

6-29-2011

Dorion v. Keane Augmentation Record Dckt. 38519

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In the Supreme Court of the State of Idaho

DAVE DORION,

Plaintiff-Respondent,

v.

RICHARD KEANE and LISA KEANE,
husband and wife, KEANE LAND
COMPANY, LLC, an Idaho limited liability
company, KEANE AND CO,
CONSTRUCTION, INC., an Idaho
corporation,

Defendants-Appellants.

ORDER GRANTING MOTION TO
AUGMENT CLERK'S RECORD ON
APPEAL

Supreme Court Docket No. 38519-2011
Nez Perce County Docket No. 2009-464

Ref. No. 11-308

A MOTION TO AUGMENT CLERK'S RECORD ON APPEAL was filed by counsel for Appellant on June 7, 2011. The Court is fully advised; therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellant's MOTION TO AUGMENT CLERK'S RECORD ON APPEAL be, and hereby is, GRANTED, and the District Court Reporter shall prepare and lodge the transcript listed below with this Court within twenty-one (21) days of the date of this Order and the District Court Clerk shall immediately serve counsel and file the transcript with this Court. Any corrections shall be filed with this Court as provided by I.A.R. 30.1:

1. Transcript of the April 7, 2011 hearing on Defendants' Rule 60(b) Motion for Relief from Final Judgment.
(Court Reporter Linda Carlson; estimated number of pages: less than 100.)

IT FURTHER IS ORDERED that proceedings in the above entitled appeal shall be SUSPENDED until such time as the transcript listed above have been prepared and lodged with this Court, at which time proceedings in this appeal shall proceed.

IT FURTHER IS ORDERED that Appellant's motion to augment the record with the documents listed below, be and hereby is, GRANTED, and the appeal record shall include the documents listed below, a copy of which accompanied the Motion:

1. File-stamped copy of the Affidavit of Mendy S. Maurer, with exhibits, filed March 30, 2011.
2. File-stamped copy of the Affidavit of Richard Keane, Filed April 4, 2011.

DATED this 29 day of June, 2011.

By Order of the Supreme Court

Stephen Keane
Stephen W. Keane, Clerk

cc: Counsel of Record
District Court Clerk
District Court Reporter
District Court Judge

LAW CLERK

AUGMENTATION RECORD

In the Supreme Court of the State of Idaho

DAVE DORION,

Plaintiff-Respondent,

v.

RICHARD KEANE and LISA KEANE,
husband and wife, KEANE LAND
COMPANY, LLC, an Idaho limited liability
company, KEANE AND CO.
CONSTRUCTION, INC., an Idaho
corporation,

Defendants-Appellants.

ORDER GRANTING MOTION TO
AUGMENT CLERK'S RECORD ON
APPEAL

Supreme Court Docket No. 38519-2011
Nez Perce County Docket No. 2009-464

Ref. No. 11-308

A MOTION TO AUGMENT CLERK'S RECORD ON APPEAL was filed by counsel for Appellant on June 7, 2011. The Court is fully advised; therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellant's MOTION TO AUGMENT CLERK'S RECORD ON APPEAL be, and hereby is, GRANTED, and the District Court Reporter shall prepare and lodge the transcript listed below with this Court within twenty-one (21) days of the date of this Order and the District Court Clerk shall immediately serve counsel and file the transcript with this Court. Any corrections shall be filed with this Court as provided by I.A.R. 30.1:

1. Transcript of the April 7, 2011 hearing on Defendants' Rule 60(b) Motion for Relief from Final Judgment.
(Court Reporter Linda Carlton; estimated number of pages: less than 100.)

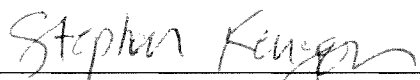
IT FURTHER IS ORDERED that proceedings in the above entitled appeal shall be SUSPENDED until such time as the transcript listed above have been prepared and lodged with this Court, at which time proceedings in this appeal shall proceed.

IT FURTHER IS ORDERED that Appellant's motion to augment the record with the documents listed below, be and hereby is, GRANTED, and the appeal record shall include the documents listed below, a copy of which accompanied the Motion:

1. File-stamped copy of the Affidavit of Mendy S. Maurer, with exhibits, filed March 30, 2011.
2. File-stamped copy of the Affidavit of Richard Keane, Filed April 4, 2011.

DATED this 29 day of June, 2011.

By Order of the Supreme Court



Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
District Court Reporter
District Court Judge

FILED

2011 MAR 31 AM 11 36

PATTY O. WILKINS
CLERK OF THE DISTRICT COURT
P. O. Wilkins
DEPUTY

DOUGLAS L. MUSHLITZ
CLARK and FEENEY
Attorneys for Plaintiff
The Train Station, Suite 201
13th and Main Streets
P. O. Drawer 285
Lewiston, Idaho 83501
Telephone: (208)743-9516
Idaho State Bar # 3452

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

DAVE DORION,

Plaintiff,

vs.

RICHARD KEANE and LISA KEANE,
husband and wife, KEANE LAND
COMPANY, LLC., an Idaho Limited
Liability Company, KEANE AND CO.
CONSTRUCTION, INC., an Idaho
corporation, and JOHN DOES 1- 5

Defendants.

Case No. CV09-00464

AFFIDAVIT OF MENDY S. MAURER

STATE OF IDAHO

County of Nez Perce

)
) ss.
)

I, MENDY S. MAURER, after being first duly sworn on oath, depose and say:

1. I am a legal assistant at Knowlton & Miles, PLLC. I work for Manderson Miles and am familiar with the records and files herein. I am a custodian of the records and files hereinafter mentioned.

AFFIDAVIT OF MENDY S. MAURER 1

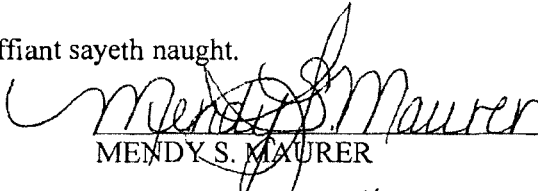
2. On August 5, 2010, this Court entered an Order permitting Manderson Miles to withdraw as counsel for the Defendants.

3. On August 9, 2010, I served this Order upon the Defendants by mailing this Order to the Defendants through the United States Postal Service, by Certified, Return Receipt Request.

4. On August 10, 2010, I filed with this Court Proof of Service that I mailed the Order through the United States Postal Service, by Certified, Return Receipt Request. Attached hereto as Exhibit 1 is a copy of the Proof of Service that I filed with this Court on August 10, 2010, along with a copy of the Order and a copy of the receipt that I received from the United States Postal Service that were attached and an Exhibit to the Proof of Service.

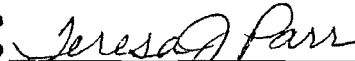
5. Subsequently our office receive a return receipt from the United States Postal Service. Attached hereto as Exhibit 2 is a copy of the return receipt received from the United States Postal Service. According to said receipt, Defendant Richard Keane signed for receipt of the Order Permitting Leave to Withdraw on August 10, 2010.

6. Further your affiant sayeth naught.


MENDY S. MAURER

SUBSCRIBED and SWORN to before me this 30th day of March, 2011.

TERESA J. PARR
Notary Public
State of Idaho


Notary Public in and for the State
of Idaho, residing at Lewiston therein.
My Commission expires: 7-31-2015

CERTIFICATE OF SERVICE

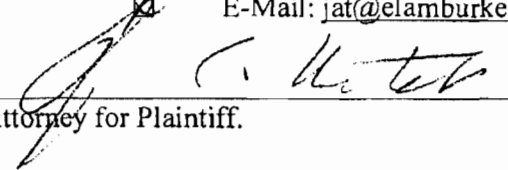
I HEREBY CERTIFY that on the 31 day of March, 2011, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Todd Richardson
Attorney at Law
604 6th Street
Clarkston WA 99403

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX)
- E-Mail: toddrichardson@justice.com

Jeffrey A. Thomson
Elam & Burke, P.A.
251 E. Front St., Ste. 300
P.O. Box 1539
Boise, ID 83701

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX)
- E-Mail: jat@elamburke.com



Attorney for Plaintiff.

Manderson L. Miles, ISBN: 1422
KNOWLTON & MILES, PLLC
312 Seventeenth Street
Post Office Drawer 717
Lewiston, Idaho 83501
Telephone: (208) 746-0103
Facsimile: (208) 746-0118

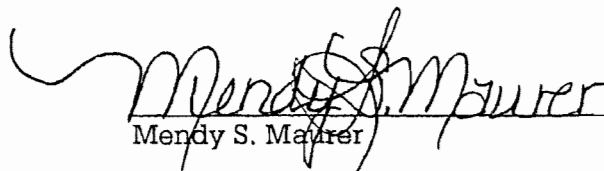
IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

DAVE DORION,)	Case No.: CV09-00464
)	
Plaintiff,)	
)	
v.)	PROOF OF SERVICE
)	
RICHARD KEANE and LISA KEANE,)	
husband and wife; KEANE LAND)	
COMPANY, LLC., an Idaho Limited)	
Liability Company; KEANE AND CO.)	
CONSTRUCTION, INC., an Idaho)	
corporation; and JOHN DOES 1-5,)	
)	
Defendants.)	

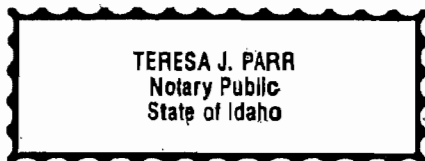
I, Mendy S. Maurer, being first duly sworn, state that I served the attached Order Permitting Leave to Withdraw, upon Rick Keane as an agent for Keane Land Company, LLC, Keane and Co. Construction, Inc., individually, and for Lisa Keane, regarding the above-referenced matter by serving the defendants through United States Postal Service, by Certified, Return Receipt Request (which a copy of receipt is attached as Exhibit A), at his residence 35309 Powell Road, Lewiston, Idaho, on the 9th day of August 2010.

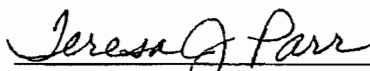


DATED this 10th day of August 2010.


Mendy S. Maurer

SUBSCRIBED and SWORN TO before me this 10th day of August 2010.




NOTARY PUBLIC for the State of Idaho
Residing at Clarkston WA
My Commission Expires: 7-31-2015

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY, that on this 10th day of August 2010, I caused a true and correct copy of the foregoing **Proof of Service** to be:

- Hand delivered by providing a copy to Valley Messenger Service
- Mailed postage prepaid
- Certified mailed
- Faxed

to the following:

Douglas Mushlitz
CLARK and FEENEY
1229 Main Street
Lewiston, ID 83501

KNOWLTON & MILES, PLLC

By: Mandy Smawer
A Member of the Firm

FILED

2010 AUG 5 AM 10 03

PATTY O. WEEKS
CLERK OF THE DIST. COURT
JANET L. KOUGH
DEPUTY

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

DAVE DORION,)
)
 Plaintiff,)
)
 v.)
)
 RICHARD KEANE and LISA KEANE,)
 husband and wife, KEANE LAND)
 COMPANY, LLC, an Idaho Limited)
 Liability Company, KEANE AND CO.)
 CONSTRUCTION, INC, an Idaho)
 Corporation, and JOHN DOES 1-5,)
)
 Defendants.)
)

Case No.: CV09-00464

ORDER PERMITTING
LEAVE TO WITHDRAW

THIS MATTER having come before this Court on August 5, 2010,
for hearing on a motion filed by Manderson L. Miles, attorney of records for the
Defendants, seeking permission to withdraw as counsel for the Defendants, RICHARD
KEANE and LISA KEANE, KEANE LAND COMPANY, LLC, and KEANE AND CO.
CONSTRUCTION, INC., pursuant to Idaho Rules of Civil Procedure, Rule 11(b)(2). The

COPY

Defendants counsel of record, Manderson L. Miles, was present at the time of the hearing and good cause appearing therefore;

NOW THEREFORE, IT IS HEREBY ORDERED, as follows:

1. Manderson L. Miles is hereby granted and permitted leave of withdraw as the attorney of record for 6the Defendants, RICHARD KEANE and LISA KEANE, KEANE LAND COMPANY, LLC, and KEANE AND CO. CONSTRUCTION, INC., effective August 5, 2010.

2. RICHARD KEANE and LISA KEANE, KEANE LAND COMPANY, LLC, and KEANE AND CO. CONSTRUCTION, INC., the Defendants herein, ARE HEREBY DIRECTED TO appoint another attorney to appear, or to appear in person by filing a written notice with the Court stating how they will proceed without an attorney, within twenty (20) days from the date of service or mailing of this Order. If you, RICHARD KEANE and LISA KEANE, KEANE LAND COMPANY, LLC, and KEANE AND CO. CONSTRUCTION, INC., fail to file and serve an additional written appearance in this action, either in person or through a newly appointed attorney, within such twenty (20) day period, such failure shall be sufficient for grounds for entry of default and default judgment against you without further notice.

DATED this 5 day of augst 2010.

JEFF M. BRUDIE

JUDGE JEFF M. BRUDIE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5 day of August 2010, I caused a true and correct copy of the foregoing **Order Permitting Leave to Withdraw** to be:

- Hand delivered by providing a copy to Valley Messenger Service
- Mailed postage prepaid
- Certified mailed
- Faxed

to the following:

Douglas L. Mushlitz
CLARK and FEENEY
1229 Main Street
Lewiston, ID 83501

Manderson L. Miles
KNOWLTON & MILES, PLLC
312 Seventeenth Street
Lewiston, ID 83501

CLERK OF THE COURT

JANET L KOUGH

By: _____
Deputy/Clerk

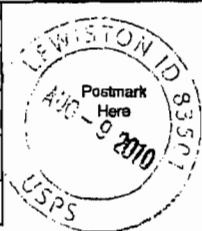
7006 3450 0001 6415 2671

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$.44
Certified Fee	2.80
Return Receipt Fee (Endorsement Required)	2.30
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 5.54



Sent To Rick Keane
 Street, Apt. No.;
 or PO Box No. 35309 Powell Road
 City, State, ZIP+4 Lewiston, ID 83501

PS Form 3800, August 2006 See Reverse for Instructions

COPY

EXHIBIT A
Page 1 Of 1

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <input type="checkbox"/> Complete forms 1, 2, and 3. Also complete item 4 if Postnet or Delivery is indicated. <input type="checkbox"/> If City or Name is not indicated on the reverse side of the meter card, the card is void. <input type="checkbox"/> Attach this card to the back of the mail piece, on an authorized mailing permit. 	<p><input checked="" type="checkbox"/> Signature <input type="checkbox"/> Agent</p> <p><i>Rick Keane</i> <input checked="" type="checkbox"/> No postage</p> <p>B: Received by (Printed Name) <input type="checkbox"/> Date of Delivery</p> <p><i>R. Keane</i></p>
<p>1. Address addressed to</p> <p>Rick Keane 35309 Powell Road Lewiston, ID 83501</p>	<p>D: Is delivery address different from item 1? <input type="checkbox"/> Yes</p> <p>If YES, enter delivery address below. <input type="checkbox"/> No</p> <p>6. Service Type</p> <p><input type="checkbox"/> Registered Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered Mail <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> Signature</p>
<p>2. ZIP Code</p> <p>7996 3458 0001 6415 2623</p>	<p>A: Restricted Delivery <input type="checkbox"/> Yes</p>

PS Form 3825, February 2004 Domestic Return Receipt (0206-02-54-114)

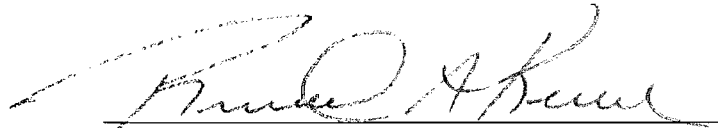




Richard Keane, having first been duly sworn, upon his oath deposes and says as follows:

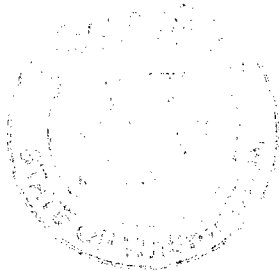
1. I am a Defendant in this matter. I have reviewed the contents of the file in this matter and make this affidavit based on personal knowledge.
2. I have reviewed the Affidavit of Mendy S. Maurer and the attached exhibits.
3. Exhibit 2 to the Affidavit of Mendy S. Maurer is a Certified Mail receipt which I have specifically reviewed to determine the "date of delivery". Neither the signature nor the date of delivery appear to be my handwriting and I am uncertain whether the date of delivery is 8/10/10 or 8/18/10 or some other date.
4. I have no current recollection of signing this receipt or when I signed it.


DATED this 4 day of April, 2011.



 RICHARD KEANE

SUBSCRIBED AND SWORN to before me this 4 day of April, 2011.





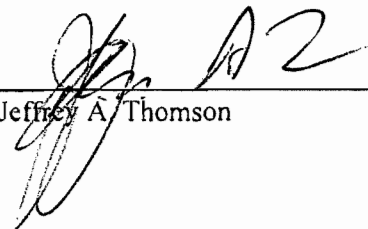
 Notary Public for Washington
 Residing at: Orofino, Idaho
 My Commission Expires: 3/24/14

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4 day of April, 2011, I caused a true and correct copy of the foregoing document to be served as follows:

Douglas L. Mushlitz
Law Offices of Clark & Feeny
The Train Station, Suite 201
13th and Main Street
Lewiston, ID 83501

- U.S. Mail
- Hand Delivery
- Federal Express
- Facsimile – (208) 746-9160



Jeffrey A. Thomson