts to have the river property returned in 2002, proven by the oral agreement between Jerry, Maureen and Bill returning the property to Bill, established by Jerry's permission given to the logger Van Smith to log only Bill's half of the river property. (Exhibit 18 - Van Smith's affidavit.)
11/25/02	Bill wrote a letter to Jerry sending him a copy of Natalie's will, instructing him to note that Craig and Sylvia are not mentioned in the will. (Exhibit 47)
8/13/04	Bill, Jerry and Mina went to Bill's safety deposit box at Bank of America. (Exhibit 14 – Sign in sheet for safety deposit box)
8/17/04	Natalie's will discovered by Maureen in Bill's safety deposit box verifying that Natalie's ½ of the property was to go to Maureen. (Exhibit 14 – Sign in sheet for safety deposit box; Exhibit 15 - Dirk Erickson's affidavit; Exhibit 26 – Jerry's timeline; Exhibit 8 - Maureen Erickson's affidavit.)
8/19/04	Bill, Jerry and Mina went to Bill's safety deposit box. Jerry stated all items in safety deposit box from his 8/13/04 visit were still there with the exception of the original holographic will of Natalie Parks McKee. A copy was left in the envelope. (Exhibit 14 – Sign in sheet for safety deposit box)
1/14/05	Letter from Bill to Mr. Peacock **admitting holographic wills** done by Bill and Natalie McKee on 6/26/94. Also asked for assistance in getting the river property back from Jerry.
7/6/05	Negotiations between Mr. Peacock and Mr. Branstetter for return of the river property beginning with a letter to Jerry, and continuing until January 5, 2007 when Jerry moved to dismiss the Probate for lack of notice. (Exhibit 27, 7/6/05 letter; Exhibit 50 – Mr. Dean's exhibit filed in the Probate regarding settlement negotiations.
8/30/05	Bill, Jerry and Mina went to Bill's safety deposit box at Bank of America. (Exhibit 14 – Sign in sheet for safety deposit box)
Sept 2005	Bill taken from Osburn to Sandpoint, then to Salt Lake City in an attempt for Jerry and Mina to relocate him to Louisiana. Bill refused to go further than Salt Lake City and had Craig drive him back to Osburn. (Exhibit 11 – Deposition of Bill McKee, pages 8, 9, 10, 11, 14, 15)
11/1/05	Bill's letter to Jerry reiterating to him that both he and Natalie had **changed their wills** leaving everything to Maureen, with Craig and Jerry agreeing with their decision. Bill asked for his river property back. (Exhibit 2)
11/9/05	Bill, having seen his personal documents while in Sandpoint, decides to check his safety deposit box, and discovers his keys missing, and has the safety deposit box forcibly opened only to find the box empty. (Exhibit 14 –

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

	Safety deposit box information; Exhibit 11 – Deposition of Bill McKee, pages 9 and 10)
1/23/06	Probate and Lis Pendens filed and no action taken pending negotiations over the return of the river property, therefore no notice sent to heirs. (Exhibit 32 - Probate Petition; Exhibit 30 - Lis Pendens.)
1/16/07	Motion for Partial Distribution – Hearing to be heard on 3/16/07. (Exhibit 33 - Motion for Partial Distribution.)
1/17/07	Petition for Preservation Deposition of Bill McKee prior to filing cause of action with hearing set for 2/20/07 (Exhibit 34). Mailed to Louisiana for service on Jerry. Mailed to Salt Lake for service on Craig. (Exhibit 35 - Notice of Service on Craig; Exhibit 36 - lack of service on Jerome.)
1/23/07	Community Property Agreement was disclosed by Branstetter for the first time in the Probate matter. Prior to this time, neither party knew of the existence of the community property agreement. (Exhibit 37 - Mr. Peacock's affidavit.)
1/26/07	Affidavit of Bill McKee in Probate matter – not filed until 3/8/07. (Exhibit 6 - Affidavit of Bill McKee.)
2/26/07	Notice of Preservation Deposition for Bill McKee in Probate matter. (Exhibit 38 - Notice of Deposition.)
2/28/07	**Guardianship action filed by Jerome McKee in Idaho to have Bill McKee declared incompetent and prevent the preservation of his testimony.**
3/8/07	Bill's affidavit of 1/26/07 filed with Court in the Probate matter and sent to Mr. Branstetter . (Exhibit 6 - Affidavit of Bill McKee.)
3/12/07	**Motion to Strike Affidavit of Bill McKee. Second attempt to prevent Bill McKee from testifying.** (Exhibit 39 - Motion to Strike.)
3/12/07	Timeline from Jerry to Social Services/Charlie Cox – admission that Maureen first discovered Natalie's will in August 2004, and admits she asked Jerry to buy Bill and Maureen's ½ of the property on the North Fork of the Coeur d'Alene River. (Exhibit 26 - timeline by Jerome McKee to Social Services.)
4/13/07	**Motion for Cognitive Assessment in the Guardianship matter. Third attempt to prevent Bill McKee from testifying.** (Exhibit 40 - Motion for Assessment of Bill McKee.)
4/19/07	Judge McFadden denied the personal representatives motion to make partial distribution of property and deciding that the community property agreement between Natalie and Bill was valid as concerns what is known as the "River" property.
4/27/07	Notice of taking of Preservation Deposition of Bill and Jerome. (Exhibit 41 - Notice of Deposition of Bill McKee; Exhibit 42 - Notice of Deposition of Jerome McKee.)
5/14/07	**Motion for Cognitive Assessment Denied.** (Exhibit 43 - Denial of Motion for Cognitive Assessment.)

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

5/15/07	Deposition of Bill McKee where he **admits having done mutual holographic wills** with Natalie leaving all of their property to Maureen, and accuses Jerry of kidnapping him and stealing $150,000 from his safety deposit box. (Exhibit 11 - Deposition of Bill McKee, page 44, line 25, page 45, lines 1-16.)
5/29/07	Deposition of Jerome McKee where he admits seeing Natalie's will in 2002 claiming Maureen sent it to him, which he confirms by his timeline to Social Services and admits that his father sent it to him. (Exhibit 13 - Deposition of Jerome McKee, page; Exhibit 26, Jerome McKee's timeline.)
6/8/07	Motion asking for Second Opinion and Postponement of Surgery. (Exhibit 44, Motion for Postponement of Surgery.)
6/14/07	Order Shortening Time on Hearing The Petitioner's Motion for Second Opinion and Postponement Surgery for a life-threatening condition for replacement of aortic value. (Exhibit 45 - Order Shortening Time.) **Jerry's attempt to keep Bill from filing a lawsuit against him for his kidnapping and theft of $150,000 from his safety deposit box.** (Exhibit 49 - Affidavit of Dr. Fuhs.)
6/18/07	Order Denying Postponement of Surgery. (Exhibit 46)
7/3/07	Bill McKee's heart surgery.
7/12/07	Court hearing on guardianship. Lyn St. Louis testified as to the competency of Bill McKee. (Exhibit 51)
8/27/07	Judge denied Jerry as guardian and as conservator. Shelley Bruna appointed as conservator requiring a bond.
9/24/07	Order entered denying guardianship but granting conservatorship – Bill found competent.
2/12/08	Craig petitioned for guardianship of Bill in Idaho – tried to have him removed from Maureen's care in Washington.
2/15/08	Judge McFadden denied Craig's Motion.
2/27/08	Judge McFadden signed Craig's Order for Temporary Guardianship ordering the removal of Bill from Maureen's house to a care facility.
2/28/08	**Washington Petition for Limited Guardianship of Bill McKee and Estate and Appointment of Guardian Ad Litem filed; restraining order signed against Jerry, Craig, Judge McFadden, et al. trying to prevent Bill's removal from Washington to Idaho.** (Exhibit 48)
6/20/08	**Judge McFadden's dismissal of Idaho Conservatorship and ordering that Washington has jurisdiction in all matters concerning Bill McKee pursuant to Washington Court's suggestion. The Court also dismissed all actions against Maureen brought by the conservator, and Judge McFadden ordered the transfer of all Bill's Idaho real property to Maureen.** (Exhibit 52)
9/10/08	**Order appointing Maureen Erickson as guardian of person – Washington** (Exhibit 53)
11/6/08	**Order appointing Garth Erickson as guardian of estate – Washington** (Exhibit 54)

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

2/1/09	Bill fell and fractured hip. Hip replacement 2/2/09. Bill in and out of rehab.
7/30/09	Filed Amended Motion for Reconsideration - Probate
9/17/09	Judge McFadden entered his decision on the Amended Motion for Reconsideration. (Exhibit 55)
10/22/09	APPEAL FILED

IV. CASE NARRATIVE

This Statement of Facts is taken from documentary evidence, including a letter from Bill to Mr. Peacock dated January 14, 2005 (Exhibit 1) and a letter from Bill to Jerry dated November 1, 2005 (Exhibit 2), admitting that Bill entered into mutual wills with his wife leaving all of his property to Maureen, the execution of which in effect amounted to a rescission of the community property agreement; the affidavit of Bill signed January 20, 2006 (Exhibit 3), and affidavit of Bill signed January 26, 2007 (Exhibit 6). It is also taken from the record of the guardianship hearing in the form of a video deposition of Bill where he admits he did a mutual will with his wife. The guardianship proceeding was brought by Jerry against Bill to have Bill declared incompetent. The video deposition of Bill done on May 15, 2007 (Exhibit 11, pgs. 23-26) was taken at the request of his attorney, John J. Rose, Jr., after several attempts by Jerry to prevent Bill's testimony (see chronology on page 7 highlighted in red). Other new evidence in the form of affidavits from Maureen (Exhibit 8), Garth Erickson (Exhibit 19), Dirk Erickson (Exhibit 15), John J. Rose, Jr. (Exhibit 10), Van Smith (Exhibit 16), Rhonda Fay (Exhibit 17), and the deposition of Jerry dated May 29, 2007 taken at the request of the ward, Bill McKee (Exhibit 13) establishing mutual wills and other important facts that support the Motion for Reconsideration.

On or about July 11, 1988 Bill and his wife Natalie executed a community property agreement (Exhibit 7).

In July 1994, Bill and Natalie told their daughter Maureen that they had agreed not to leave their property to one another, but had changed their minds and were going to leave all their property to Maureen (Exhibit 8 – Affidavit of Maureen Erickson; Exhibit 9 – Holographic will of Natalie Parks McKee; Exhibit 11 – Bill McKee's video deposition, page 23, line 24-25; Dirk Erickson's affidavit of the existence of Bill McKee's holographic will, Exhibit 15; Exhibit 19 – Affidavit of Garth Erickson). In November 1994, after Maureen had spent the summer months and extended periods during the fall

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

and part of the winter taking care of her mother and keeping her at home in Osburn, a family meeting was held where the entire McKee family including Natalie, Bill, Jerry, Craig, Maureen, Garth, Dirk and Dane Erickson, were present. At the meeting, Natalie and Bill announced that they had decided to leave all their property to their daughter Maureen as she had traveled to the area to take care of Natalie during the late stages of her life. The reasons given in addition to her care for her mother and future care of her father was because of Maureen's responsibility to her children and lack of job skills/resources, and as responsible parents and grandparents they felt that Maureen had needs their sons did not have. (See Exhibit 6, Affidavit of Bill McKee, paragraph 6 and 7, and Exhibit 10 – Affidavit of John J. Rose, Jr., page 3, lines 20-26, Exhibit 1 –Bill McKee letter to Mr. Peacock, Exhibit 2, Bill McKee letter to Jerome McKee). Thereafter, Bill requested Maureen move to Spokane so he could be near his grandsons and her. (Exhibit 11 – Bill McKee's video deposition, page 28, lines 7-11).

At the family meeting in 1994, everyone, including Jerry and Craig, agreed to this disposition and that the decision was made because of Maureen's responsibilities to her children and her lack of job skills and/or resources. (See Exhibit 6 – Affidavit of Bill McKee, page 1, paragraph 5.)

On June 26, 1994, prior to a family meeting, Bill and Natalie wrote out holographic wills. (Exhibit 11 – Bill McKee's video deposition, page 23, lines 24-25, Exhibit 1 –Bill McKee's January 14, 2005 letter to Mr. Peacock, Exhibit 2, Bill McKee's November 1, 2005 letter to Jerome McKee.) Both wills left everything to Maureen. (Exhibit 11 – Bill McKee's video deposition, page 24-26, Exhibit 11 –Bill McKee letter to Mr. Peacock, Exhibit 2, Bill McKee letter to Jerome McKee.) Bill acknowledged that he knew that his wife's will would affect his ownership of property and would revoke and make void the community property agreement because Maureen would own an undivided ½ interest in the property of Bill and Natalie upon the death of Natalie. This was acceptable to Bill. (See Exhibit 6 – Affidavit of Bill McKee, page 2, paragraphs 7, 8, 9, and 10.)

The result of the meeting and the promises made to Maureen by her mother and father resulted in a contract to make a will provided by adequate consideration on the part

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

of both parties in the form of care being provided by Maureen and her parents agreement to distribute their entire estate to her. (Exhibit 5 – Peacock's memorandum to Branstetter dated 7/13/06, Exhibit 8 – Affidavit of Maureen Erickson; Exhibit 9 – Holographic will of Natalie Parks McKee; Exhibit 11 – Bill McKee's video deposition, page 23, line 24-25; Dirk Erickson's affidavit of the existence of Bill McKee's holographic will, Exhibit 15; Exhibit 19 – Affidavit of Garth Erickson.)

Natalie died on December 19, 1994 (Exhibit 12 – Death Certificate). Bill took no action on his wife's holographic will and kept its existence a secret. He did not tell his daughter about the will, but kept it in his safety deposit box. In addition, Bill admits he did that so that he would have power over the property of his wife, so he could prevent Maureen from having any say over what happened to the property. (See Exhibit 6 – Affidavit of Bill McKee, paragraphs 15, 16 and 17.) The existence of the mutual wills admitted to by Bill in his deposition were unknown to Maureen. However, Jerry admitted in his deposition taken on May 29, 2007 that he saw the Natalie's will in 2000 or late 2002, alleging that a copy was mailed to him by his sister, when in fact it was mailed to him by his father (see Exhibit 47 – November 25, 2002 letter from Bill McKee to Jerome McKee; Exhibit 26 - Jerome's timeline admission that the will of his mother came to him by mail from his father). He stated he had no knowledge of the will prior to that time. He further acknowledged that he saw it in his father's safety deposit box two years later (August 13 and 19, 2004), and he admits he first saw it in late 2002. (Exhibit 13 – Deposition of Jerome McKee, page 70.) A copy of the safety deposit box entry sheet shows Jerome McKee, his wife Mina McKee and Bill McKee entered the safety deposit box on August 13, 2004. Bill, Maureen, and Dirk entered the safety deposit box on August 17, 2004, and discovered an envelope marked "The Last Will and Testament of Natalie P. McKee". Dirk removed a handwritten will signed by Natalie and gave it to Maureen. At the same time she observed the title to Bill's Isuzu Rodeo on the top of the safety deposit box. She immediately left to make a copy of her mother's will. While she was gone, Bill and Dirk removed a second document from the same envelope which was Bill's holographic will written and signed by Bill in June 1994, which was returned to the envelope along with a copy of Natalie's will and placed back into the safety deposit box.

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

(Exhibit 14 – Safety Deposit Box Entry Sheet; Exhibit 8 -Affidavit of Maureen Erickson; Exhibit 15 – Affidavit of Dirk Erickson, page 2, lines 1-9.) Maureen became very emotionally upset upon finding her mother's will, and did not realize Dirk had found her father's will. However, she had a copy of her mother's will made and kept the original.

Interestingly, Jerry returned to the safety deposit box on August 19, 2004 and once again on August 30, 2005 before Bill was removed to Salt Lake City against his will. (Exhibit 14 – Safety deposit box paperwork) After Bill returned from Salt Lake City, he discovered his safety deposit box key missing and had to have his safety deposit box drilled on November 9, 2005. At that time all of the documents in the safety deposit box, including those documents observed by Maureen and Dirk, including a copy of Natalie's will and Bill's will, were gone along with $150,000. (Exhibit 11 – Bill McKee's Deposition, pages 8, 9, 10, 11, 14, 15; Exhibit 15 – Dirk Erickson's affidavit)

From the time of the announcement of her parents intention to leave her all their property, Maureen was under the impression that that would not occur until her father's death. She was told by both her father and by Jerry that that is when she would receive her parent's estate. Maureen, prior to the discovery of her mother's will, thought that the joint promise would be fulfilled upon the death of her father. She did not realize, nor did anyone tell her, that there were mutual wills, which required a legal process to pass title to the heir named in the will. She was also informed by her father, and her brother Jerry, that her parents half of the "River" property would be hers upon her father's death. (See Exhibit 8 – Affidavit of Maureen Erickson.)

In 2000, Maureen needed additional funds to support two of her sons that were in college. She asked Jerry if he wanted to buy what she was led to believe was her ¼ of the property, or if she could log it. (Exhibit 8 - Maureen Erickson's Affidavit, page 2, paragraph 5 lines 9-17.) Jerry told her that the market was down and it was a bad time to sell or log, and that she needed to come up with money some other way. At that time neither Bill nor Jerry disclosed that Bill had Quit Claim Deeded Bill and Natalie's half of the "River" property to Jerry. (See Exhibit 8 – Affidavit of Maureen Erickson.)

In the fall of 2002, not being aware that the "River" property had been Quit Claim Deeded to Jerry, she again asked Jerry if he would be interested in buying her portion of

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

the "River" property, and if not she was going to selectively log her portion of the property in order to raise funds for her sons education. At that point Jerry informed Maureen that it was his property and that Bill had Quit Claim Deeded it to him in 2000. On finding out that a Quit Claim Deed had taken place without her knowledge, she confronted Bill by phone in Osburn, Idaho. Bill admitted Quit Claiming the property to Jerry because he felt pressured by Jerry, and he was afraid to tell Maureen. Maureen protested the transfer and told Bill that he needed to straighten out the matter and get her portion of the property back, that Bill did not have the authority to give her property away. Bill told Maureen that he would go to his safety deposit box and see if there was anything left in writing by Natalie regarding her wishes. Bill informed Maureen that he found a letter, but denied that it was a will. Bill faxed the letter/will to Jerry in Louisiana, then called and discussed the contents of the letter/will with Jerry. (See Exhibit 47 where Bill states, "Please note that there is no mention of Craig & Sylvia in Mother's will.") Exhibit 47 was provided by Jerry to counsel for Maureen in Jerome McKee's Response to the Amended Motion for Reconsideration. Also see Exhibit 26 - timeline by Jerome McKee. Jerry in turn called Maureen in Spokane and informed her that he would honor their mother's wishes and Quit Claim the property back to Bill so that Bill and Maureen could in turn log their half of the property. (See Exhibit 8 – Affidavit of Maureen Erickson.) Jerry acknowledges in his deposition that he received a copy of the will in 2002 claiming it came from Maureen, however it was provided to him by Bill. (See Exhibit 13 – Deposition of Jerome McKee, page 70, and lines 20-25; Exhibit 47 – November 25, 2002 letter from Bill McKee to Jerome McKee with a copy of the will; Exhibit 26 - timeline provided by Jerome McKee.) Jerry did not want to log his half, and acknowledged to the logger, Van Smith, that half the property belonged to his father, and he didn't want his half logged. (Exhibit 16 – Affidavit of Van Smith.) Maureen assumed that Bill's half of the property had been transferred back because Van Smith obtained a cutting permit from the Department of Lands showing that Bill McKee was the owner of the property. Jerry required the logger to establish the property line between the two halves before logging to make sure no trees were cut on his property. (Exhibit 16 – Affidavit of Van Smith; Exhibit 18 – Cutting permits/ documents obtained by Van

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

Smith.) Thereafter in the summer of 2004, Jerry and Mina McKee, in the presence of Maureen and her long-time friend, Rhonda Fay, represented that Maureen owned the property jointly with them, and accompanied them to the property. Ms. Fay was in the area to buy property and expressed interest in buying an acre of the "River" property from Maureen. Jerome discouraged Maureen from selling any of the property, and discouraged Ms. Fay from purchasing, telling her the area was unsafe for a single woman. (See Exhibit 8 – Affidavit of Maureen Erickson; Exhibit 17 – Affidavit of Rhonda Fay.)

Apparently Jerry, after admitting to the logger and Ms. Fay that the property had been deeded to Bill and divided in half, he decided to reassert ownership of the entire river property. On August 17, 2004 at a family meeting, attorney Nancy McGee produced a 1999 will showing that Bill had given his share of the river property to Jerry. In order to establish that Bill could not leave or deed all of Bill Natalie's half of the property to Jerry, Maureen took her father and son Dirk to the safety deposit box at Bank of American in Osburn, Idaho to look for what she was told was a letter from Natalie stating that she wanted Maureen to have her half of the estate. (Exhibit 8, Affidavit of Maureen Erickson; Exhibit 26 - timeline of Jerome McKee.) Much to the surprise of Maureen, she discovered her mother's holographic will, which had been kept secret from her by her brother who knew about it since 2002, and her father who knew about it since its inception.

As a result of this discovery and Jerry's insistence that the property belonged to him, on January 14, 2005 Bill requested his attorney, Mr. Peacock, begin negotiations to seek the return of his "River" property. (Exhibit 1, - Bill McKee's letter to Mr. Peacock.) Many negotiations were had in that regard between Mr. Peacock, counsel for Bill and Maureen, and Mr. Branstetter, attorney for Jerry. (See letters from Mr. Peacock to Mr. Branstetter - Exhibit 27, July 6, 2005 letter; Exhibit 28 September 9, 2005 letter; Exhibit 29 July 13, 2006 letter.) During the negotiations, as a precaution to prevent a transfer of the property, Attorney Peacock filed Natalie's will for probate on January 23, 2006 and filed a Lis Pendens on January 26, 2006. (Exhibit 5 – Mr. Peacock's memorandum to Mr. Branstetter dated July 13, 2006; Exhibit 30 – Lis Pendens filed January 26, 2006.) The

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

Notice of the Probate was held in abeyance to determine if the negotiations would be successful. The negotiations continued up until July 12, 2006, when Demand for Notice of All Proceedings of Probate was filed by Jerry's attorney, Mr. Branstetter. (Exhibit 4 – Demand for Notice filed on July 12, 2006.) Thereafter, Mr. Branstetter, on behalf of Jerry, filed a Motion to Dismiss Probate, Affidavits and Memorandum in Support of said Motion on January 5, 2007. Mr. Peacock filed a Motion for Partial Distribution on January 23, 2007. An Objection to the Motion for Partial Distribution was filed by Mr. Branstetter on January 23, 2007, and for the first time the existence of the community property agreement dated July 11, 1988 was revealed. Prior to this time, no one apparently knew of the community property agreement, nor had it ever been mentioned. (See Exhibit 37, Affidavit of Michael Peacock.)

In anticipation of filing an independent action to return the property outside the probate, Bill's attorney, Michael Peacock, filed a Petition for Deposition Before Action on the 17th day of January 2007 requesting a hearing on the 20th day of February 2007, and sent the petition for service on Jerome and Craig McKee at their prospective residences. (See Exhibit 35, Letter to Civil Clerk dated January 17, 2007.) On February 26, 2007, a Notice of Taking an Audio Visual Deposition of Bill McKee was filed by Mr. Peacock in order to preserve his testimony in the probate matter. In response to these two petitions to preserve Bill's testimony, a guardianship action was filed by Jerry on February 28, 2007 requesting that he be appointed guardian and conservator of Bill's estate. This guardianship proceeding was obviously filed as a means to have Bill declared incompetent to render any testimony in the preservation deposition inadmissible. After failed attempts to serve Jerry, Bill's attorney filed an Affidavit of Bill McKee (Exhibit 6) on March 3, 2007 in Support of the Partial Distribution of Property. Mr. Branstetter, Jerry's attorney, retaliated with a Motion to Strike Bill McKee's Affidavit urging the Court to take note of the guardianship filing and alleging Bill was incompetent. (Exhibit 39, Motion to Strike Affidavit of Bill McKee) On July 12, 2007 during the guardianship hearing, Judge McFadden heard the testimony from a recognized elder law lawyer from the State of Washington, Lyn St. Louis. Her opinion was that Bill was competent and that she arrived at that opinion having met with Bill 3 times, and after

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

having reviewed four medical opinions on his competency, and personally interviewing Dr. Nisco, Bill's heart surgeon. (Exhibit 51, Transcript of the Court testimony of Lyn St. Louis on 7/12/07, pages 6-25)

On August 27, 2007 Judge McFadden ruled that Jerry would not be the appropriate designee as guardian or conservator, and found that Bill was only in need of a conservator to assist him with his finances, and appointed Shelley Bruna.

On February 12, 2008, a second attempt by Jerome and Craig McKee to gain guardianship of Bill when Craig requested and was ultimately granted letters of temporary guardianship of Bill with the right to remove him from Maureen's care in Washington. Since Bill had been a resident of the State of Washington since March 2007, a Petition for Limited Guardianship was filed in the State of Washington on February 28, 2008, and a restraining order was issued against Jerry, Craig, Judge McFadden, et al trying to prevent Bill's removal from Washington, which became permanent. (Exhibit 48 – Washington Guardianship and Restraining Order)

On 6/20/08, Judge McFadden reversed himself dismissing the Idaho Conservatorship and ordered that Washington has jurisdiction in all matters concerning Bill McKee. The Idaho Court also dismissed all actions against Maureen brought by the conservator, and Judge McFadden ordered the transfer of all Bill's Idaho real property to Maureen. (Exhibit 52, Dismissal of the Idaho Conservatorship) Following open-heart surgery in 2007 and several TIA's (strokes) in 2008, Maureen was appointed as guardian of the person in the Washington guardianship proceeding on September 10, 2008. (Exhibit 53) On November 6, 2008, Garth was appointed as guardian of the estate in the Washington guardianship proceeding. (Exhibit 54)

On February 1, 2009, Bill fell and fractured his hip. He underwent a full hip replacement on February 2, 2009, and continued to be in and out of rehab for several months.

On July 30, 2009, an Amended Motion for Reconsideration of Judge McFadden's ruling on April 19, 2007 denying the personal representatives motion to make partial distribution of property and deciding that the community property agreement between

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

Natalie Parks McKee and Bill McKee was valid as concerns what is known as the "River" property.

V. ISSUES

1. **Mutual Contract to Rescind Community Property Agreement:** Was there an agreement between Bill McKee and Natalie Parks McKee to leave all their property to their daughter, Maureen Erickson, entered into in 1994 rescinding their 1988 community property agreement?

2. **Contract to Make a Will:** Was there an agreement between Maureen Erickson and her parents in 1994 that in return for her care of her mother and future care of her father, they had left all of their estate to her?

3. **Mutual Rescission of Community Property Agreement:** Was there a mutual decision to rescind the community property agreement by entering into subsequent mutual wills rescinding the community property agreement?

4. **Ambiguity Requiring Hearing:** Was there am ambiguity created by the existence of a subsequent will of the decedent supported by affidavit of surviving spouse that the intention was to rescind the community property agreement?

5. **Custody of Wills and Delivery of Same:** Did Jerome McKee have a statutory obligation to deliver the will to the appointed personal representative?

6. **Participation in Fraud Resulting in a Constructive Trust:** Did Jerome McKee's participation with his father, and transferring assets to himself with knowledge that his parents had agreed to leave all their property to Maureen Erickson, and the continuation of his participation with his father after the true contents of his mother's will was revealed to him, by promising to return the property and than failing to do so resulting in a constructive trust?

VI. DISCUSSION

A. WHY MOTION FOR RECONSIDERATION SHOULD BE GRANTED

1. Motion to Dismiss Must be Treated as Summary Judgment

All motions to dismiss must be treated as a motion for summary judgment, and the proceedings thereafter must comport with hearing and notice requirements of

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

summary judgment rule. *Hellickson v Jenkins, 118 Idaho 273, 1990.* It is unclear by the record, but it appears that the court decided a motion to dismiss without following Rule 56 requirements; however, the court in its decision concludes that as a matter of law the I. C. §15-6-201 were determinative and that no issue of fact was presented by the non-moving party in regards to whether the community property agreement had been revoked. The court ruled that the subsequent will of the decedent wife, and the actions and affidavit agreeing to the rescission by the surviving husband, was insufficient as a matter of law. In other words, no ambiguity had occurred affecting the intentions of the parties by their subsequent acts indicating a rescission of the community property agreement. It is clear by the courts decision that in the face of facts demonstrating that the parties intended to and did rescind the community property agreement, that the court did not interpret the facts most favorable to the non-moving party. The burden is upon the party moving for summary judgment to establish that there is no genuine issue of material fact. *Collord v Cooley, 92 Idaho 789, 451 P.2d 535 (1969).* 'The courts are in entire agreement that the moving party for summary judgment has the burden of showing the absence of any genuine issue as to all the material facts, which, under applicable principles of substantive law, entitle him to judgment as a matter of law.' 'The courts hold the movant to a strict standard. To satisfy his burden the movant must make a showing that is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact.' Moreover, Idaho Supreme Court has consistently held that upon a motion for summary judgment all doubts are to be resolved against the moving party. *Collord v Cooley, 92 Idaho 789, 451 P.2d 535 (1969).*

2. Court Failed to Apply Summary Judgment Standard

The key facts are whether a family meeting occurred wherein the parties to the community property agreement announced their intention to leave all their property to their daughter. This fact was presented by an affidavit of Bill McKee that the court says it considered. In addition, Bill's affidavit says after he and his wife executed a community property agreement, subsequently they decided to leave all of their property to the daughter, Maureen. Mr. McKee further states in his affidavit that everyone present at the meeting agreed that the estate should be passed to Maureen. Present at that

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

meeting was the resisting party, Jerome McKee. Other critical facts in the affidavit clearly state that the decedent wrote out a will just prior to the family meeting, that in affect contradicted the community property agreement entered into in 1988, and that since Mr. McKee agreed to that disposition it rendered the community property agreement signed in 1988 void.

Under Rule 56, all evidence is presented by way of affidavit. The only affidavits submitted were by Bill McKee, which asserted that he and his wife mutually intended and did cancel the 1988 community property agreement. No contradictory affidavits were submitted denying the existence of a family meeting where the intentions of Bill Natalie were announced, nor were any affidavits submitted countering Bill's statement that he agreed with the content of his wife's will and intended that the entire estate pass to his daughter, Maureen, and that the community property agreement had no force and affect. At the very minimum, counsel who made the motion to dismiss must submit an affidavit denying or contradicting the existence of an oral contract to devise all of the McKee properties to Maureen. No counter-affidavits were filed; a certain degree of verity must be imputed to the affidavits in opposition to the motion to dismiss. *Woodward v Utter, 29 Idaho 310, 158 P.492, (1916).* The probate court is not bound, nor should it uphold disputed title to property in the face of uncontroverted affidavits alleging oral contracts to make a will rescinding a prior community property agreement. The trial court must look at the affidavit and determine whether it alleges facts, which, if taken as true, would render the testimony admissible. *Shane v Blair, 139 Idaho 126, 75 P.3d 180 (2003).*

The court cannot ignore the wishes of two sole parties included in the contract. In addition there was no testimony to refute Bill's affidavit, nor testimony to deny Natalie's will was proper, and no testimony to refute the family meeting during which time Bill and Natalie made their wishes known resulting in a mutual agreement to rescind the community property agreement. The affidavit of Bill McKee creates an uncontradicted genuine issue of fact, and summary judgment was therefore inappropriate.

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

The court should have denied the motion to dismiss, treated it as a summary judgment, and because of uncontroverted facts provided in the affidavit and the will, allowed a full hearing on the evidence.

3. Court Needs to Consider All the Evidence INCLUDING All New Evidence Produced

A full hearing on the evidence would have allowed the parties time to present and prepare for a full hearing at which time additional evidence would have confirmed the intent of Bill and Natalie to leave all their estate to Maureen, and as a result of mutual wills and an oral contract to make a will invalidating any deeds affecting her share of the estate, Natalie Parks McKee's entire estate would be passed to Maureen Erickson.

New evidence exists that Bill and Natalie made mutual wills rescinding the community property agreement. In Bill's deposition taken in the guardianship proceeding in this court under CV 07-120 on May 15, 2007, he acknowledged that he and his wife wrote out a will at the same time leaving their property to Maureen (Exhibit 11, page 23, lines 24-25; page 24, lines 1-7, lines 15-20; page 25, line 20; page 26, lines 1-2). The wills having been done, their intention was announced at a family meeting referred to in Bill's affidavit. The family meeting is also referred to in Maureen's affidavit (Exhibit 8, page 1 lines 20-27), Dirk's affidavit (Exhibit 15, page 1, lines 14-20), and Garth's affidavit (Exhibit 19, page 1, lines 14-21).

There is additional new evidence not submitted at the time of the hearing in the form of letters by Bill to Michael Peacock on January 14, 2005 (Exhibit 1), and to Jerry on November 1, 2005 (Exhibit 2), that reiterate Bill made mutual wills with Natalie leaving all their property to Maureen. Evidence of that are Maureen's affidavit (Exhibit 8), Bill's affidavit (Exhibit 6), and Mr. Peacock's letter to Mr. Branstetter (Exhibit 5).

When considering a Motion to Reconsider under IRCP 11(a)(2), the district court should taking into account any new facts by the moving party on the correctness of the prior decision. *Spur Products Corporation v. Stoel Rives LLP, 143 Idaho 812, 153 P.3d 1158, headnote 8 ; Coeur d'Alene Mining Co. v. First Nat'l Bank of N. Idaho, 118 Idaho 812, 823, 800 P.2d 1026, 1037 (1990).* Judge McFadden admits in his ruling the

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

new evidence of mutual holographic wills was presented, but refuses to consider that evidence requiring the production of the holographic will itself. The court goes on to say there never has been produced any writing signed by Bill McKee; however, letters written by Bill prior to this litigation succinctly say that he wrote a mutual holographic will. It's clear that Judge McFadden didn't consider the new evidence.

The fraud that Judge McFadden referred to in his oral decision about Bill's fraudulent concealment of the will and Bill and Natalie's oral contract for a will with Maureen has been proved and a judgment entered in Spokane County Cause No. 07-2-02928-8 (Exhibit 20), and filed in Shoshone County, Instrument #443803 (Exhibit 21). Said judgment is tantamount to a transfer of fraud of creditors, I.C. 55-901 and I.C. 55-914 (Exhibits 22 & 23), which voids any transfers with or without consideration.

Jerry admitted the known existence of Natalie's will, and he never informed Maureen or delivered it to her. Said knowledge of the existence of the will and possession of a copy prior to Maureen's discovery in Bill's safety deposit box was admitted to in Jerry's deposition taken after this motion to dismiss (Exhibit 13, page 70, lines 20-25). Jerry had an obligation by statute, I.C. 15-2-902 (Exhibit 24), to deliver the will with reasonable promptness to a person able to secure its probate.

The existence of the mutual wills will be testified to by Dirk (Exhibit 15) when he saw the wills of both Natalie and Bill in the same envelope in Bill's safety deposit box on August 17, 2004. Both wills were identical and handwritten and left all of their property to Maureen. The existence of Bill's mutual will, as testified to by Dirk, is further evidence of a mutual rescission of the community property agreement. In *Miller v Prater* adopted the Washington Supreme Court position the contract interpretation should be applied to community property agreements. With that in mind, the Idaho court said that the two instruments be read and construed as one in order to determine the intent of the parties. If the composite contract is ambiguous, extrinsic evidence is appropriate in order to determine the true intent of the parties.

There is substantial new evidence that a contract to make a will was entered into between Bill and Natalie and Maureen to leave their entire estate to Maureen for her efforts in caring for her mother during her illness, and future care of her father. Her

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

affidavit (Exhibit 8) also confirms Jerry knew of Natalie's will and concealed it from her. Her affidavit demonstrates substantial evidence that Jerry agreed to and did in fact give the "River" property back to Bill and Maureen when he allowed them to log their one-half interest in the total property. Support for this return of property is found in the affidavits of Van Smith and Rhonda Fay (Exhibits 16 and 17), where they confirm statements of Jerry that Bill and Maureen owned the property and Jerry requested Van Smith divide the property in half prior to logging it for Bill and Maureen. Idaho law provides that trees are part of the real property and that a giving of the trees is a passing of title to the real property. (Exhibit 25 - I.C. 55-101) (*Spence v. Price, 48 Idaho 121, 279 P. 1092 (1929); Howard v. Howard, 112 Idaho 306, 732 P. 2d 275 (1987).)*

Documentary evidence of Bill's returned ownership of the "River" property is provided by Van Smith's affidavit and the documents he submitted (Exhibit 18) to the Idaho Department of Lands indicating he was entering into a contract with Bill to log his property.

There is more than substantial evidence available through a hearing on the merits to confirm the already undisputed affidavits and will that was before the court that demonstrated an ambiguity between the two instruments so that the question should have been dealt with in a full evidentiary hearing on the merits.

B. WHY THE DECISION SHOULD BE OVERRULED ON APPEAL AS THERE EXISTS GENUINE ISSUES OF MATERIAL FACT.

Judge McFadden's Decision on Reconsideration once again emphasizes the lack of mutual holographic wills, and bases his decision that "there has never been produced any writing (including the purported holographic will) signed by Bill McKee." The court places the blame for the failure to produce Mr. McKee's holographic will on Maureen. The court chooses to ignore the testimony of the existence of the will seen in the safety deposit box on August 17, 2004 by Dirk, and apparently discounts the fact that Bill says in his deposition that he did a mutual will with his wife leaving all of their property to Maureen. (Exhibit 11 – Deposition of Bill McKee, pages 23-26; Exhibit 15 – Affidavit of Dirk Erickson) There has been contradictory evidence provided by the parties to the

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

litigation, all of which raises an issue of material fact as to whether Bill and Natalie mutually agreed to rescind their community property agreement and enter into a contract to make a will with Maureen. The documentary evidence provided supports the contentions of Maureen. When the court ruled on the Motion to Dismiss there were no opposing affidavits, which supported Jerry's contentions in this matter. Especially significant is that no affidavit has been submitted denying the existence of Bill's holographic will that he has testified he entered in to at the same time as Natalie and evidenced by his letters to both Jerome and his attorney.

The deposition testimony of Bill and the affidavit testimony of Dirk are supported by two letters written by Bill, one to his attorney, Michael Peacock on January 14, 2005 when he informs Mr. Peacock that he and his wife changed their wills to leave all their property to Maureen (Exhibit 1), and one to Jerry on November 1, 2005 where he requested his river property be returned and tells Jerry that he and his wife had changed their wills (Exhibit 2). It's interesting that the letter written to Jerry is after Jerry has entered Bill's safety deposit box twice in 2004, again in August 2005 just before attempting to take Bill against his will to Louisiana, and before Bill discovered his safety deposit box empty. It is important when judging factual matters that the Court consider and think about why it was necessary for Jerry to enter and reenter his father's safety deposit box three times, and after his many entries many of Bill's documents, including the copy of Natalie's holographic will and Bill's original holographic will, disappeared. In answers to interrogatories in Bill McKee v Jerome McKee, CV 07-469, Jerry admits entering the safety deposit box three times. (Exhibit 57 – Jerome McKee's Answers to Interrogatories, Interrogatory #14, pages 5-6) On the first occasion, 8/13/04, he admits seeing the original holographic will of Natalie McKee. Maureen entered the safety deposit box on 8/17/04 and found her mother's will when she copied it and took the original. Jerry entered the safety deposit box on 8/19/04 and admits that all the documents were there with the exception of Natalie's original holographic will. On the third occasion on 8/30/05, Jerry stated in his interrogatories there were no documents other than silver certificates. (Exhibit 57 – Jerome McKee's Answers to Interrogatories, Interrogatory #14, page 6) Bill's deposition taken in the guardianship hearing, CV 07-

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

120, and his suit against Jerry, CV 07-469, states that he was removed from his home on August 30, 2005 and taken to Sandpoint, Idaho (page 2 of the Complaint in CV 07-469 attached as Exhibit 56). On pages 9 and 10 of Bill's deposition attached as Exhibit 11, Bill states that while in Sandpoint he saw papers scattered from here to there, which he believed to be from his safety deposit box. In Bill's deposition he stated the last time he was in his safety deposit box with Jerry on August 30, 2005, those documents were in his safety deposit box.

Although we establish the existence of mutual wills by exhibits 1, 2, and 11, they can't be produced because the safety deposit box was cleaned out, according to Bill's testimony, by Jerry and circumstantially established by the fact that Jerry was regularly entering Bill's safety deposit box, and was the last one to enter before the box was emptied. These exhibits and testimony, which are uncontested, certainly raises an issue of fact as to the existence of mutual wills rescinding the community property agreement. The blame for not producing Bill's holographic will should not be placed by the court upon Maureen Erickson. The court admits, "Most of the affidavits and briefing submitted in support of the Amended Motion for Reconsideration assert facts that the community property agreement between Bill McKee and Natalie Parks McKee was revoked by mutual holographic wills." The court refuses to consider the facts and bluntly requires the production of a document that has been confiscated out of Bill's safety deposit box. The purpose of the evidence is to demonstrate that there was mutual intent to revoke the community property agreement. All of such evidence is totally uncontradicted by any evidence or facts alleged by Jerry's counsel.

The court once again states, "The property subject to the original Motion for Partial Distribution is not as a matter of law part of the estate of Natalie Parks McKee," after having admitted that there was evidence of facts submitted asserting the community property agreement was revoked by mutual holographic wills.

Considering the evidence that was submitted was uncontradicted, it most certainly raises genuine issues of material fact requiring a hearing. The moving party has the burden of showing the absence of any genuine issue as to all the material facts. The court in its decision has admitted there are genuine issues of material facts, and ignores the fact

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

that the moving party has not met the burden of a showing that is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine material facts. In this case the court has failed to resolve all doubts against the moving party.

C. WHY THE 27-MONTH DELAY WAS NOT PREJUDICIAL TO JEROME MCKEE.

Judge McFadden denying the Amended Motion for Reconsideration flatly declares 27-month delay in bringing the motion was unfairly prejudicial to Jerome McKee. Laches creating prejudice must be pleaded and proved by the asserting party. The passage of time alone does not constitute laches or prejudice, and is simply one of many circumstances from which a determination of what constitutes unreasonable and unjustifiable delay must be made. Because the doctrine of laches is founded in equity in determining whether the doctrine applies, consideration must be given to all surrounding circumstances and acts of the parties. The lapse of the time alone is not controlling on whether laches applies, and whether or not a party is guilty of laches is a question of fact. *Thomas v Arkoosh Produce, Inc., 137 Idaho 352, 48 P.3d 1241 (2002)*; *Henderson v. Smith, 128 Idaho 444, 449, 915 P.2d 6, 11 (1996); Huppert v. Wolford, 91 Idaho 249, 256, 420 P.2d 11, 18 (1966).* The appellant has gone to great lengths to set forth the many circumstances going on surrounding this case. After this probate was filed and objection to distribution made on January 23, 2007, the guardianship action, an attempt to declare Bill McKee incompetent, was filed on February 28, 2007, and litigation has continued non-stop between the parties in one form or another from that guardianship petition all the way through the Washington guardianship petition and the dismissal of the Idaho guardianship. That coupled with the need for open-heart surgery and rehabilitation, hip surgery and rehabilitation, and the cost of litigation has delayed the bringing this reconsideration.

Once the probate was filed and the Lis Pendens placed on the property, no change of position has occurred to the detriment of Jerome McKee. No pleading or proof has been provided demonstrating a detrimental change of position. Judge McFadden presumed prejudice as a result of the passage of time when he says, "Bringing the

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

amended motion 27 months after the Court ruled and after the original Motion for Reconsideration was filed is unfairly prejudicial to Jerome McKee." Idaho case law is replete with case after case demonstrating delay without prejudice is not sufficient (*Thomas v. Arkoosh Produce, Inc.* cited above involves a case of 44-month delay). *Henderson v. Smith, 128 Idaho 444, 449, 915 P.2d 6, 11 (1996)* found that a 10-year delay did not constitute laches or prejudice. In an *Idaho Public Utilities Commission* case, *83 Idaho 351, 364, P.2d 167*, the court decided that 5 years was not sufficient to constitute laches because there was not proof of prejudice or injury occasioned by the delay.

In *Bunn v. Bunn, 99 Idaho, 710, 587 P.2d 1245*, Justice Bistline, in a decision where Justices McFadden and Bakes concur, goes to great lengths in stating that the party who claims prejudice must allege and show prejudice resulting from the delay. Justice Bistline goes on to say that "liberal construction" of the rules are required by Rule 1, will ordinarily preclude dismissal of an appeal especially where no prejudice is shown by any delay that may have been occasioned. He goes on to say that previous rules and statutes which had long served vexatious to the bar were narrowed to but one jurisdictional rule, the timely filing of the notice, thus continuing the earlier philosophy of Idaho jurisprudence which recognizes that rules of procedure are designed to promote the disposition of causes upon their substantial merits.

VII. CONCLUSION

There has been contradictory evidence including new evidence provided by the parties to the litigation, all of which raises an issue of material fact as to whether Bill and Natalie McKee mutually agreed to rescind their community property agreement and enter into a contract to make a will with Maureen Erickson. The documentary evidence provided supports the contentions of Maureen Erickson. Once again, I must remind the Court that when Judge McFadden ruled on the Motion to Dismiss, there were no opposing affidavits that supported Jerome McKee's contentions in this matter. Especially significant is that no affidavit has been submitted denying the existence of Bill McKee's holographic wills that he has testified he entered in to at the same time as Natalie and

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

evidenced by his letters to both Jerome and his attorney. When Judge McFadden ruled on the Amended Motion for Reconsideration, he admitted that facts were asserted that the community property agreement was revoked by mutual holographic wills. Judge McFadden went further to deny the Amended Motion for Reconsideration on the grounds it was unfairly prejudicial to Jerome McKee without any evidence being pleaded or proved, and the case law makes it abundantly clear that prejudice is an issue of fact. The facts clearly demonstrate that there is no prejudicial reliance upon Judge McFadden's decision during the delay in setting the Motion for Reconsideration.

Dated this 19th day of January 2010.

LLOYD A. HERMAN
Attorney for Maureen Erickson
Personal Representative,
Estate of Natalie Parks McKee

Lloyd A. Herman & Associates
213 N. University Road
Spokane Valley, WA 99206
Ph. (509) 922-6600
Fax (509) 922-4720

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LLOYD A. HERMAN
LLOYD HERMAN & ASSOCIATES, P.S.
213 N. University Road
Spokane Valley, WA 99206
(509) 922-6600 * fax (509) 922-4720
ISB No. 6884

IN THE DISTRICT COURT OF THE FIRST JUDICAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTYOF SHOSHONE

IN THE MATTER OF THE ESTATE OF NATALIE PARKS McKEE, Deceased	CASE NO. CV 2006-40 AFFIDAVIT OF LLOYD A. HERMAN

I, LLOYD A. HERMAN, being first duly sworn on oath, deposes and says:

1. That I am now and, at all times material hereto, a citizen of the United States, resident of the State of Washington, over the age of 18 years, and am competent to be a witness herein, and licensed to practice in Washington and Idaho.

2. I am one of the attorneys for Maureen Erickson, Personal Representative for the Estate of Natalie Parks McKee.

3. The following documents attached as exhibits are true and correct copies.

Exhibit "1" – Bill McKee's letter to Michael Peacock 1/14/05;

Exhibit "2" – Bill McKee's letter to Jerome McKee 11/1/05;

Exhibit "3" – Affidavit of Bill McKee January 20, 2006;

Exhibit "4" – Notice of Hearing 7/12/06;

Exhibit "5" – Peacock's Memorandum to Branstetter 7/13/06;

Exhibit "6" – Affidavit of Bill McKee January 26, 2007;

Exhibit "7" – Community Property Agreement filed 7/12/88;

Exhibit "8" – Affidavit of Maureen Erickson July 29, 2009;

Exhibit "9" – Holographic will of Natalie Parks McKee 6/26/94;

Exhibit "10" – Affividat of John J. Rose, Jr. pg 3, lns 20-26;

Exhibit "11" – Bill McKee's videotaped deposition, pg 28, lns 1-9;

Exhibit "12" – Death Certificate of Natalie Parks McKee;

Exhibit "13" – Deposition of Jerome McKee 5/29/07;

Exhibit "14" – Safety Deposit Box sign in sheet and information;

Exhibit "15" – Affidavit of Dirk Erickson May 12, 2009;

Exhibit "16" – Affidavit of Van Smith July 27, 2009;

Exhibit "17" – Affidavit of Rhonda Fay June 18, 2009;

Exhibit "18" – Cutting permits/documents obtained by Van Smith;

Exhibit "19" – Affidavit of Garth Erickson May 11, 2009;

Exhibit "20" – Spokane County Complaint for Fraud Action No. 07202928-6 and Judgment Nun Pro Tunc;

Exhibit "21" – Shoshone County Fraud Filing Instrument #443803 (Exhibit 20 above);

Exhibit "22" – Idaho Code 55-901 – Fraudulant Conveyances of Land;

Exhibit "23" – Idaho Code 55-914 – Fraudulant Transfers/Creditors;

Exhibit "24" – Idaho Code 15-2-902 – Duty of Custodian of Will;

Exhibit "25" – Idaho Code 55-101/55-101A – Real Property Defined

Exhibit "26" – Jerome McKee's Timeline to Social Services

Exhibit "27" – 7/6/05 letter from Peacock to Branstetter

Exhibit "28" – 9/9/05 letter from Peacock to Branstetter

Exhibit "29" – 7/13/06 letter from Peacock to Branstetter

Exhibit "30" – Lis Pendens filed 1/26/06 on "River" property

Exhibit "31" – 2002 letter from Maureen to Jerome

Exhibit "32" – Application for Informal Probate - 1/23/06

Exhibit "33" – Motion for Partial Distribution - 1/16/07

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213 N. University Rd.
Spokane, Valley WA 99206
(509) 922-6600

Exhibit "34" – Petition for Preservation Deposition prior to filing cause of action – CV 2007-016

Exhibit "35" – Notice of Service of Preservation Deposition – Craig McKee - 2/26/07

Exhibit "36" – Notice of Non-service of Preservation Deposition – Jerome McKee - 2/26/07

Exhibit "37" – Affidavit of Michael Peacock - 1/ /10

Exhibit "38" – 2/26/07 Notice of Taking of Preservation Deposition of Bill McKee in Probate matter.

Exhibit "39" – Motion to Strike Affidavit of Bill McKee - 3/12/07

Exhibit "40" – Motion for Cognitive Assessment of Bill McKee in Guardianship matter - 4/13/07

Exhibit "41" – Notice of Taking of Preservation Deposition of Bill McKee in Probate matter - 4/27/07

Exhibit "42" – Notice of Taking of Deposition of Jerome McKee in Probate matter - 4/27/07

Exhibit "43" – Denial of Motion for Cognitive Assessment

Exhibit "44" – Motion for Second Opinion and Postponement of Surgery - 6/8/07

Exhibit "45" – Order Shortening Time of Petitioner's Motion for Second Opinion and Postponement of Surgery - 6/14/07

Exhibit "46" – Order Denying Postponement of Surgery - 6/18/07

Exhibit "47" – 11/25/02 letter from Bill McKee to Jerome McKee

Exhibit "48" – Restraining Order / Washington Guardianship Action filed on 2/28/07

Exhibit "49" – Affidavit of Dr. Fuhs – 3/4/08

Exhibit "50" – Letter of negotiation between Peacock and Branstetter filed in Charles Dean's Opposition to Amended Motion for Reconsideration

Exhibit "51" – Court testimony of Lyn St. Louis on 7/12/07.

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213 N. University Rd.
Spokane, Valley WA 99206
(509) 922-6600

Exhibit "52" - Order terminating Idaho Conservatorship – 6/20/08

Exhibit "53" – Order appointing Maureen Erickson as guardian of the person in Washington

Exhibit "54" – Order appointing Garth Erickson as guardian of the estate in Washington

Exhibit "55" – Judge McFadden's Decision on Amended Motion for Reconsideration.

Exhibit "56" – CV 07-469, McKee v McKee

Exhibit "57" – Jerome McKee's Answers to Interrogatories in CV 07-469

DATED this 19th day of January, 2010.

Lloyd A. Herman

GIVEN under my hand and official seal this 19th day of January 2010.

NOTARY PUBLIC in and for the State of WA, residing in Spokane
MY COMMISSION EXPIRES: 05-01-13

Notary Public
State of Washington
LYNN WORTHINGTON
MY COMMISSION EXPIRES
May 1, 2013

Lloyd A. Herman & Associates
213 N. University Rd.
Spokane, Valley WA 99206
(509) 922-6600

#1

January 14, 05

Mr. Peacock, Attorney at Law
Kelby, Idaho

Dear Mr. Peacock:

My wife and I gave our word to Maureen and her three boys in 1994 that we had changed our wills and were going to leave all the real estate property to her family so that she could manage and educate the boys. Both Jerry and Craig gave their word that they would honor our wishes on that. This applies to only the downstream half of the entire lot.

When I sold the Canadian property for $300,000 after Natalie's death, I did not give Maureen her half share left for by Natalie, nor did she ever ask for it.

When I gave Jerry the lower property which was promised to Maureen, I owed him some money and had no other way and had no other way to repay it. When we did this neither Jerry or I kept our word to Natalie and Maureen.

Both of these deals harmed my daughter and her children terribly. It has now come back to hurt me.

Maureen is putting three boys through college by herself and without the money promised her Mother and me.

As it stands I am going to lose Priest Lake property which is a heart breaker. I also need more money to live on. If the river property that I gave Jerry was returned I could keep Priest Lake property

and give some money to help Maureen's remaining grandchildren to help them finish college.

I understand your concern about my relationship with Jerry Thorpe as we already had I talked to both boys and told them I'd be at Maureens for Christmas. Neither has called since since including my birthday December 28.

Please let me know what you need for a retainer. Can you start immediately to get the silver property back soon.

Bill E McKee

November 1, 05

Dear Jerry

I love you very much, as you know. I am so proud of you in so many ways. However I am troubled by your behavior towards Maureen and boys. I want to talk as your father and head of our family.

We were such a happy family while you kids were growing up. You were so protective of the younger sister and brother. Things were very good for many years after you kids were grown up. We had many happy times sledding, skating and skiing and, at Priest Lake summers water skiing, swimming etc. Mother and I were so proud of you children and later to our grandchildren. We were so happy that we all had good times together. . .

Things changed around that time that Maureen separated from Roger and Craig and Sylvia married. All four of you became very critical of Maureen and began to treat her poorly. Mother and I felt that neither of you boys cared about or supported her during that terrible time. Roger was drinking heavily and became abusive and nasty to Maureen and the boys. We had witnessed enough to know she was in danger and was said constantly. Two police officers called by Gavin and a neighbor all filed reports that Roger was a physical danger to Maureen and the boys.

At the end of a weekend Roger returned the boys to Maureen & while drunk

Maureen called the police and hair and blood tested. He tested positive for cocaine and heroine. The trauma sustained that weekend caused Gavin to have a nervous breakdown. Kirk had been abused, including wounds cut on his back from blow darts. They had all been exposed to pornography. Two psychologists and a judge tested Roger violations at that time and charged him with child abuse. This is all in court records.

Mother and I witnessed and were shocked by how about how upset and Craig treated Maureen during this terrible period. She was scared to death for the boys and Roger continued to threaten her. He also withheld support knowing she couldn't afford an attorney.

At this time knowing all of this I drove down there. I had guns with me and feeling the police weren't providing adequate protection

(4)

for her. I planned to kill him but realized if it went wrong and I got caught that I would be of no good for her. I spent two days scoping his office. I finally decided my chances of succeeding were slim and that they would all be in more danger if I did so I took my weapons back home. I have never before told anyone about this.

Because Morton and Maureen didn't know about this don't mention this to Maureen.

Morton and I felt that we were concerned neither of you would help when we were gone would be all alone. That is why we changed our will and informed both of you boys. You both agreed that all of our property would go to Maureen.

We both broke our promise to Maureen when I gave you that quit claim on the sea property.

We did this when without telling her I feel guilty about this and you should also. I was you telling that you would give the property back to her. Now you have hired an attorney to break your Mother will. I have lived here for forty years. It is embarrassing to me and disrespectful to both Mother and me. This is not how I want my life to end. I want back Mother and my share of the property since 2000 when you asked me to quit-claim that property to you, I was depressed.

In spite of all the difficult Mom has raised three boys to be fine young men. I doubt that you realize how hard this has been. Society doesn't treat divorced women very well. I respect more of you and Craig. I appreciate so much everything you have done for me. I appreciate and love you all so much. I would like peace and love for all of us. Love,

Daddy

#3

MICHAEL F. PEACOCK
Attorney at Law
123 McKinley Avenue
Kellogg, Idaho 83837
Telephone: (208) 783-1231
Facsimile: (208) 783-1232
Idaho State Bar No. 2291

STATE OF IDAHO
COUNTY OF SHOSHONE/SS
FILED

2006 JAN 23 A 11:23

PEGGY WHITE
CLERK DIST. COURT

BY Gail Elliott
DEPUTY

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

IN THE MATTER OF THE ESTATE OF NATALIE PARKS McKEE, Deceased.	Case No. CV-2006- 40 AFFIDAVIT OF BILL McKEE

STATE OF IDAHO)
:ss
County of Shoshone)

BILL McKEE, being first duly sworn on oath, deposes and says:

1. I was the husband of the decedent, NATALIE PARKS McKEE.

2. I am the father of the Applicant for Personal Representative, MAUREEN ERICKSON.

3. That I was aware of a holographic Will the decedent had executed leaving her share of our community property to our daughter, MAUREEN ERICKSON, as it was in my safety deposit box at Bank of America.

4. That NATALIE PARKS McKEE died on December 19, 1994.

5. That I did not provide the holographic Will of NATALIE PARKS McKEE to MAUREEN ERICKSON until August 17, 2004.

FURTHER, Affiant sayeth not.

DATED this 30th day of January, 2006.

BILL McKEE

SUBSCRIBED AND SWORN to before me this 30th day of January, 2006.

MICHAEL F. PEACOCK NOTARY PUBLIC STATE OF IDAHO

Notary Public, State of Idaho
Residing at Kellogg
My commission expires: 11/1/08

#4

STATE OF IDAHO
COUNTY OF SHOSHONE/SS
FILED #3888
2006 JUL 12 P 3:38
PEGGY WHITE
CLERK DIST. COURT
BY Gail Ellett
DEPUTY

Michael K. Branstetter
HULL & BRANSTETTER CHARTERED
Attorneys at Law
P.O. Box 709
Wallace, ID 83873
Telephone: (208) 752-1154
Facsimile: (208) 752-0951
ISB #2454

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

In the Matter of the Estate	)	Case No. CV-06- 40
	)	
	)	
of	)	DEMAND FOR NOTICE
	)	
	)	
NATALIE PARKS McKEE,	)	
	)	Fee Category: L (7)
Deceased.	)	Fee: $9.00 PD.

COMES NOW, Jerome S. McKee and hereby files his Demand For Notice in the above entitled matter pursuant to Idaho Code, Section 15-3-204. In support of this Demand he provides the following:

1. Natalie Parks McKee passed away on December 19, 1994.

2. Jerome S. McKee is a natural born child of Natalie Parks McKee. he has two (2) siblings to wit: Maureen Erickson and Craig N. McKee.

3. An Application For Informal Probate of Will and Informal Appointment of Personal Representative was filed on January 23, 2006. Letters Testamentary were issued on January 24, 2006. No notice was provided to Jerome S. McKee or Craig N. McKee.

4. Paragraph 5 of the Application For Informal Probate of Will and Informal Appointment of Personal Representative misrepresents the names and identities of all the heirs of Natalie Parks McKee.

5. Jerome S. McKee is an interested party herein.

6. Jerome S. McKee hereby demands notice of all orders and filings as required by Section 15-3-204 and notice as provided in Section 15-1-401. Further, Jerome S. McKee demands that no further proceedings or acts be performed herein by the Personal Representative by reason of her failure to comply with the notice requirements of the Idaho Uniform Probate Code.

7. Further, by reason of the above and for other grounds to be asserted herein, Maureen Erickson should be removed as Personal Representative and the Application for Informal Probate of Will be dismissed.

8. Jerome S. McKee reserves the right to assert other claims, demands and seek other relief as appears appropriate in this matter.

DATED this 12th day of July, 2006.

Michael K. Branstetter
Hull & Branstetter Chartered
P.O. Box 709
Wallace, ID 83873
Phone: (208) 752-1154
Fax: (208) 752-0951
Attorneys for Jerome S. McKee

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Demand For Notice to be served by the method indicated below and addressed to the following on this 12th day of July, 2006:

Michael F. Peacock
Attorney at Law
123 McKinley Avenue
Kellogg, ID 83837

✓ U.S. Mail
____ Hand Delivered
____ Overnight Mail
____ Facsimile

Maureen Erickson
Personal Representative
4702 S. Pender Lane
Spokane, WA 99224

✓ U.S. Mail
____ Hand Delivered
____ Overnight Mail
____ Facsimile

Jerome S. McKee
P.O. Box 702
Thibodaux, LA 70302

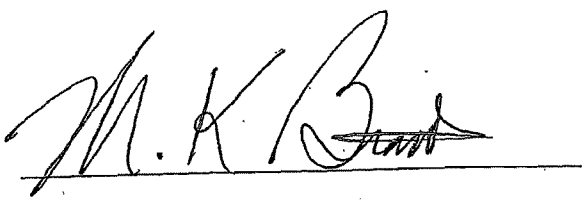
✓ U.S. Mail
____ Hand Delivered
____ Overnight Mail
____ Facsimile

Craig N. McKee
2203 E. Flat Iron Drive
Sandy, UT 84093

✓ U.S. Mail
____ Hand Delivered
____ Overnight Mail
____ Facsimile

Bill McKee
106 E. Idaho Ave.
Osburn, ID 83849

✓ U.S. Mail
____ Hand Delivered
____ Overnight Mail
____ Facsimile



#5

MICHAEL F. PEACOCK
Attorney at Law

123 McKinley Ave.
Kellogg, ID 83837
208-783-1231
Fax 208-783-1232

July 13, 2006

From: Michael F. Peacock

To: Mike Branstetter

RE: Estate of Natalie Parks McKee

I acknowledge receipt of your letter of July 12, 2006. The estate was filed and no action has been taken other than to file a lis pendens on the "river" property. The reason this has been done is that my client has some trust issues with yours and this was done as a protection from sale of the property without her knowledge and consent.

As you are no doubt aware, your client his brother and Mr. McKee all agreed that if Maureen would come to this area, and watch over her father and mother their estate would be left to her. Her mother executed a holographic will leaving her ½ of the community property to Maureen. Maureen believes this was because when she moved to this area and started to care for her parents, the above mentioned agreement was made, but the wills had not been modified as they should have been. This will was Natalie's way of trying to ensure that the agreement was kept, at least as far as Natalie was concerned. Maureen was unaware of this will until Bill told her about it and gave it to her as set forth in his affidavit.

Bill was under a great deal of stress at the time he deeded the property to Jerry and has repeatedly asked Jerry to return the property to him. Jerry refuses to do so. This is extremely unsettling to Bill and he cannot understand why his son won't honor his wishes since Jerry has no interest in the property and Bill only had the right to transfer ½ interest in the first place, given his knowledge of the will.

It has consistently been Maureen's position to try to resolve the ownership issue peaceably with Jerry and Bill. She is trying not to have hard feelings and only wants some part of what was promised to her. There are many issues that could be brought up, but I think Maureen is trying to preserve some sense of family for the elderly father. It seems that Jerry, whom I'm told is quite wealthy, doesn't care as much about this father as some gain he might get from the property on the river. There are many things that are reprehensible about Jerry's actions from emptying Bill's safety deposit box and taking his records with out his permission and only returning part of the records to wanting to be reimbursed for phone calls to his father and trips to see him. If we end up in court, that should be an interesting thing to justify to a judge.

MICHAEL F. PEACOCK
Attorney at Law

123 McKinley Ave.
Kellogg, ID 83837
208-783-1231
Fax 208-783-1232

July 13, 2006

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To: Mike Branstetter

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It has consistently been Maureen's position to try to resolve the ownership issue peaceably with Jerry and Bill. She is trying not to have hard feelings and only wants some part of what was promised to her. There are many issues that could be brought up, but I think Maureen is trying to preserve some sense of family for the elderly father. It seems that Jerry, whom I'm told is quite wealthy, doesn't care as much about this father as some gain he might get from the property on the river. There are many things that are reprehensible about Jerry's actions from emptying Bill's safety deposit box and taking his records with out his permission and only returning part of the records to wanting to be reimbursed for phone calls to his father and trips to see him. If we end up in court, that should be an interesting thing to justify to a judge.

I think if we can move ahead and resolve this issue with the River property everybody can go on with their life. The best thing would be for Jerry to deed the property back to Bill and at least give him some consideration at this late stage of his life. Jerry shouldn't care what Bill does with the property. I talked to Bill for a long time and he is extremely upset with Jerry and if this continues he will want nothing further to do with him.

Let me know if you need anything further and lets try to either resolve this matter or if we must get to the litigation.

#6

MICHAEL F. PEACOCK
Attorney at Law
123 McKinley Avenue
Kellogg, Idaho 83837
Telephone: (208) 783-1231
Facsimile: (208) 783-1232
Idaho State Bar No. 2291

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

IN THE MATTER OF THE ESTATE OF)	CASE NO. CV-2006-40
)	
NATALIE PARKS McKEE,)	AFFIDAVIT OF BILL McKEE
)	
Deceased.)	
)	

AFFIDAVIT OF BILL McKEE

Bill McKee being first duly sworn deposes and says:

1. I am the husband of Natalie Parks McKee. I have three children, to wit: Maureen Erickson, Jerome S. McKee, and Craig McKee.

2. On July 12, 1988, my wife and I executed a community property agreement.

3. After that time, my wife and I decided to leave all our property to our daughter, Maureen Erickson, who was divorced and without resources to put her sons through college.

4. My entire family was present at a family meeting where they were informed of the decision of my wife and I to leave our entire estate to Maureen and to exclude Jerome and Craig from receiving an inheritance.

5. At this meeting everyone agreed that this was to happen and that the decision was made because of Maureen's responsibilities to her children and her lack of job skills and/or resources.

6. The decision to leave all our assets to Maureen was not made because we loved any child less than the others, but because as responsible parents and grandparents we felt that Maureen had needs our

sons did not have, as they both appeared quite well off and both had good educations and job skills.

7. In 1994, prior to the family meeting described in paragraph 4, my wife Natalie Parks McKee wrote out a will.

8. I knew of this will and agreed with it because it reflected what my wife and I had agreed to and told our children.

9. I realized that this will would effect my ownership of property and revoke the community property agreement. I recognized that when Natalie died, Maureen would own a one-half interest in all our property and that I would not solely own the property.

10. I knew that this would render the community property agreement we signed on July 11, 1988 void.

11. My wife died on December 19, 1996.

12. My wife and I had been married 53.

13. After her death I was very depressed and went to the doctor and was given medications for anxiety and depression.

14. I don't recall a lot of the years following my wife's death and felt very dazed and confused, due to depression and possibly the medication. During this period of confusion and depression I deeded my Coeur d'Alene river property to my son Jerome.

15. I took no action on my wife's hand written will and kept its existence a secret.

16. I did not tell my daughter about the will, but kept it in my safety deposit box.

17. I did this so that I could have power over the property my wife and I had accumulated to do as I pleased without Maureen having a say in what happened.

18. During the time I was depressed and confused following my wife's death, my son Jerome pressured me to deed my interest in property we bought together on the Coeur d'Alene River to him.

19. I did not realize at the time that I had deeded the property that belonged to Maureen along with my interest. Both Jerome and I knew we were breaking a promise made to Natalie.

20. I do not feel that I was capable of consent or competent to deed the property Coeur d'Alene River property to my son, however, my son talked me into it. Since that time I have repeatedly asked Jerome to deed the property back to me, he has promised to do so three times, and later refuses.

21. I did not receive any payment of any kind for deeding my interest to Jerome.

22. After my wife's death, I also sold property known as the Moyie property owned by my wife and I without Maureen's consent.

23. I did not disclose what I did with the proceeds to Maureen.

24. I knew that a one-half interest in this property belonged to Maureen, but she was not consulted about the sale and was opposed to it.

25. I concealed part of these proceeds (approximately $150,000.00) in my safety deposit box and my son Jerry took this money when he removed other things from my safety deposit box.

26. In 2005 Maureen and her son Dirk and I were looking in the safety deposit box and Dirk and Maureen found the holographic will of my wife, Natalie Parks McKee, and I delivered the will to Maureen Erickson.

27. The will delivered to Maureen was the will written by my wife Natalie Parks McKee on June 26, 1994. I am very familiar with my wife's handwriting and the will is in her handwriting.

28. I requested Maureen to return to the area in 1997 to assist in my care and she has cared for me since her return to the area in 1997.

29. I have stayed with her when I had surgery on my knee and on other occasions when I have not been well. When I have done this she has had my dog that I dearly love come with me too.

30. Maureen comes from her home in Spokane, Washington to see and help me as much as 3 or 4 days a week, and has done so for years.

31. Since she moved here, Maureen has had financial needs the other children have not had.

32. Maureen has had to have back surgeries and has been laid up for considerable periods of time.

33. I have helped her financially more than the other children, but I did so knowingly and willingly as she had needs that the other children did not.

34. Had either of my other children had special needs and needed financial help, I would have gladly provided it to them as they are all my children.

Further your affiant sayeth not.

DATED this 26 day of January, 2007.

Bill McKee

#7

821-COMMUNITY PROPERTY AGREEMENT

Printed and for sale by Spokane-York Company, Boise

333566

COMMUNITY PROPERTY AGREEMENT BETWEEN HUSBAND AND WIFE

THIS AGREEMENT Made and entered into this [illegible] day of July, 19 88,

by and between Bill E. McKee husband and

Natalie P. McKee wife, relative to community property and disposition thereof upon the death of either of the parties hereto as provided by Section 15-6-201, Idaho Code.

WITNESSETH:

1. The parties were married August 31, 1961 and ever since have been and now are husband and wife.

2. We certify that the following described real and personal property was acquired by us from our joint efforts while married and while living together as husband and wife in a community property State, and that no part of said property owned by either of us prior to this marriage, or which either of us have acquired since by gift, devise or as an heir at law of any person and that the same is the community property of the parties hereto.

3. The legal description of said real property covered by this agreement is as follows:
Lots 1, 2 and 3 of Block 18 Galena Home Tract Osburn, Idaho with Residence
Lot 1 of Block 17 Wardner, Idaho
Govt. Lot 2, Section 17 T. 49 N. R. 2 E. - Half interest with Mr. & Mrs. J.F. McKee
State lease on Priest Lake with cabin, bonthouse and other improvements
NE¼ of NE¼ of SW¼ Sec. 26-T28 N42 Spokane County, Washington (Cont'd on second sheet)

4. The personal property affected by this agreement is described as follows:
Any and all personal property, including, but not limited to: home, garages and any other outbuildings located on above-mentioned real property, household furnishings, motor vehicles, checking accounts, savings accounts, savings certificates, stocks, bonds, and any other personal property that we may acquire in the future.

5. That upon the death of either of the parties hereto the property described herein shall vest in the survivor absolutely subject to the liabilities imposed by Section 15-6-201, Idaho Code.

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

Bill E. McKee
Husband

Natalie P. McKee
Wife

STATE OF IDAHO,
County of] ss.

On this 12th day of July, 1988, before me the undersigned, a Notary Public in and for said State, personally appeared Bill E. McKee husband and Natalie P. McKee wife, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

Julia P. Pizzuto
Notary Public for Idaho
Residing at Kellogg, Idaho