

11-21-2011

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IN THE ^{v2} 2-06
LAW CLERK SUPREME COURT
OF THE
STATE OF IDAHO

IN THE MATTER OF THE ESTATES OF
CAROL BAILEY and FRANCIS ANDREW
BAILEY, Deceased,

COPY

F. KIM BAILEY, Personal Representative of
THE ESTATES OF CAROL BAILEY and
FRANCIS ANDREW BAILEY

Plaintiff/Appellant

KERRY BAILEY, KYLE BAILEY, and
TAMARA BAILEY SIPE,

Defendants/Respondent

Appealed from the District Court of the Seventh Judicial

District of the State of Idaho, in and for Bonneville County

Hon. Jon J. Shindurling, District Judge

Reginald Reeves,

PO Box 1841, Idaho Falls, ID 83403

Attorney for Appellant

Michael Whyte

2635 Channing Way, Idaho Falls, ID 83404

Attorney for Respondent

Filed this _____ day of _____, 20____

Clerk

By _____ Deputy

VOLUME II of IV

38760

IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF THE ESTATES OF)
CAROL BAILEY and FRANCIS ANDREW)
BAILEY, Deceased,)

_____)
F. KIM BAILEY, Personal Representative of)
THE ESTATES OF CAROL BAILEY and)
FRANCIS ANDREW BAILEY,)

Plaintiff/Appellant.)

-vs.-)

KERRY BAILEY, KYLE BAILEY, and)
TAMARA BAILEY SIPE,)

Defendants-Respondents.)
_____)

Case No. CV-2006-6496
Docket No. 38760-2011

VOLUME II of IV

CLERK'S RECORD ON APPEAL

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

HONORABLE JON J. SHINDURLING, District Judge.

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TABLE OF CONTENTS

	Page
ROA Report, printed August 12, 2011	VI-1
Petitioner for Informal Probate and Informal Appointment of Personal Representative filed November 17, 2006	VI-12
Notice of Lodging of Will, filed November 17, 2006.....	VI-17
Statement of Informal Probate, filed December 5, 2006.....	VI-21
Letters Testamentary, entered December 5, 2006.....	VI-23
Acceptance of Appointment, filed December 5, 2006.....	VI-24
Petition for Supervised Administration, filed December 21, 2006.....	VI-25
Notice of Compliance, filed January 30, 2007.....	VI-28
Minutes Report, dated January 26, 2007	VI-30
Order Denying Motion for Supervised Administration, entered February 23, 2006.....	VI-31
Renewed Petitioner for Supervised Administration (I.C. 15-3-502), filed March 15, 2011	VI-34
Affidavit of Kerry L. Bailey, filed March 15, 2007	VI-38
Responding Affidavit to Affidavit of Kerry L. Bailey, filed March 20, 2007.....	VI-44
Motion to Dismiss Renewed Petition [IRCP 12(b)(6)], filed March 20, 2007	VI-46
Responding Affidavit of Kerry L. Bailey, filed March 20, 2011	VI-48
Motion to Dismiss Renewed Petition [IRCP 12(b)(6), filed March 20, 2007.....	VI-50
Order Granting Motion to Compel, entered April 2, 2007	VI-52
Affidavit of Counsel in Support of Motion for Protective Order, filed April 18, 2007	VI-54
Motion for Protective Order (Rule 36), filed April 18, 2007.....	VI-59
Response to Motion for Protective Order [IRCP 12LF], filed May 1, 2007.....	VI-115

Motion to Strike Affidavit of Counsel [IRCP 12LF], filed May 1, 2007.....	VI-117
Objection to Proposed Ordered, filed June 25, 2007	VI-119
Response to Objection to Proposed Order, filed June 25, 2007.....	VI-121
Order, entered July 9, 2007	VI-123
Motion for Sanctions, filed July 19, 2007.....	VI-127
Objection to Motion for Sanctions (Rule 75(h)), filed July 19, 2007	VI-129
Minutes Report, dated August 15, 2007	VI-131
Affidavit of Kyle Bailey, filed September 11, 2007	VI-133
Second Motion to Compel Kyle Bailey’s Answers to Interrogatories, filed September 12, 2007	VI-141
Second Motion to Compel Kyle Bailey’s Responses to Request for Production of Documents, filed September 12, 2007.....	VI-143
Affidavit of Kyle Bailey, filed October 29, 2007	VI-150
Motion to Strike Affidavit of Kyle Bailey [IRCP 12(h)], filed November 5, 2007	VI-158
Objection to Motion to Strike Affidavit of Kyle Bailey, filed November 5, 2007.....	VI-159
Minutes Report, dated November 20, 2007	VI-161
Order, entered November 29, 2007	VI-163
Motion for Temporary Ordered, filed December 4, 2007.....	VI-165
Amended Petition, filed December 4, 2007.....	VI-168
Rule 16 Pre-trial Order Setting Trial and Other Dates, entered December 17, 2007.....	VI-170
Inventory and Appraisement [§§ 15-3-706 & 707 I.C.], filed December 18, 2007	VI-176
Notice of Compliance, filed December 20, 2007.....	VI-179
Response to Amended Petition, filed February 8, 2008.....	VI-181
Response to Motion for Temporary Orders, filed February 8, 2008.....	VI-183
Order, entered February 8, 2008.....	VI-185

Objection to Proposed Ordered, filed February 8, 2008 VI-188

Notice of Compliance, filed February 26, 2008..... VI-190

Order to Submit Nominations for Appraiser, entered March 10, 2008..... VI-192

Notice of Compliance, filed March 11, 2008 VI-196

Nominations for Appraiser, filed March 17, 2008..... VI-198

Order Appointing Appraiser, entered March 20, 2008 VI-201

Notice of Compliance, filed April 9, 2008 VI-203

Personal Representative’s Pre-Trial Memorandum, filed April 9, 2008..... VII-208

Memorandum of Facts and Law, filed April 10, 2008..... VII-213

Home Appraisal, Lodged April 9, 2008 VII-219

Pre-trial Conference/Minute Entry/Order, entered April 10, 2008 VII-237

Memorandum of Facts and Law, entered April 10, 2008 VII-238

Notice of Non-Compliance, filed April 18, 2008 VII-244

Notice of Objection, filed April 19, 2008..... VII-246

Order Sustaining Objection to Personal Representative’s Notice of Non-Compliance,
filed April 24, 2008 VII-249

Minutes Report, dated April 28, 2008 VII-251

Post Trial Brief, filed May 12, 1008..... VII-255

Affidavit of Rent, filed May 14, 2008 VII-264

Personal Representative’s Responding Memorandum, filed May 19, 2008 VII-268

Minutes Report, dated May 20, 2008 VII-271

Order, entered July 2, 2008 VII-272

Notice of Appeal, filed July 22, 2008..... VII-279

Notice of Compliance Re Statement of Issues, filed August 5, 2008	VII-283
Response to Petition for Distribution, filed August 13, 2008	VII-284
Amended Petition for Distribution (I.C. 15-3-1001), filed August 13, 2008.....	VII-288
Petition for Distribution (I.C. 15-3-1001), filed August 14, 2008	VII-291
Motion to Strike Amended Petition for Distribution [IRCP 12(h) & 15(a)]	VII-294
Minutes Report, dated October 9, 2008.....	VII-296
Appellant’s Brief, filed November 18, 2008	VII-298
Respondent’s Brief, filed December 15, 2008.....	VII-314
Minute Entry, filed December 17, 2008	VII-329
Minute Entry, dated January 8, 2009.....	VII-332
Decision on Appeal, entered January 15, 2009.....	VII-334
Second Affidavit of Kerry L. Bailey, filed January 20, 2009	VII-342
Affidavit of Michael J. Whyte Re: Magistrate Court Record, filed January 30, 2009	VII-371
Supplemental Decision on Appeal, entered February 4, 2009.....	VII-374
Notice of Non-Compliance, filed February 5, 2009.....	VII-377
Post-Appeal Memorandum, filed February 10, 2009.....	VII-379
Order Denying Motion to Disqualify and Order to Produce Proof of Evidence from Records, entered February 18, 2009	VII-381
Notice of Non-Compliance, filed March 10, 2009	VII-383
Order Amending Prior Order, entered March 13, 2009	VII-385
Remittitur, filed March 19, 2009.....	VII-387
Motion for Relief from Judgment (I.R.C.P. 60(b)), filed April 28, 2009	VII-389
Notice of Motion and Motion to Strike Motion for Relief from Judgment [IRCP 12(f)], filed April 30, 2009	VII-393

Order Denying Motion to Strike and Motion for Relief from Judgment, entered May 28, 2009.....	VII-396
Affidavit of Counsel, filed June 23, 2009.....	VII-399
Personal Representative Responding Affidavit on Petitioners' Affidavit of Counsel, filed, June 25, 2009	VIII-403
Petition for Accounting and Separation of Personal Representative's Attorney Fees from Estate Attorney Fees, filed June 24, 2009.....	VIII-405
Response to Petition for Accounting, filed June 24, 2009.....	VIII-407
Memorandum in Opposition to Petition for Accounting, filed August 17, 2009.....	VIII-409
Memorandum of Costs [§12-121 I.C.§IRCP 54(d)(1)(B), filed September 16, 2009.....	VIII-416
Order on Petitioner's Petition for Accounting, entered September 17, 2009.....	VIII-431
First and Final Accounting and Petition for Distribution and Discharge, filed September 17,2 009.....	VIII-434
Request for Additional Detail and Supporting Documentation on First and Final Accounting and Petition for Distribution and Discharge, filed September 29, 2009	VIII-439
Affidavit of Kerry L. Bailey, September 29, 2009.....	VIII-445
Objection to Memorandum of Costs, September 29, 2009.....	VIII-459
Objection to Personal Representative's Notice of Non-Compliance Filed September 30, 2009, filed October 1, 2009.....	VIII-466
Notice of Compliance, filed October 1, 2009	VIII-470
Notice of Non-Compliance, filed October 1, 2009	VIII-472
Reply to Objection to Notice of Non-Compliance, filed October 6, 2009.....	VIII-474
Reply to Objection to Memorandum of Costs, filed October 7, 2009	VIII-476
Response to Affidavit of Kerry Bailey, filed October 19, 2009.....	VIII-479
Court Minutes, dated October 21, 2009.....	VIII-482
Order Re: Request for Additional Detail on Final Accounting and Objection to Memorandum of Costs, filed November 19, 2009.....	VIII-484

Notice of Inability to Comply with Order Re Costs, filed November 24, 2009 VIII-489

Motion for Reconsideration [IRCP 11(a)(2)(B), filed December 1, 2009 VIII-490A
(Original could not be located and a copy was obtained from appellate counsel)

Order Denying Motion for Reconsideration, entered December 16, 2009 VIII-491

Notice of Compliance, filed December 22, 2009..... VIII-494

Notice of Appeal, filed January 26, 2010 VIII-593

Appellant’s Brief, filed May 14, 2010..... VIII-597

Respondent’s Brief, filed June 4, 2010..... VIV-608

Minute Entry, dated August 2, 2010..... VIV-620

Order on Personal Representative’s Appeal of Magistrate Decision, filed October 1, 2010 VIV-621

Order Dismissing Appeal and Remanding Case to Magistrate Court, entered October 5, 2010..... VIV-629

Petition for Rehearing, filed October 13, 2010..... VIV-631

Memorandum in Support of Petition for Rehearing [IAR 42(b)], filed October 13, 2010..... VIV-633

Memorandum in Opposition to Appellant’s Motion for Rehearing, filed October 19, 2010..... VIV-637

Motion to Strike Memorandum in Opposition [IAR 42(a)], filed October 20, 2010 VIV-639

Order Denying Petition for Rehearing, entered February 3, 2011 VIV-641

Notice of Appeal, filed March 15, 2011 VIV-643

Amended Notice of Appeal, filed May 10, 2011 VIV-647

Clerk’s Certificate of Appeal, dated May 11, 2011 VIV-652

Clerk’s Certification of Exhibits, dated August 15, 2011 VIV-653

Clerk’s Certificate, dated August 15, 2011..... VIV-655

Certificate of Service VIV-657

INDEX

	Page
Acceptance of Appointment, filed December 5, 2006.....	VI-24
Affidavit of Counsel in Support of Motion for Protective Order, filed April 18, 2007	VI-54
Affidavit of Counsel, filed June 23, 2009.....	VII-399
Affidavit of Kerry L. Bailey, filed March 15, 2007.....	VI-38
Affidavit of Kerry L. Bailey, September 29, 2009.....	VIII-445
Affidavit of Kyle Bailey, filed October 29, 2007	VI-150
Affidavit of Kyle Bailey, filed September 11, 2007	VI-133
Affidavit of Michael J. Whyte Re: Magistrate Court Record, filed January 30, 2009	VII-371
Affidavit of Rent, filed May 14, 2008	VII-264
Amended Notice of Appeal, filed May 10, 2011	VIV-647
Amended Petition for Distribution (I.C. 15-3-1001), filed August 13, 2008.....	VII-288
Amended Petition, filed December 4, 2007.....	VI-168
Appellant’s Brief, filed May 14, 2010.....	VIII-597
Appellant’s Brief, filed November 18, 2008	VII-298
Certificate of Service	VIV-657
Clerk’s Certificate of Appeal, dated May 11, 2011	VIV-652
Clerk’s Certificate, dated August 15, 2011.....	VIV-655
Clerk’s Certification of Exhibits, dated August 15, 2011	VIV-653
Court Minutes, dated October 21, 2009.....	VIII-482
Decision on Appeal, entered January 15, 2009.....	VII-334
First and Final Accounting and Petition for Distribution and Discharge, filed September 17, 2009.....	VIII-434

Home Appraisal, Lodged April 9, 2008	VII-219
Inventory and Appraisalment [§§ 15-3-706 & 707 I.C.], filed December 18, 2007	VI-176
Letters Testamentary, entered December 5, 2006.....	VI-23
Memorandum in Opposition to Appellant’s Motion for Rehearing, filed October 19, 2010.....	VIV-637
Memorandum in Opposition to Petition for Accounting, filed August 17, 2009.....	VIII-409
Memorandum in Support of Petition for Rehearing [IAR 42(b)], filed October 13, 2010.....	VIV-633
Memorandum of Costs [§12-121 I.C. §IRCP 54(d)(1)(B), filed September 16, 2009.....	VIII-416
Memorandum of Facts and Law, entered April 10, 2008	VII-238
Memorandum of Facts and Law, filed April 10, 2008.....	VII-213
Minute Entry, dated January 8, 2009.....	VII-332
Minute Entry, filed December 17, 2008	VII-329
Minutes Report, dated April 28, 2008	VII-251
Minutes Report, dated August 15, 2007	VI-131
Minutes Report, dated January 26, 2007	VI-30
Minutes Report, dated May 20, 2008	VII-271
Minutes Report, dated November 20, 2007	VI-161
Minutes Report, dated October 9, 2008.....	VII-296
Motion for Protective Order (Rule 36), filed April 18, 2007.....	VI-59
Motion for Reconsideration [IRCP 11(a)(2)(B)], filed December 1, 2009 (Original could not be located and a copy was obtained from appellate counsel).....	VIII-490A
Motion for Relief from Judgment (I.R.C.P. 60(b)), filed April 28, 2009	VII-389
Motion for Sanctions, filed July 19, 2007.....	VI-127
Motion for Temporary Ordered, filed December 4, 2007.....	VI-165



Motion to Dismiss Renewed Petition [IRCP 12(b)(6), filed March 20, 2007.....	VI-50
Motion to Dismiss Renewed Petition [IRCP 12(b)(6)], filed March 20, 2007	VI-46
Motion to Strike Affidavit of Kyle Bailey [IRCP 12(h)], filed November 5, 2007	VI-158
Motion to Strike Amended Petition for Distribution [IRCP 12(h) & 15(a)].....	VII-294
Motion to Strike Memorandum in Opposition [IAR 42(a)], filed October 20, 2010	VIV-639
Nominations for Appraiser, filed March 17, 2008.....	VI-198
Notice of Appeal, filed January 26, 2010	VIII-593
Notice of Appeal, filed July 22, 2008.....	VII-279
Notice of Appeal, filed March 15, 2011	VIV-643
Notice of Compliance Re Statement of Issues, filed August 5, 2008	VII-283
Notice of Compliance, filed April 9, 2008	VI-203
Notice of Compliance, filed December 20, 2007.....	VI-179
Notice of Compliance, filed December 22, 2009.....	VIII-494
Notice of Compliance, filed February 26, 2008.....	VI-190
Notice of Compliance, filed January 30, 2007.....	VI-28
Notice of Compliance, filed March 11, 2008	VI-196
Notice of Compliance, filed October 1, 2009	VIII-470
Notice of Inability to Comply with Order Re Costs, filed November 24, 2009	VIII-489
Notice of Lodging of Will, filed November 17, 2006.....	VI-17
Notice of Motion and Motion to Strike Motion for Relief from Judgment [IRCP 12(f)], filed April 30, 2009	VII-393
Notice of Non-Compliance, filed April 18, 2008	VII-244

Notice of Non-Compliance, filed February 5, 2009.....	VII-377
Notice of Non-Compliance, filed March 10, 2009	VII-383
Notice of Non-Compliance, filed October 1, 2009	VIII-472
Notice of Objection, filed April 19, 2008.....	VII-246
Objection to Memorandum of Costs, September 29, 2009.....	VIII-459
Objection to Motion for Sanctions (Rule 75(h)), filed July 19, 2007	VI-129
Objection to Motion to Strike Affidavit of Kyle Bailey, filed November 5, 2007.....	VI-159
Objection to Personal Representative’s Notice of Non-Compliance Filed September 30, 2009, filed October 1, 2009	VIII-466
Objection to Proposed Ordered, filed February 8, 2008.....	VI-188
Objection to Proposed Ordered, filed June 25, 2007.....	VI-119
Order Amending Prior Order, entered March 13, 2009.....	VII-385
Order Appointing Appraiser, entered March 20, 2008.....	VI-201
Order Denying Motion for Reconsideration, entered December 16, 2009	VIII-491
Order Denying Motion for Supervised Administration, entered February 23, 2006.....	VI-31
Order Denying Motion to Disqualify and Order to Produce Proof of Evidence from Records, entered February 18, 2009.....	VII-381
Order Denying Motion to Strike and Motion for Relief from Judgment, entered May 28, 2009.....	VII-396
Order Denying Petition for Rehearing, entered February 3, 2011	VIV-641
Order Dismissing Appeal and Remanding Case to Magistrate Court, entered October 5, 2010.....	VIV-629
Order Granting Motion to Compel, entered April 2, 2007	VI-52
Order on Personal Representative’s Appeal of Magistrate Decision, filed October 1, 2010	VIV-621
Order on Petitioner’s Petition for Accounting, entered September 17, 2009.....	VIII-431

Order Re: Request for Additional Detail on Final Accounting and Objection to Memorandum of Costs, filed November 19, 2009	VIII-484
Order Sustaining Objection to Personal Representative’s Notice of Non-Compliance, filed April 24, 2008	VII-249
Order to Submit Nominations for Appraiser, entered March 10, 2008.....	VI-192
Order, entered February 8, 2008.....	VI-185
Order, entered July 2, 2008	VII-272
Order, entered July 9, 2007	VI-123
Order, entered November 29, 2007	VI-163
Personal Representative Responding Affidavit on Petitioners’ Affidavit of Counsel, filed, June 25, 2009	VIII-403
Personal Representative’s Pre-Trial Memorandum, filed April 9, 2008.....	VII-208
Personal Representative’s Responding Memorandum, filed May 19, 2008	VII-268
Petition for Accounting and Separation of Personal Representative’s Attorney Fees from Estate Attorney Fees, filed June 24, 2009.....	VIII-405
Petition for Distribution (I.C. 15-3-1001), filed August 14, 2008	VII-291
Petition for Rehearing, filed October 13, 2010.....	VIV-631
Petition for Supervised Administration, filed December 21, 2006	VI-25
Petitioner for Informal Probate and Informal Appointment of Personal Representative filed November 17, 2006.....	VI-12
Post Trial Brief, filed May 12, 1008.....	VII-255
Post-Appeal Memorandum, filed February 10, 2009.....	VII-379
Pre-trial Conference/Minute Entry/Order, entered April 10, 2008	VII-237
Remittitur, filed March 19, 2009	VII-387
Renewed Petitioner for Supervised Administration (I.C. 15-3-502), filed March 15, 2011	VI-34

Reply to Objection to Memorandum of Costs, filed October 7, 2009	VIII-476
Reply to Objection to Notice of Non-Compliance, filed October 6, 2009	VIII-474
Request for Additional Detail and Supporting Documentation on First and Final Accounting and Petition for Distribution and Discharge, filed September 29, 2009	VIII-439
Respondent’s Brief, filed December 15, 2008.....	VII-314
Respondent’s Brief, filed June 4, 2010.....	VIV-608
Minute Entry, dated August 2, 2010.....	VIV-620
Responding Affidavit of Kerry L. Bailey, filed March 20, 2011	VI-48
Responding Affidavit to Affidavit of Kerry L. Bailey, filed March 20, 2007.....	VI-44
Response to Affidavit of Kerry Bailey, filed October 19, 2009	VIII-479
Response to Amended Petition, filed February 8, 2008.....	VI-181
Response to Motion for Protective Order [IRCP 12LF], filed May 1, 2007	VI-115
Motion to Strike Affidavit of Counsel [IRCP 12LF], filed May 1, 2007.....	VI-117
Response to Motion for Temporary Orders, filed February 8, 2008.....	VI-183
Response to Objection to Proposed Order, filed June 25, 2007.....	VI-121
Response to Petition for Accounting, filed June 24, 2009	VIII-407
Response to Petition for Distribution, filed August 13, 2008.....	VII-284
ROA Report, printed August 12, 2011	VI-1
Rule 16 Pre-trial Order Setting Trial and Other Dates, entered December 17, 2007	VI-170
Second Affidavit of Kerry L. Bailey, filed January 20, 2009	VII-342
Second Motion to Compel Kyle Bailey’s Answers to Interrogatories, filed September 12, 2007	VI-141
Second Motion to Compel Kyle Bailey’s Responses to Request for Production of Documents, filed September 12, 2007.....	VI-143
Statement of Informal Probate, filed December 5, 2006.....	VI-21

Supplemental Decision on Appeal, entered February 4, 2009VII-374

even appearing (in person or by counsel) at the hearing on such appointment.

KIM BAILEY continued to reside in the family residence.

Despite being required to do so, through discovery, the challengers refused to turn over to the personal representative certain personal property of the estate.

The contestants agreed that the personal representative could purchase such residence, at the appraised value. An appraisal was obtained, but they thereafter objected to such sale.

The contestant siblings demand that the personal representative pay rent for his occupancy of the residence.

ISSUES

I

WHETHER THE PERSONAL REPRESENTATIVE IS ENTITLED TO POSSESSION OF THE PROPERTY OF THE ESTATE?

II

WHETHER A PERSONAL REPRESENTATIVE, OCCUPYING THE DECEDENT'S RESIDENCE, MAY BE REQUIRED TO PAY RENT FOR SUCH OCCUPANCY?

ARGUMENT

I

The personal representative has a duty to take possession of the decedent's property. § 15-3-709 I.C.

II

“A person qualifying as [personal representative is] charged with the fiduciary duty of . . . taking into his possession all assets of his testator . . . and is responsible for any loss incurred by his culpable failure to do so.” In re Anderton's Estate [1946], 67 Idaho 160, 163.

III

“ The authorities hold [a personal representative] responsible not only for property which comes into his possession, but also that which he reasonably should have taken into his possession.” Anderton, at 163.

IV

“. . . It is clear that an Idaho [personal representative] is entitled to possession of the property of the estate in Idaho until the estate is settled or until the property is delivered or otherwise disposed of pursuant to an order of the court.” Peterson v. Neal [1972], 94 Idaho. 816, 819. See also, estate of Randall [1942], 64 Idaho 629, 637.

V

“ [Personal representatives are] not liable for rent for the period of their occupancy [of decedent’s residence].” Estate of Randall [1942], 64 Idaho 629, 637.

VI

In Randall, the person acting as personal representative had resided in the home all of her life, and continued to so reside following her mother’s death. The court held that she would only be liable for rent if she had leased the property, in which case she would have been required to account for the profit realized.

CONCLUSION

It is clear that a personal representative is entitled to – – and must – – take possession of the property of the estate.

It is equally clear that a personal representative, occupying the decedent’s residence, is not required to pay rent for such occupancy.

Respectfully submitted, this April 10, 2008.



REGINALD R. REEVES, ESQ.

Personal Representative’s Attorney
Cambridge Law Center
Idaho Falls, Idaho

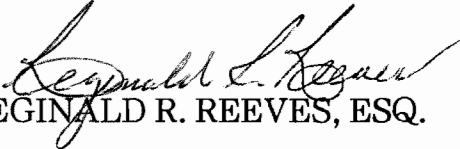
CERTIFICATE OF SERVICE
[IRCP 5(f)]

I HEREBY CERTIFY That on this day I served the foregoing upon
the designated party, by handing a copy to their attorney, as follows:

PETITIONERS

BRIAN L. BOYLE, ESQ.

April 10, 2008


REGINALD R. REEVES, ESQ.

2006 APR 10 10:44

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

IN THE MATTER OF THE ESTATES	)	Case No. CV-06-6496
OF)	
)	
CAROL BAILEY and	)	MEMORANDUM OF FACTS
FRANCIS ANDREW BAILEY,	)	AND LAW
)	
Deceased.)	
_____)	

COME NOW Kerry L. Bailey, Kyle Bailey, and Tamara Lee Bailey Sipe, by and through counsel of record, and submit that the facts of this matter are as follows:

1. Decedent Carol Bailey died April 11, 1998 at the age of 63 years. Decedent Francis A. Bailey died September 22, 2006 at the age of 76 years. The decedents left the following children, heirs, and devisees: F. Kim Bailey, Kerry L. Bailey, Kyle J. Bailey, and Tamara Lee Bailey Sipe.

2. On or about October 26, 2006, F. Kim Bailey filed a Petition for Informal Probate and Informal Appointment of Personal Representative pursuant to the last wills and testaments of the decedents. At the time of decedents' deaths, they had real property and personal property. According to the last wills and testaments, all children were to share equally in the estate.

3. Since Francis A. Bailey passed away on September 22, 2006, F. Kim Bailey, has resided in the Carol Bailey and Francis A. Bailey estate home and has used the estate real and personal property as his own possessions, including pasturing his personal horses on the estate property.

4. Since September 22, 2006, Kim Bailey, as personal representative, has not taken any efforts to gather, prioritize, or evaluate the estate property, nor has he prepared the real property for sale or taken any efforts to finalize the estate and obtain a distribution of the assets for the heirs.

5. Since September 22, 2006, Kim Bailey, as personal representative, has failed to allow the heirs access to the property, nor has he provided any information to which they have a right so as to confirm that the property is being handled in an appropriate manner and in the estate's best interest.

6. Since September 22, 2006, Kim Bailey, as personal representative, has failed to maintain the real property in a condition that would preserve its value. Specifically, the personal representative has allowed the yard, trees, and landscaping to die and has allowed the property to fall into a general state of disrepair.

LAW OF THE CASE

Idaho Code 15-3-611 governs the removal of personal representative for cause.

Cause for removal exists when removal would be in the best interest of the estate, or if it is shown that the personal representative or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment, or that the personal representative has disregarded an order from the Court, has become incapable of discharging the duties of his office, or has mismanaged the estate, or failed to perform any duty pertaining to the office.”

Idaho Code 15-3-611(b)

The Court of Appeals in *Kolouch v. First Security Bank*, 128 Idaho 196, 911 P.2d 779 (Ct. App. 1996) upheld the magistrate's removal of personal representative because said personal representative "failed to act in the best interest of the estate, mismanaged the affairs of the estate, operated under a conflict of interest, failed to marshal estate assets, and breached her fiduciary duty to the estate." *Kolouch* at 192. In that case, the magistrate specifically held that the personal representative was guilty of financial mismanagement for various things, including conveying estate property to herself.

In the case before this court, Kim Bailey, the personal representative, has effectively transferred property to himself without benefit to the estate, by retaining control of the assets, and living in the estate's home since September 2006 without fair compensation. This qualifies as a violation of the personal representative's fiduciary duties and should result in his removal.

The personal representative's reliance upon the old case of *Estate of Randall*, 64 Idaho 629 (1942) is misplaced. Even if it were an accurate statement of current law (which petitioners believe it is not), the Court in *Randall* made it clear that as surviving children equally entitled to the estate, all parties were in effect joint tenants, and the personal representative could not refuse the other cotenants the same use and possession of the estate property as asserted by the personal representative. *Id.* at 636-37. The *Randall* court also clarified that the personal representative is entitled to possession of the estate residence so long as he is "duly and regularly administering [the estate for the heirs]." *Id.* at 637. Petitioners believe the evidence will show that the personal representative denied them access to and use of the residence, in violation of the law as set forth above. The evidence will also show that the personal representative was not "duly and regularly administering the estate for the heirs" but in fact did little or nothing at all in that regard. Therefore he was not entitled to rent-free possession of the estate residence.

Petitioners have alleged that the personal representative has violated the duties placed on him as the personal representative. "A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by § 15-7-302 of this Code." Idaho Code § 15-3-703(a). A trustee's standard of care as outlined in Idaho Code §15-7-302, is that which would be observed by a prudent man dealing with the property of another. The trial evidence will show that the personal representative has taken little if any effort to preserve the real and personal property and has actually damaged the property with his actions.

There is an allegation that the personal representative has failed to comply with Idaho Code § 15-3-706 requirement that an inventory of the property along with values be filed within three months following the appointment. As of March 11, 2008, the personal representative advised the petitioners that he could not make any disbursement of personal property until such time as he had a complete list of the assets and their corresponding values. This statement confirms that the personal representative has failed to comply with his duties, and has mismanaged the estate by not properly tracking the property and its values and preparing the estate for final distribution.

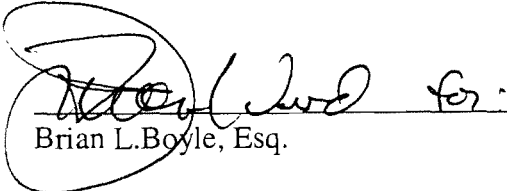
The personal representative is required to settle and distribute the estate property in accordance with the terms of the will as expeditiously and efficiently as is consistent with the best interests of the estate. Without dispute, the personal representative has had control of the estate property since September 2006 with no effort to distribute. During this same period of time, the personal representative has made no efforts to prepare the real property for sale, has not listed the real property for sale, has not completed an inventory of the personal property with its fair market value so as to facilitate the disposition of the estate assets, has allowed the estate assets to be diminished in value by allowing those assets to fall into disrepair. It will be clear at the trial in this matter that the personal representative has assumed the decedents' property as his own, has received

a significant benefit from the use of this property without fair compensation to the estate, and has not made any attempt to fulfill his duties as the personal representative. For those reasons, personal representative should be removed, all assets still in the personal representative's possession should be turned over to a successor personal representative. The personal representative should be made to account for personal property he used and should be made to reimburse the estate for the fair rental use of the real property and other personal property the personal representative had the benefit of since September 2006.

DATED this 10 day of April, 2005.

THOMSEN STEPHENS LAW OFFICES, P.L.L.C.

By:



Brian L. Boyle, Esq.

CERTIFICATE OF SERVICE

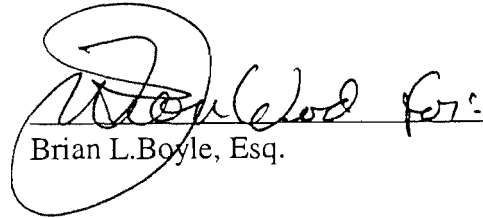
I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the 10 day of April, 2008, I caused a true and correct copy of the foregoing **MEMORANDUM OF FACTS AND LAW** to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon or by hand delivering or by transmitting by facsimile as set forth below.

REGINALD R REEVES
690 CAMBRIDGE DRIVE
PO BOX 1841
IDAHO FALLS ID 83403
FAX: 522-2516

- Mail
- Hand Delivery
- Facsimile
- Courthouse Box

THOMSEN STEPHENS LAW OFFICES, PLLC

By:



Brian L. Boyle, Esq.

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Uniform Residential Appraisal Report

File # 04018

The purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property.

SUBJECT

Property Address **4673 South 15th West** City **Idaho Falls** State **ID** Zip Code **83401**
 Borrower _____ Owner of Public Record **Frances Bailey Estate** County **Bonneville**
 Legal Description **SW1/4, SW1/4, Section 36, Township 2 North, Range 37**
 Assessor's Parcel # **RP 02N37E366219** Tax Year **2007** R.E. Taxes \$ **1,122.02**
 Neighborhood Name **Idaho Falls** Map Reference **N/A** Census Tract **9714.00**
 Occupant Owner Tenant Vacant Special Assessments \$ **N/A** PUD HDA \$ _____ per year per month
 Property Rights Appraised Fee Simple Leasehold Other (describe) _____
 Assignment Type Purchase Transaction Refinance Transaction Other (describe) **To determine market value.**
 Lender/Client **State of Idaho Bonneville County Court** Address **Idaho Falls, ID**
 Is the subject property currently offered for sale or has it been offered for sale in the twelve months prior to the effective date of this appraisal? Yes No
 Report data source(s) used, offering price(s), and date(s). **MLS**

CONTRACT

I did did not analyze the contract for sale for the subject purchase transaction. Explain the results of the analysis of the contract for sale or why the analysis was not performed.
 Contract Price \$ _____ Date of Contract _____ Is the property seller the owner of public record? Yes No Data Source(s) _____
 Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower? Yes No
 If Yes, report the total dollar amount and describe the items to be paid.

NEIGHBORHOOD

Note: Race and the racial composition of the neighborhood are not appraisal factors.

Neighborhood Characteristics		One-Unit Housing Trends		One-Unit Housing		Present Land Use %	
Location <input type="checkbox"/> Urban <input type="checkbox"/> Suburban <input checked="" type="checkbox"/> Rural	Property Values <input type="checkbox"/> Increasing <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Declining	PRICE	AGE	Dne-Unit	25 %		
Built-Up <input type="checkbox"/> Over 75% <input checked="" type="checkbox"/> 25-75% <input type="checkbox"/> Under 25%	Demand/Supply <input type="checkbox"/> Shortage <input checked="" type="checkbox"/> In Balance <input type="checkbox"/> Over Supply	\$ (000)	(yrs)	2-4 Unit	%		
Growth <input type="checkbox"/> Rapid <input type="checkbox"/> Stable <input type="checkbox"/> Slow	Marketing Time <input type="checkbox"/> Under 3 mths <input checked="" type="checkbox"/> 3-6 mths <input type="checkbox"/> Over 6 mths	75	Low 1	Multi-Family	%		
Neighborhood Boundaries The subject neighborhood is southwest edge of Idaho Falls south of Sunnyside		400	High 60	Commercial	50 %		
Road, east of Highway 20, west of 5th West and north of 65th South.		150	Pred. 40	Other	25 %		
Neighborhood Description The subject neighborhood is mainly commercial/industrial. There are developing subdivisions, agricultural lands and residential properties in the neighborhood. The neighborhood has a strong commercial influence. Hospital, parks and schools are in close proximity. Conveniences located in the Idaho Falls area. No apparent adverse neighborhood conditions.							
Market Conditions (including support for the above conclusions) Market conditions appear average for the area. Most types of financing are available.							
Conventional and FHA financing appears most prevalent. Financing concessions are not typical. Market appears to be active with steady interest rates. Property values appear stable. Supply and demand appear in balance. Homes in the area vary in size, design, and value.							

SITE

Dimensions From Legal _____ Area **.86 Acre** Shape **Rectangular** View **Hrms,Cmrrl**
 Specific Zoning Classification **A-1** Zoning Description **Agriculture**
 Zoning Compliance Legal Legal Nonconforming (Grandfathered Use) No Zoning Illegal (describe) _____
 Is the highest and best use of subject property as improved (or as proposed per plans and specifications) the present use? Yes No If No, describe _____
 Utilities Public Other (describe) _____ Public Other (describe) _____ Off-site Improvements - Type Public Private
 Electricity Water Shared Well Street Asphalt
 Gas Sanitary Sewer Individual Septic Alley
 FEMA Special Flood Hazard Area Yes No FEMA Flood Zone **C** FEMA Map # **1600270230C** FEMA Map Date **11/4/1981**
 Are the utilities and off-site improvements typical for the market area? Yes No If No, describe _____
 Are there any adverse site conditions or external factors (easements, encroachments, environmental conditions, land uses, etc.)? Yes No If Yes, describe _____
 I have not checked the land records for recorded easements and have reported only apparent easements, encroachments and other apparent adverse conditions. Irrigation water available. Road across rear of property. Partially fenced yard. Trees and other landscaping is overgrown and dying. (Some dead trees) Fenced area for livestock. Old cars and debris on property.

IMPROVEMENTS

General Description	Foundation	Exterior Description	materials/condition	Interior	materials/condition
Units <input checked="" type="checkbox"/> One <input type="checkbox"/> One with Accessory Unit	<input type="checkbox"/> Concrete Slab <input type="checkbox"/> Crawl Space	Foundation Walls	Poured Concrete	Floors	Carpet, Vinyl/Ave
# of Stories 1	<input checked="" type="checkbox"/> Full Basement <input type="checkbox"/> Partial Basement	Exterior Walls	Brick/Ave	Walls	DW, Paneling/Ave
Type <input checked="" type="checkbox"/> Det. <input type="checkbox"/> Att. <input type="checkbox"/> S-Det./End Unit	Basement Area 1,098 sq.ft.	Roof Surface	Metal/Ave	Trim/Finish	Wood/Ave
<input checked="" type="checkbox"/> Existing <input type="checkbox"/> Proposed <input type="checkbox"/> Under Const.	Basement Finish 50 %	Gutters & Downspouts	None	Bath Floor	Vinyl/Ave
Design (Style) Ranch	<input type="checkbox"/> Outside Entry/Exit <input type="checkbox"/> Sump Pump	Window Type	Double Hung/Ave	Bath Wainscot	Marble/Ave
Year Built 1959	Evidence of <input type="checkbox"/> Infestation	Storm Sash/Insulated	Att/Ave	Car Storage	<input type="checkbox"/> None
Effective Age (Yrs) 49	<input type="checkbox"/> Dampness <input type="checkbox"/> Settlement	Screens	Att/Ave	Driveway	# of Cars
Attic <input type="checkbox"/> None	Heating <input checked="" type="checkbox"/> FWA <input type="checkbox"/> HWBB <input type="checkbox"/> Radiant	Amenities	<input type="checkbox"/> Woodstove(s) #	Driveway Surface	Conc/Asph
<input type="checkbox"/> Drop Stair <input type="checkbox"/> Stairs	<input type="checkbox"/> Other <input type="checkbox"/> Fuel Gas	<input checked="" type="checkbox"/> Fireplace(s) # 1	<input checked="" type="checkbox"/> Fence Partial	<input checked="" type="checkbox"/> Garage	# of Cars 2
<input type="checkbox"/> Floor <input checked="" type="checkbox"/> Scuttle	Cooling <input type="checkbox"/> Central Air Conditioning	<input type="checkbox"/> Patio/Deck 2Rear	<input type="checkbox"/> Porch	<input type="checkbox"/> Carport	# of Cars
<input type="checkbox"/> Finished <input type="checkbox"/> Heated	<input type="checkbox"/> Individual <input type="checkbox"/> Other	<input type="checkbox"/> Pool	<input type="checkbox"/> Other	<input checked="" type="checkbox"/> Att.	<input type="checkbox"/> Det. <input type="checkbox"/> Built-in

Appliances (P) Refrigerator Range/Oven Dishwasher Disposal Microwave Washer/Dryer Other (describe) _____
 Finished area above grade contains: **4 Rooms 2 Bedrooms 1 Bath(s) 1,098 Square Feet of Gross Living Area Above Grade**
 Additional features (special energy efficient items, etc.). **Electric water heater. Rear patio and deck. Fireplace. Shed. Garage has electric opener.**

Describe the condition of the property (including needed repairs, deterioration, renovations, remodeling, etc.). **Roof approximately 5 years old. Mold in bathroom due to limited ventilation. Damage in basement shower and it is not working. Other areas of home showing signs of wear. Floor coverings are dated. Furnace is near new. Overall condition of home appears below average to average. Second old shed on property in poor condition. No value considered.**

Are there any physical deficiencies or adverse conditions that affect the livability, soundness, or structural integrity of the property? Yes No If Yes, describe _____
 It is unknown if old vehicles on property have created any environmental hazards. No other adverse environmental conditions noted or observed in the improvements, on the site, or on the area of the subject property.

Does the property generally conform to the neighborhood (functional utility, style, condition, use, construction, etc.)? Yes No If No, describe _____
 Home similar to others in the neighborhood.

Uniform Residential Appraisal Report

File # 04018

There are 3 comparable properties currently offered for sale in the subject neighborhood ranging in price from \$ 110,000 to \$ 159,000		There are 3 comparable sales in the subject neighborhood within the past twelve months ranging in sale price from \$ 132,000 to \$ 139,000					
FEATURE	SUBJECT	COMPARABLE SALE # 1	COMPARABLE SALE # 2	COMPARABLE SALE # 3			
Address	4673 South 15th West Idaho Falls, ID 83401	2613 West 17th South Idaho Falls	175 West 17th Street Idaho Falls	255 South 45 West Idaho Falls			
Proximity to Subject		2.06 miles NW	2.30 miles NE	4.07 miles NW			
Sale Price	\$ N/A	\$ 139,500	\$ 132,700	\$ 118,900			
Sale Price/Gross Liv. Area	\$ sq.ft.	\$ 94.32 sq.ft.	\$ 89.24 sq.ft.	\$ 114.33 sq.ft.			
Data Source(s)		MLS/Drive-By	MLS/Drive-By	MLS/Drive-By			
Verification Source(s)		MLS #138317	MLS #143692	MLS #141018			
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-) \$ Adjustment	DESCRIPTION	+(-) \$ Adjustment	DESCRIPTION	+(-) \$ Adjustment
Sales or Financing Concessions		FHA Closing Costs	-3,000	FHA Closing Costs	-3,700	FHA Concessions	-500
Date of Sale/Time		7-07/133 Days		08-07/15 Days		06-07/8 Days	
Location	Rural	Suburban		Urban	-6,000	Rural	
Leasehold/Fee Simple	Fee Simple	Fee Simple		Fee Simple		Fee Simple	
Site	.86 Acre	.21 Acre	+6,500	.25 Acre	+6,100	1 Acre	-1,400
View	Hms.Cmrc	Homes		Homes		Homes	
Design (Style)	Ranch	Ranch		Ranch		Ranch	
Quality of Construction	Brick	Brick		Brick		Vinyl Siding	
Actual Age	49 Years	45 Years		47 Years		34 Years	
Condition	Average	Superior	-14,000	Superior	-13,000	Superior	-6,000
Above Grade	Total Bdrms. Baths	Total Bdrms. Baths		Total Bdrms. Baths		Total Bdrms. Baths	
Room Count	4 2 1	4 2 1		8 3 1.5	-3,000	5 3 1	-2,000
Gross Living Area	1,098 sq.ft.	1,479 sq.ft.	-3,800	1,487 sq.ft.	-3,900	1,040 sq.ft.	+600
Basement & Finished Rooms Below Grade	1,098/549 Fam,Bd,Ba	629/629 Fmr,Bdr,Bth	+1,900 -300	None	+4,400 +2,200	1040/0 Unfinished	+200 +2,200
Functional Utility	Average	Average		Average		Average	
Heating/Cooling	Gas FA/None	Gas FA/None		Gas FA/None		Elec CC/None	
Energy Efficient Items	Average	Average		Average		Average	
Garage/Carport	2 Att Garage	2 Att. Garage		2 Att. Garage		Onsite Parking	+4,000
Porch/Patio/Deck	Patio, Deck, FP	Cvd Patio, GI		Patios, FP		None	+2,000
Amenities	Shed	Shed					
Net Adjustment (Total)			\$ -12,700		\$ -16,900		\$ -900
Adjusted Sale Price of Comparables		Net Adj. 9.1 % Gross Adj. 21.1 %	\$ 126,800	Net Adj. 12.7 % Gross Adj. 31.9 %	\$ 115,800	Net Adj. 0.8 % Gross Adj. 15.9 %	\$ 118,000

SALES COMPARISON APPROACH

I did not research the sale or transfer history of the subject property and comparable sales. If not, explain

My research did did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.

Data Source(s) MLS
My research did did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sale.

Data Source(s) MLS
Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).

ITEM	SUBJECT	COMPARABLE SALE #1	COMPARABLE SALE #2	COMPARABLE SALE #3
Date of Prior Sale/Transfer	None for past three years.	None for past year.	None for past year.	None for past year.
Price of Prior Sale/Transfer				
Data Source(s)	MLS	MLS	MLS	MLS
Effective Date of Data Source(s)	04/01/2008	04/02/2008	04/02/2008	04/02/2008

Analysis of prior sale or transfer history of the subject property and comparable sales No prior sales history available on the subject for the past 36 months or the comparables for the past 12 month. The subject is located in a non disclosure state. Due to this, second source verification is not possible.

Summary of Sales Comparison Approach Comparable sales were limited in the market area. Those considered were the most representative and the best available at the time of the appraisal. Comparables located in similar and competing neighborhoods. Adjustments were made for lot size, GLA, and room count. Comparables 2, 4, and 5 were adjusted for urban location. The subject has some commercial/industrial influence. None of the comparables available had this influence. Comparables 1, 2, 3, and 5 were adjusted for condition due to maintenance and updating. Basement, car storage, and other amenity adjustments based on estimated contributory value. All five comparables were given some consideration in the value estimate. Data on subject obtained from public records and physical inspection of property. The subject appears compatible to the neighborhood.

Indicated Value by Sales Comparison Approach \$ 115,000
Indicated Value by: Sales Comparison Approach \$ 115,000 Cost Approach (if developed) \$ 109,624 Income Approach (if developed) \$ N/A

The Sales Comparison Approach best indicates the market value of the subject. The Cost Approach was given limited consideration. The Income Approach lacks supportable and reliable data.

RECONCILIATION

This appraisal is made "as is", subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed, subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require alteration or repair:

Based on a complete visual inspection of the interior and exterior areas of the subject property, defined scope of work, statement of assumptions and limiting conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is \$ 115,000, as of 04/01/2008, which is the date of inspection and the effective date of this appraisal.

Uniform Residential Appraisal Report

File # 04018

Comments: Square footage of improvements is approximate.

Site Comments: The subject has a shared well with three other properties. Water assessment is \$240 per year.

It is unknown if the old vehicles on the property have created any environmental hazards.

The home is in need of some repair and updating. Some minor maintenance has taken place by the current occupant, however, there are larger issues which have not been corrected. I recommend a plumbing and electrical inspection. This is due to the condition and working order of these areas of the home. Home is dated. Floor coverings are worn. Plumbing drains and electrical outlets have limited or non use. It is unknown if both fireplaces are functional. I also recommend dead trees be removed from property to eliminate fire hazard. I also recommend old cars and debris be removed from property and any environmental conditions corrected.

The subject is occupied by a family member. Rental arrangement, if any, is unknown, therefore, the Income Approach was not attempted.

ADDITIONAL COMMENTS

COST APPROACH TO VALUE (not required by Fannie Mae)

Provide adequate information for the lender/client to replicate the below cost figures and calculations.

Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value) Land value estimated from the market.

COST APPROACH

ESTIMATED <input type="checkbox"/> REPRODUCTION OR <input checked="" type="checkbox"/> REPLACEMENT COST NEW	OPINION OF SITE VALUE	= \$	26,000
Source of cost data Marshall & Swift Cost Manual	DWELLING 1,098 Sq.Ft. @ \$ 78.52	= \$	86,215
Quality rating from cost service 2.5 Effective date of cost data 03/2008	1,098 Sq.Ft. @ \$ 25.38	= \$	27,867
Comments on Cost Approach (gross living area calculations, depreciation, etc.)	Patio, Deck, FP	= \$	9,888
See attached building sketch. Physical depreciation includes all improvements.	Garage/Carport 600 Sq.Ft. @ \$ 18.59	= \$	11,154
	Total Estimate of Cost-New	= \$	135,124
	Less Physical Functional External		
	Depreciation 54,000	= \$(	54,000)
	Depreciated Cost of Improvements	= \$	81,124
	As-is Value of Site Improvements	= \$	2,500
Estimated Remaining Economic Life (HUD and VA only) 40 Years	INDICATED VALUE BY COST APPROACH	= \$	109,624

INCOME APPROACH TO VALUE (not required by Fannie Mae)

Estimated Monthly Market Rent \$ X Gross Rent Multiplier = \$ Indicated Value by Income Approach
Summary of Income Approach (including support for market rent and GRM)

INCOME

PROJECT INFORMATION FOR PUDs (if applicable)

Is the developer/builder in control of the Homeowners' Association (HOA)? Yes No Unit type(s) Detached Attached
Provide the following information for PUDs ONLY if the developer/builder is in control of the HOA and the subject property is an attached dwelling unit.

Legal Name of Project
Total number of phases Total number of units Total number of units sold
Total number of units rented Total number of units for sale Data source(s)
Was the project created by the conversion of existing building(s) into a PUD? Yes No If Yes, date of conversion.
Does the project contain any multi-dwelling units? Yes No Data Source
Are the units, common elements, and recreation facilities complete? Yes No If No, describe the status of completion.

PUD INFORMATION

Are the common elements leased to or by the Homeowners' Association? Yes No If Yes, describe the rental terms and options.

Describe common elements and recreational facilities.

Uniform Residential Appraisal Report

File # 04018

This report form is designed to report an appraisal of a one-unit property or a one-unit property with an accessory unit, including a unit in a planned unit development (PUD). This report form is not designed to report an appraisal of a manufactured home or a unit in a condominium or cooperative project.

This appraisal report is subject to the following scope of work, intended use, intended user, definition of market value, statement of assumptions and limiting conditions, and certifications. Modifications, additions, or deletions to the intended use, intended user, definition of market value, or assumptions and limiting conditions are not permitted. The appraiser may expand the scope of work to include any additional research or analysis necessary based on the complexity of this appraisal assignment. Modifications or deletions to the certifications are also not permitted. However, additional certifications that do not constitute material alterations to this appraisal report, such as those required by law or those related to the appraiser's continuing education or membership in an appraisal organization, are permitted.

SCOPE OF WORK: The scope of work for this appraisal is defined by the complexity of this appraisal assignment and the reporting requirements of this appraisal report form, including the following definition of market value, statement of assumptions and limiting conditions, and certifications. The appraiser must, at a minimum: (1) perform a complete visual inspection of the interior and exterior areas of the subject property, (2) inspect the neighborhood, (3) inspect each of the comparable sales from at least the street, (4) research, verify, and analyze data from reliable public and/or private sources, and (5) report his or her analysis, opinions, and conclusions in this appraisal report.

INTENDED USE: The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.

INTENDED USER: The intended user of this appraisal report is the lender/client.

DEFINITION OF MARKET VALUE: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions* granted by anyone associated with the sale.

*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS: The appraiser's certification in this report is subject to the following assumptions and limiting conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it, except for information that he or she became aware of during the research involved in performing this appraisal. The appraiser assumes that the title is good and marketable and will not render any opinions about the title.
2. The appraiser has provided a sketch in this appraisal report to show the approximate dimensions of the improvements. The sketch is included only to assist the reader in visualizing the property and understanding the appraiser's determination of its size.
3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in this appraisal report whether any portion of the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand, or as otherwise required by law.
5. The appraiser has noted in this appraisal report any adverse conditions (such as needed repairs, deterioration, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the research involved in performing the appraisal. Unless otherwise stated in this appraisal

Uniform Residential Appraisal Report

File# 04018

1000

APPRAISER'S CERTIFICATION: The Appraiser certifies and agrees that:

1. I have, at a minimum, developed and reported this appraisal in accordance with the scope of work requirements stated in this appraisal report.
2. I performed a complete visual inspection of the interior and exterior areas of the subject property. I reported the condition of the improvements in factual, specific terms. I identified and reported the physical deficiencies that could affect the livability, soundness, or structural integrity of the property.
3. I performed this appraisal in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
4. I developed my opinion of the market value of the real property that is the subject of this report based on the sales comparison approach to value. I have adequate comparable market data to develop a reliable sales comparison approach for this appraisal assignment. I further certify that I considered the cost and income approaches to value but did not develop them, unless otherwise indicated in this report.
5. I researched, verified, analyzed, and reported on any current agreement for sale for the subject property, any offering for sale of the subject property in the twelve months prior to the effective date of this appraisal, and the prior sales of the subject property for a minimum of three years prior to the effective date of this appraisal, unless otherwise indicated in this report.
6. I researched, verified, analyzed, and reported on the prior sales of the comparable sales for a minimum of one year prior to the date of sale of the comparable sale, unless otherwise indicated in this report.
7. I selected and used comparable sales that are locationally, physically, and functionally the most similar to the subject property.
8. I have not used comparable sales that were the result of combining a land sale with the contract purchase price of a home that has been built or will be built on the land.
9. I have reported adjustments to the comparable sales that reflect the market's reaction to the differences between the subject property and the comparable sales.
10. I verified, from a disinterested source, all information in this report that was provided by parties who have a financial interest in the sale or financing of the subject property.
11. I have knowledge and experience in appraising this type of property in this market area.
12. I am aware of, and have access to, the necessary and appropriate public and private data sources, such as multiple listing services, tax assessment records, public land records and other such data sources for the area in which the property is located.
13. I obtained the information, estimates, and opinions furnished by other parties and expressed in this appraisal report from reliable sources that I believe to be true and correct.
14. I have taken into consideration the factors that have an impact on value with respect to the subject neighborhood, subject property, and the proximity of the subject property to adverse influences in the development of my opinion of market value. I have noted in this appraisal report any adverse conditions (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) observed during the inspection of the subject property or that I became aware of during the research involved in performing this appraisal. I have considered these adverse conditions in my analysis of the property value, and have reported on the effect of the conditions on the value and marketability of the subject property.
15. I have not knowingly withheld any significant information from this appraisal report and, to the best of my knowledge, all statements and information in this appraisal report are true and correct.
16. I stated in this appraisal report my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the assumptions and limiting conditions in this appraisal report.
17. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or opinion of market value in this appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.
18. My employment and/or compensation for performing this appraisal or any future or anticipated appraisals was not conditioned on any agreement or understanding, written or otherwise, that I would report (or present analysis supporting) a predetermined specific value, a predetermined minimum value, a range or direction in value, a value that favors the cause of

Uniform Residential Appraisal Report

File # 04018

21. The lender/client may disclose or distribute this appraisal report to: the borrower; another lender at the request of the borrower; the mortgagee or its successors and assigns; mortgage insurers; government sponsored enterprises; other secondary market participants; data collection or reporting services; professional appraisal organizations; any department, agency, or instrumentality of the United States; and any state, the District of Columbia, or other jurisdictions; without having to obtain the appraiser's or supervisory appraiser's (if applicable) consent. Such consent must be obtained before this appraisal report may be disclosed or distributed to any other party (including, but not limited to, the public through advertising, public relations, news, sales, or other media).

22. I am aware that any disclosure or distribution of this appraisal report by me or the lender/client may be subject to certain laws and regulations. Further, I am also subject to the provisions of the Uniform Standards of Professional Appraisal Practice that pertain to disclosure or distribution by me.

23. The borrower, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.

24. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

25. Any intentional or negligent misrepresentation(s) contained in this appraisal report may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq., or similar state laws.

SUPERVISORY APPRAISER'S CERTIFICATION: The Supervisory Appraiser certifies and agrees that:

1. I directly supervised the appraiser for this appraisal assignment, have read the appraisal report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
2. I accept full responsibility for the contents of this appraisal report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
3. The appraiser identified in this appraisal report is either a sub-contractor or an employee of the supervisory appraiser (or the appraisal firm), is qualified to perform this appraisal, and is acceptable to perform this appraisal under the applicable state law.
4. This appraisal report complies with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
5. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

APPRAISER

Signature Curtis J. Boam
Name Curtis J. Boam
Company Name Boam & Associates
Company Address 560 3rd Street, Idaho Falls, ID 83401
Telephone Number (208) 528-9200
Email Address curtisboam@cableone.net
Date of Signature and Report April 07, 2008
Effective Date of Appraisal 04/01/2008
State Certification # CGA-51
or State License # _____
or Other (describe) _____ State # _____
State ID _____
Expiration Date of Certification or License 11/9/2008

SUPERVISORY APPRAISER (ONLY IF REQUIRED)

Signature _____
Name _____
Company Name _____
Company Address _____
Telephone Number _____
Email Address _____
Date of Signature _____
State Certification # _____
or State License # _____
State _____
Expiration Date of Certification or License _____

SUBJECT PROPERTY

Uniform Residential Appraisal Report

File # 04018

FEATURE	SUBJECT	COMPARABLE SALE # 4			COMPARABLE SALE # 5			COMPARABLE SALE # 6		
Address	4673 South 15th West Idaho Falls, ID 83401	548 Lomax Idaho Falls			1055 South Woodruff Idaho Falls					
Proximity to Subject		3.53 miles NE			3.91 miles NE					
Sale Price	\$ N/A	\$ 112,500			\$ 134,000			\$		
Sale Price/Gross Liv. Area	\$ sq.ft.	\$ 88.86 sq.ft.			\$ 115.12 sq.ft.			\$ sq.ft.		
Data Source(s)		MLS/Drive-By			MLS/Drive-By					
Verification Source(s)		MLS #142017			MLS #144683					
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+	(-) \$ Adjustment	DESCRIPTION	+	(-) \$ Adjustment	DESCRIPTION	+	(-) \$ Adjustment
Sales or Financing		Conv			FHA					
Concessions		None Known			Concessions		-3,200			
Date of Sale/Time		07-07/3 Days			09-07/35 Days					
Location	Rural	Urban		-6,000	Urban		-6,000			
Leasehold/Fee Simple	Fee Simple	Fee Simple			Fee Simple					
Site	.86 Acre	.28 Acre		+5,800	.23 Acre		+6,300			
View	Hms,Cmrcl	Hms,Cmrcl			Homes					
Design (Style)	Ranch	Ranch			Ranch					
Quality of Construction	Brick	Wood Siding			Brick,Vinyl					
Actual Age	49 Years	54 Years			50 Years					
Condition	Average	Average			Superior		-13,000			
Above	Total Bdrms. Baths	Total Bdrms. Baths			Total Bdrms. Baths			Total Bdrms. Baths		
Room Count	4 2 1	4 2 1			5 3 2		-4,000			
Gross Living Area	1,098 sq.ft.	1,266 sq.ft.		-1,700	1,164 sq.ft.		-700			sq.ft.
Basement & Finished	1,098/549	1200/900		-400	1164/1164		-300			
Rooms Below Grade	Fam,Bd,Ba	2Bd,Ba,Fam		-1,400	Fm,Bd,5Ba,Ut		-2,500			
Functional Utility	Average	Average			Average					
Heating/Cooling	GasFA/None	GasFA/None			GasFA/None					
Energy Efficient Items	Average	Average			Average					
Garage/Carport	2 Att Garage	2 Att Garage			1 Att Garage		+2,000			
Porch/Patio/Deck	Patio, Deck,FP	CvDeck,FP			CvPrch,Patio					
Amenities	Shed				2FP,Shed					
Net Adjustment (Total)		<input type="checkbox"/> + <input checked="" type="checkbox"/> -	\$	-3,700	<input type="checkbox"/> + <input checked="" type="checkbox"/> -	\$	-21,400	<input type="checkbox"/> + <input type="checkbox"/> -	\$	
Adjusted Sale Price of Comparables		Net Adj. 3.3 %			Net Adj. 16.0 %			Net Adj. %		
		Gross Adj. 13.6 %	\$	108,800	Gross Adj. 28.4 %	\$	112,600	Gross Adj. %	\$	

Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).

ITEM	SUBJECT	COMPARABLE SALE # 4	COMPARABLE SALE # 5	COMPARABLE SALE # 6
Date of Prior Sale/Transfer	None for past three years.	None for past year.	None for past year.	
Price of Prior Sale/Transfer				
Data Source(s)	MLS	MLS	MLS	
Effective Date of Data Source(s)	04/01/2008	04/02/2008	04/02/2008	

And prior sale or transfer history of the subject property and comparable sales No prior listing or sales history available on the subject for the past 36 months for the comparables for the past 12 months.

Analysis/Comments Five comparables were considered in support of the value estimate. Due to limited sales, larger than typical adjustments were indicated and comparables over 6 months old were considered. No time adjustment indicated.

SIS COMMENTS

Subject Photo Page

Borrower							
Property Address	4673 South 15th West						
City	Idaho Falls	County	Bonneville	State	ID	Zip Code	83401
Lender/Client	State of Idaho Bonneville County Court						



Subject Front

4673 South 15th West
Sales Price N/A
Gross Living Area 1,098
Total Rooms 4
Total Bedrooms 2
Total Bathrooms 1
Location Rural
View Hms, Cmrd
Site .86 Acre
Quality Brick
Age 49 Years



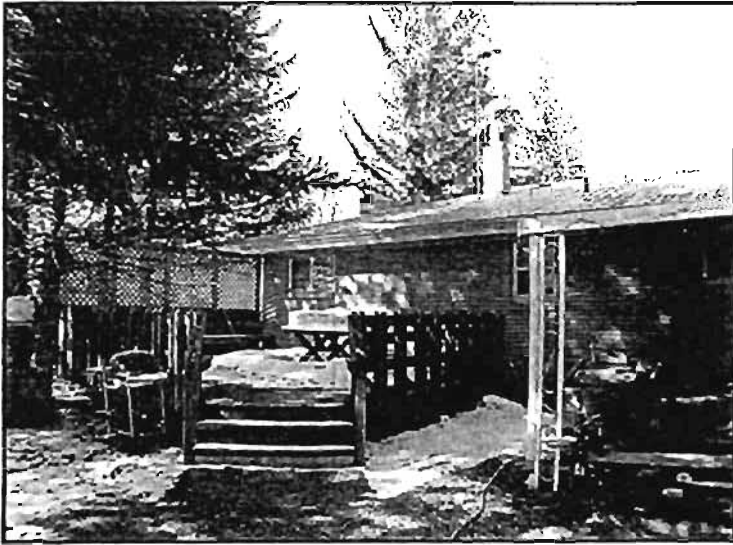
Subject Rear



Subject Street

PHOTOGRAPH ADDENDUM

Borrower			
Property Address 4673 South 15th West			
City	Idaho Falls	County	Bonneville
State	ID	Zip Code	83401
Lender/Client State of Idaho Bonneville County Court			



Rear View



Rear View



Rear and Side View

Bonneville				
Property Address 4673 South 15th West				
City	Idaho Falls	County	Bonneville	State ID Zip Code 83401
Lender/Clerk State of Idaho Bonneville County Court				

230

FRONT VIEW



Front View



Street Scene

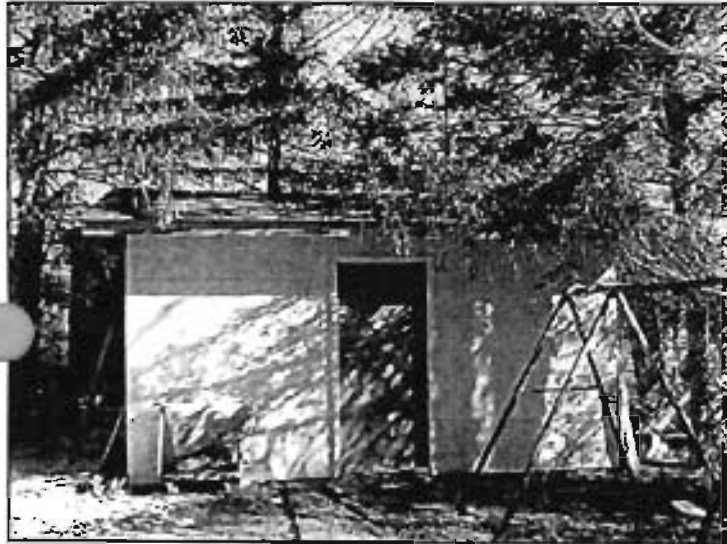


Borrower									
Property Address 4873 South 15th West									
City	Idaho Falls	County	Bonneville	State	ID	Zip Code	83401		
Lender/Client					State of Idaho Bonneville County Court				

231



Shed



Shed



View of Rear Property

Photograph Addendum

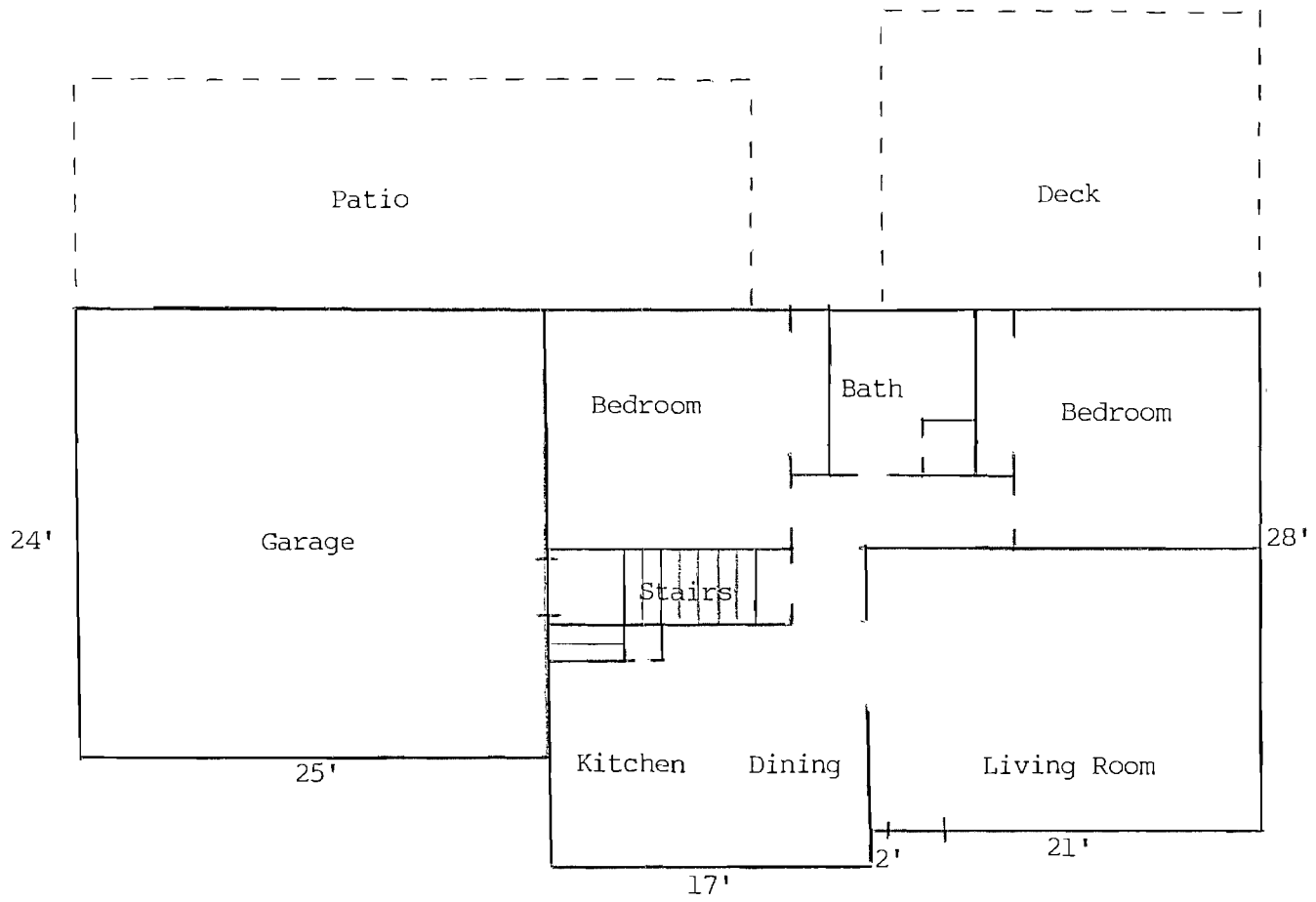
Borrower							
Property Address 4673 South 15th West							
City	Idaho Falls	County	Bonneville	State	ID	Zip Code	83401
Lender/Client		State of Idaho Bonneville County Court					



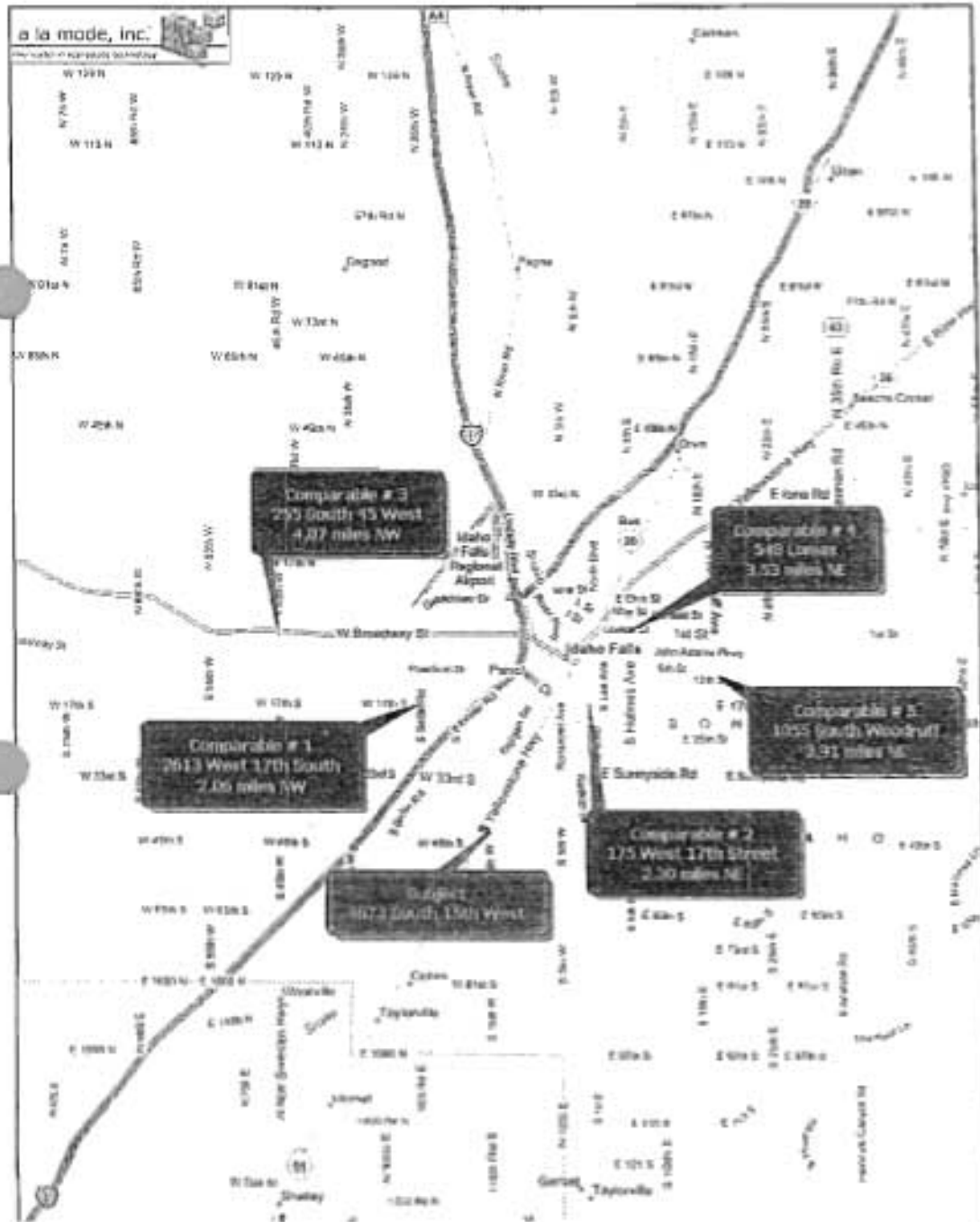
View of Rear Property



View of Rear Property



Borrower			
Property Address: 4673 South 15th West			
City	Idaho Falls	County	Bonneville
State	ID	Zip Code	83401
Lender/Clerk	State of Idaho, Bonneville County Court		



Comparable Photo Page

Borrower				
Property Address 4673 South 15th West				
City	Idaho Falls	County	Bonneville	State ID Zip Code 83401
Lender/Client State of Idaho Bonneville County Court				



Comparable 1

2613 West 17th South
 Prox. to Subject 2.06 miles NW
 Sale Price 139,500
 Gross Living Area 1,479
 Total Rooms 4
 Total Bedrooms 2
 Total Bathrooms 1
 Location Suburban
 View Homes
 Site .21 Acre
 Quality Brick
 Age 45 Years



Comparable 2

175 West 17th Street
 Prox. to Subject 2.30 miles NE
 Sale Price 132,700
 Gross Living Area 1,487
 Total Rooms 8
 Total Bedrooms 3
 Total Bathrooms 1.5
 Location Urban
 View Homes
 Site .25 Acre
 Quality Brick
 Age 47 Years

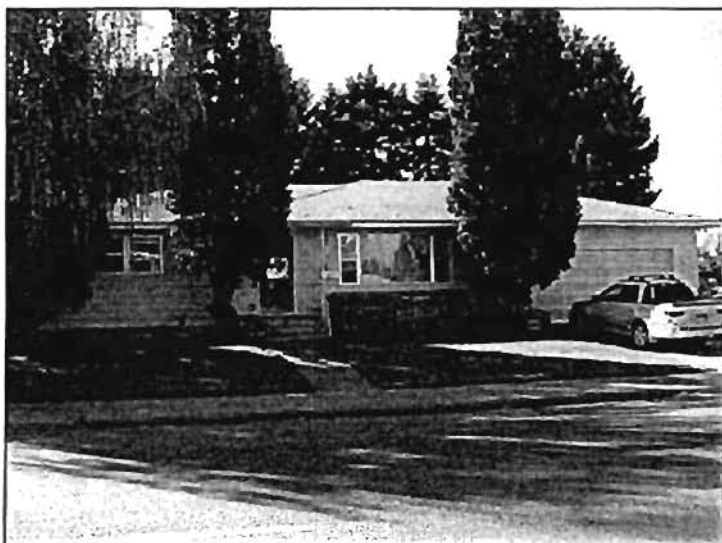


Comparable 3

255 South 45 West
 Prox. to Subject 4.07 miles NW
 Sale Price 118,900
 Gross Living Area 1,040
 Total Rooms 5
 Total Bedrooms 3
 Total Bathrooms 1
 Location Rural
 View Homes
 Site 1 Acre
 Quality Vinyl Siding
 Age 34 Years

Comparable Photo Page

Borrower				
Property Address 4673 South 15th West				
City	Idaho Falls	County	Bonneville	State ID Zip Code 83401
Lender/Client State of Idaho Bonneville County Court				



Comparable 4

548 Lomax
 Prox. to Subject 3.53 miles NE
 Sale Price 112,500
 Gross Living Area 1,266
 Total Rooms 4
 Total Bedrooms 2
 Total Bathrooms 1
 Location Urban
 View Hms, CmrcI
 Site .28 Acre
 Quality Wood Siding
 Age 54 Years



Comparable 5

1055 South Woodruff
 Prox. to Subject 3.91 miles NE
 Sale Price 134,000
 Gross Living Area 1,164
 Total Rooms 5
 Total Bedrooms 3
 Total Bathrooms 2
 Location Urban
 View Homes
 Site .23 Acre
 Quality Brick, Vinyl
 Age 50 Years

Comparable 6

Prox. to Subject
 Sale Price
 Gross Living Area
 Total Rooms
 Total Bedrooms
 Total Bathrooms
 Location
 View
 Site
 Quality
 Age

PRE-TRIAL CONFERENCE, MINUTE ENTRY/ORDER

CASE In re Boyle Estate CV 06-6496
 Counsel (Wood) Boyle / Reeves 2509 APR 10 PM 4:43
 MEDIATION ORIENTATION PL/DF MEDIATION SESSIONS
 DISCOVERY
 NEW DISCOVERY CUT-OFF _____ TRIAL RESET TO _____
 HOME STUDY/COUNSELOR _____
 PAY IN ADVANCE PLAINTIFF DEFENDANT
 GUARDIAN/MASTER _____ INTERVIEW _____
 WITNESSES PL Both sides must DF _____
focus on heirs
 STIPULATIONS Inventory filed | Mediation unsuccessful

ISSUES ^{STIPULATIONS} Submit on briefs? Factual issues? Legal issues?
Did P.R. discharge his duties timely, properly?

ORDERS Mr. Boyle respond to Mr. Reeves on his request
to resolve on briefs by April 16 at noon or sooner.

COMPLY IN WRITING BY FAX, MAIL OR HAND DELIVERY BY _____
 IT IS SO ORDERED. JUDGE L. MARK RIDDOCH M. Reddock 4/10/08 DATE

8 APR 10 P4:00

Brian L. Boyle, Esq., ISB #6233
THOMSEN STEPHENS LAW OFFICES, PLLC
2635 Channing Way
Idaho Falls ID 83404
Telephone (208)522-1230
Fax (208)522-1277

Attorneys for Kerry L. Bailey, Kyle Bailey, and Tamara Lee Bailey Sipe

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

IN THE MATTER OF THE ESTATES	)	Case No. CV-06-6496
OF)	
)	
CAROL BAILEY and	)	MEMORANDUM OF FACTS
FRANCIS ANDREW BAILEY,	)	AND LAW
)	
Deceased.)	
_____)	

COME NOW Kerry L. Bailey, Kyle Bailey, and Tamara Lee Bailey Sipe, by and through counsel of record, and submit that the facts of this matter are as follows:

1. Decedent Carol Bailey died April 11, 1998 at the age of 63 years. Decedent Francis A. Bailey died September 22, 2006 at the age of 76 years. The decedents left the following children, heirs, and devisees: F. Kim Bailey, Kerry L. Bailey, Kyle J. Bailey, and Tamara Lee Bailey Sipe.
2. On or about October 26, 2006, F. Kim Bailey filed a Petition for Informal Probate and Informal Appointment of Personal Representative pursuant to the last wills and testaments of the decedents. At the time of decedents' deaths, they had real property and personal property. According to the last wills and testaments, all children were to share equally in the estate.

ORIGINAL

3. Since Francis A. Bailey passed away on September 22, 2006, F. Kim Bailey, has resided in the Carol Bailey and Francis A. Bailey estate home and has used the estate real and personal property as his own possessions, including pasturing his personal horses on the estate property.

4. Since September 22, 2006, Kim Bailey, as personal representative, has not taken any efforts to gather, prioritize, or evaluate the estate property, nor has he prepared the real property for sale or taken any efforts to finalize the estate and obtain a distribution of the assets for the heirs.

5. Since September 22, 2006, Kim Bailey, as personal representative, has failed to allow the heirs access to the property, nor has he provided any information to which they have a right so as to confirm that the property is being handled in an appropriate manner and in the estate's best interest.

6. Since September 22, 2006, Kim Bailey, as personal representative, has failed to maintain the real property in a condition that would preserve its value. Specifically, the personal representative has allowed the yard, trees, and landscaping to die and has allowed the property to fall into a general state of disrepair.

LAW OF THE CASE

Idaho Code 15-3-611 governs the removal of personal representative for cause.

Cause for removal exists when removal would be in the best interest of the estate, or if it is shown that the personal representative or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment, or that the personal representative has disregarded an order from the Court, has become incapable of discharging the duties of his office, or has mismanaged the estate, or failed to perform any duty pertaining to the office.”

Idaho Code 15-3-611(b)

The Court of Appeals in *Kolouch v. First Security Bank*, 128 Idaho 196, 911 P.2d 779 (Ct. App. 1996) upheld the magistrate's removal of personal representative because said personal representative "failed to act in the best interest of the estate, mismanaged the affairs of the estate, operated under a conflict of interest, failed to marshal estate assets, and breached her fiduciary duty to the estate." *Kolouch* at 192. In that case, the magistrate specifically held that the personal representative was guilty of financial mismanagement for various things, including conveying estate property to herself.

In the case before this court, Kim Bailey, the personal representative, has effectively transferred property to himself without benefit to the estate, by retaining control of the assets, and living in the estate's home since September 2006 without fair compensation. This qualifies as a violation of the personal representative's fiduciary duties and should result in his removal.

The personal representative's reliance upon the old case of *Estate of Randall*, 64 Idaho 629 (1942) is misplaced. Even if it were an accurate statement of current law (which petitioners believe it is not), the Court in *Randall* made it clear that as surviving children equally entitled to the estate, all parties were in effect joint tenants, and the personal representative could not refuse the other cotenants the same use and possession of the estate property as asserted by the personal representative. *Id.* at 636-37. The *Randall* court also clarified that the personal representative is entitled to possession of the estate residence so long as he is "duly and regularly administering [the estate for the heirs]." *Id.* at 637. Petitioners believe the evidence will show that the personal representative denied them access to and use of the residence, in violation of the law as set forth above. The evidence will also show that the personal representative was not "duly and regularly administering the estate for the heirs" but in fact did little or nothing at all in that regard. Therefore he was not entitled to rent-free possession of the estate residence.

Petitioners have alleged that the personal representative has violated the duties placed on him as the personal representative. "A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by § 15-7-302 of this Code." Idaho Code § 15-3-703(a). A trustee's standard of care as outlined in Idaho Code §15-7-302, is that which would be observed by a prudent man dealing with the property of another. The trial evidence will show that the personal representative has taken little if any effort to preserve the real and personal property and has actually damaged the property with his actions.

There is an allegation that the personal representative has failed to comply with Idaho Code § 15-3-706 requirement that an inventory of the property along with values be filed within three months following the appointment. As of March 11, 2008, the personal representative advised the petitioners that he could not make any disbursement of personal property until such time as he had a complete list of the assets and their corresponding values. This statement confirms that the personal representative has failed to comply with his duties, and has mismanaged the estate by not properly tracking the property and its values and preparing the estate for final distribution.

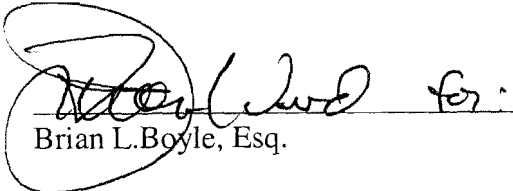
The personal representative is required to settle and distribute the estate property in accordance with the terms of the will as expeditiously and efficiently as is consistent with the best interests of the estate. Without dispute, the personal representative has had control of the estate property since September 2006 with no effort to distribute. During this same period of time, the personal representative has made no efforts to prepare the real property for sale, has not listed the real property for sale, has not completed an inventory of the personal property with its fair market value so as to facilitate the disposition of the estate assets, has allowed the estate assets to be diminished in value by allowing those assets to fall into disrepair. It will be clear at the trial in this matter that the personal representative has assumed the decedents' property as his own, has received

a significant benefit from the use of this property without fair compensation to the estate, and has not made any attempt to fulfill his duties as the personal representative. For those reasons, personal representative should be removed, all assets still in the personal representative's possession should be turned over to a successor personal representative. The personal representative should be made to account for personal property he used and should be made to reimburse the estate for the fair rental use of the real property and other personal property the personal representative had the benefit of since September 2006.

DATED this 10 day of April, 2005.

THOMSEN STEPHENS LAW OFFICES, P.L.L.C.

By:



Brian L. Boyle, Esq.

CERTIFICATE OF SERVICE

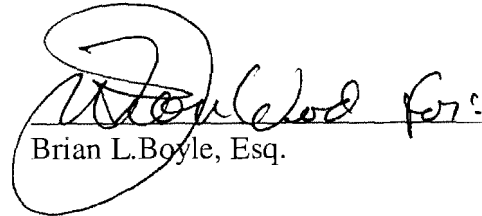
I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the 10 day of April, 2008, I caused a true and correct copy of the foregoing **MEMORANDUM OF FACTS AND LAW** to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon or by hand delivering or by transmitting by facsimile as set forth below.

REGINALD R REEVES
690 CAMBRIDGE DRIVE
PO BOX 1841
IDAHO FALLS ID 83403
FAX: 522-2516

Mail
 Hand Delivery
 Facsimile
 Courthouse Box

THOMSEN STEPHENS LAW OFFICES, PLLC

By:


Brian L. Boyle, Esq.

MJW:es
J:\data\BLB\6186\PLEADINGS OURS\038 Memo Facts & Law.wpd

BONNEVILLE COUNTY

8 APR 18 4 02:21

DENMAN & REEVES
ATTORNEYS AND COUNSELLORS
CAMBRIDGE LAW CENTER
BOX 1841
IDAHO FALLS ID 83403
Telephone 522-2513
FAX 522-2516
IDAHO STATE BAR NO. 712

Attorneys for Personal Representative
By REGINALD R. REEVES, ESQ.
Our File 16338

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

///

In The Matter of the Estates of }
 }
 }
CAROL BAILEY and }
FRANCIS ANDREW BAILEY, }
 }
Deceased. }

Civil No. CV-06-6496

NOTICE OF NON-COMPLIANCE

NOTICE IS HEREBY GIVEN That petitioners have failed to
comply with the order entered herein on April 10, 2008, in that they have
not responded to the personal representative's request that the matters
herein be submitted on briefs, without the need for trial.

WHEREFORE Personal Representative requests that the trial setting herein be vacated, and the matter deemed submitted, upon the record.

April 17, 2008

Reginald R. Reeves
REGINALD R. REEVES, ESQ
Personal Representative's Attorney
Cambridge Law Center
Idaho Falls Idaho

CERTIFICATE OF SERVICE
[IRCP 5(f)]

I HEREBY CERTIFY That on this day I served the foregoing upon the designated party, by faxing a copy to their attorney, as follows:

PLAINTIFFS

BRIAN L. BOYLE, ESQ.
FAX 522-1277

April 17, 2008

M. Bird
M. Bird

BONNEVILLE COUNTY
IDAHO

8 APR 18 10:22

Brian L. Boyle, Esq., ISB #6233
THOMSEN STEPHENS LAW OFFICES, PLLC
2635 Channing Way
Idaho Falls ID 83404
Telephone (208)522-1230
Fax (208)522-1277

Attorneys for Kerry L. Bailey, Kyle Bailey, and Tamara Lee Bailey Sipe

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

IN THE MATTER OF THE ESTATES)
OF)
CAROL BAILEY and)
FRANCIS ANDREW BAILEY,)
Deceased.)
_____)

Case No. CV-06-6496

NOTICE OF OBJECTION

Notice is hereby given that petitioners object to submitting the above matter to the Court on briefs, and that they have not and do not stipulate to the same, for the reasons explained to the Court at the pre-trial conference on April 10, 2008. Namely, that this case presents an entirely factual dispute.

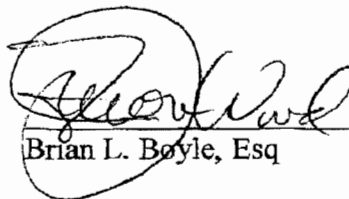
Furthermore, with no motion for dismissal or summary adjudication of this matter having been filed by the personal representative, and the motion cut-off date having long since passed, there is no basis whatsoever for vacating the trial in this matter. Neither is there any basis for the personal representative's absurd request that this matter be deemed submitted upon the record, thereby denying petitioners access to the Court and a right to present witnesses and evidence in support of their claims. Petitioners have never waived this right, expressly or impliedly.

WHEREFORE Petitioners request that the personal representative's Notice of Non-Compliance be stricken and that his request for vacation of the trial and that petitioners somehow be barred from presenting evidence to the fact-finder in this case, be summarily rejected.

DATED this 17 day of April, 2008.

THOMSEN STEPHENS LAW OFFICES

By:



Brian L. Boyle, Esq

for

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the 17th day of April, 2008, I caused a true and correct copy of the foregoing **NOTICE OF OBJECTION** to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon or by hand delivering or by transmitting by facsimile as set forth below.

REGINALD R REEVES
690 CAMBRIDGE DRIVE
PO BOX 1841
IDAHO FALLS ID 83403
FAX: 522-2516

- Mail
- Hand Delivery
- Facsimile
- Courthouse Box

THOMSEN STEPHENS LAW OFFICES, PLLC

By: _____
Brian L. Boyle, Esq

BLB:es
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2008 APR 24 11 31 53


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

IN THE MATTER OF THE ESTATES OF)	ORDER SUSTAINING OBJECTION
)	TO PERSONAL REPRESENTATIVE'S
CAROL BAILEY and)	NOTICE OF NON-COMPLIANCE
FRANCIS ANDREW BAILEY,)	
)	
Deceased.)	CV-2006-6496
)	

The Court found no order or record or minutes entry of an order of 4/10/2008. The Court recalled that Mr. Reeves proposed resolving issues on briefs without a trial, and Petitioner's declining and affirming the need for a trial to resolve factual and legal issues. Absent a signed stipulation Petitioner's have a right to proceed to trial. Thus, Court sustains the Objection. Trial shall proceed on April 28, 2008 @ 9:30 a.m.

IT IS SO ORDERED.

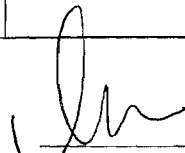
April 24, 2008.


Magistrate

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 4/24/2008, I served a true and correct copy of the foregoing document to the following by mailing, with correct postage thereon, by facsimile transmission, by delivery to the attorney's courthouse box, or by causing the same to be hand delivered.

Reginald Reeves Cambridge Law Center Fax No. 522-2516	<input type="checkbox"/> Courthouse Box <input checked="" type="checkbox"/> FAX	<input type="checkbox"/> US Mail <input type="checkbox"/> Hand Delivery
Brian Boyle Thomsen Stephens Fax No. 522-1277	<input type="checkbox"/> Courthouse Box <input checked="" type="checkbox"/> FAX	<input type="checkbox"/> US Mail <input type="checkbox"/> Hand Delivery
	<input type="checkbox"/> Courthouse Box <input type="checkbox"/> FAX	<input type="checkbox"/> US Mail <input type="checkbox"/> Hand Delivery



Deputy Clerk

Minutes Report

Case: CV-2006-0006496

In The Matter Of The Estate Of Carol Bailey, etal. Deceased

Selected Items

Hearing type:	Trial	Minutes date:	04/28/2008
Hearing judge:	L. Mark Riddoch	Start time:	09:30 AM
Court reporter:		End time:	09:30 AM
Minutes clerk:	Linda Newton	Audio tape number:	

Parties: Bailey, F. Kim; Reeves, Reginald
Bailey, Kerry; Boyle, Brian
Bailey, Kyle; Boyle, Brian
Bailey, Tamra; Boyle, Brian

Digital Session 042808AMRiddoch

Judge opens and calls case. Reginal Reeves appears with Kim Bailey; Brian Boyle appears with Kerry, Kyle and Tamra Bailey.

J addresses counsel and parties.

Mr. Boyle addresses the Court. Asks that a break be taken when the court appointed appraiser arrives.

Mr. Reeves addresses the Court request clarification as to what is to be tried.

Mr. Boyle responds to Mr. Reeves' questions and comments.

Mr. Reeves responds to Mr. Boyle's comments.

Mr. Boyle responds.

J questions Mr. Boyle re: affidavit.

Mr. Boyle responds.

J addresses Mr. Reeves and clarifies what will be tried this date.

Mr. Boyle sets forth the affidavits filed by Petitioners.

Mr. Reeves addresses the Court.

J addresses counsel. States that notice was clearly given to Mr. Reeves and his client as to the issues to be heard.

J reviews the first petition which was denied.

J questions Mr. Boyle re: 2/23/2007 order denying petition.

Mr. Boyle responds.

Mr. Reeves responds to Mr. Boyle's comments.

Mr. Boyle responds.

Mr. Reeves responds.

J addresses counsel.

J denies Mr. Reeves' oral motion.

251

Seventh Judicial District Court - Bonneville County

User: LMESSICK

Minutes Report

Case: CV-2006-0006496

In The Matter Of The Estate Of Carol Bailey, etal. Deceased

Selected Items

Mr. Boyle makes opening statement.

J excuses all witnesses from courtroom.

Mr. Boyle calls Kim Bailey; sworn in.

Dx of Kim Bailey.

Mr. Reeves objects.

Mr. Boyle responds.

Mr. Reeves responds.

Mr. Boyle responds.

J reserves objection.

Dx continues of Kim Bailey.

J questions Mr. Bailey

Mr. Bailey responds to J's questions.

Dx continues.

Mr. Reeves objects argumentative.

J directs Mr. Boyle to restate questions.

J overrules objection.

Dx continues.

Dx of Kim Bailey suspended.

Mr. Boyle calls Curtis Boam, appraiser; sworn in.

Dx of Curtis Boam.

Petitioner's Exhibit 2 marked.

Dx continues.

Mr. Reeves will stipulate to Mr. Boam's qualifications.

Dx continues.

Mr. Reeves objects.

Mr. Boyle responds.

J addresses counsel. Sustains objection.

Dx continues.

Seventh Judicial District Court - Bonneville County

User: LMESSICK

Minutes Report

Case: CV-2006-0006496

In The Matter Of The Estate Of Carol Bailey, etal. Deceased

Selected Items

Mr. Reeves questions in aid of objection.

Mr. Reeves object.

J addresses counsel. Sustains objection.

Dx continues.

Dx ends.

X of Curtis Boam by Mr. Reeves.

X ends.

No ReDx.

Witness excused.

J admits Exhibit 2.

J addresses the Court.

Parties agree that sealed bids would be helpful to settling case.

Mr. Reeves questions Court re: counter offers.

J questions Mr. Boyle.

Mr. Boyle responds.

J questions counsel.

Mr. Boyle questions Court.

Mr. Reeves states that Kim Bailey has been pre-approved.

Court takes recess - 10 min.

Off record.

On Record.

Agreement reached that PR will purchase home for \$129,000.

J questions counsel.

J directs closing to occur within 4 - 6 weeks.

Mr. Boyle addresses the remaining issues.

Makes recommendations.

J questions Mr. Bailey.

Mr. Bailey responds.

J addresses counsel and parties.

Minutes Report

Case: CV-2006-0006496

In The Matter Of The Estate Of Carol Bailey, etal. Deceased

Selected Items

Mr. Reeves addresses Court.

PR is willing to sell the coin collection at the appraised value.

Kyle Bailey agrees to purchase coin collection at the appraised value.

Discussion held regarding WWII memorabilia.

Kim Bailey does not object to any of his siblings taking the WWII memorabilia.

Discussion held regarding distibuting personal items.

Discussion held regarding silverware.

J directs that any piece of personal property that the heirs received within 3 years will be subject to re-distribution.

J suggests Kent Gauchay as a facilitator.

J addresses parties.

Directs parties to meet on Wednesday to distribute personal property. No spouses to be present.

Mr. Reeves addresses the Court.

Mr. Boyle responds to Mr. Reeves' questions.

J directs parties to meet at 4:30 p.m. on Tuesday at the home of the estate.

Mr. Boyle addresses final issue.

Counsel will submit briefs regarding if rent needs to be paid by the personal representative and will submit by affidavit with in 14 days.

Mr. Boyle to prepare minute entry and order.

End of Record.

BONNEVILLE COUNTY
IDAHO

8 MAY 12 PM 13

Brian L. Boyle, Esq., ISB #6233
THOMSEN STEPHENS LAW OFFICES, PLLC
2635 Channing Way
Idaho Falls ID 83404
Telephone (208)522-1230
Fax (208)522-1277

Attorneys for Kerry L. Bailey, Kyle Bailey, and Tamara Lee Bailey Sipe

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

IN THE MATTER OF THE ESTATES)
OF)
CAROL BAILEY and)
FRANCIS ANDREW BAILEY,)
Deceased.)

Case No. CV-06-6496

POST TRIAL BRIEF

COME NOW Kerry L. Bailey, Kyle Bailey, and Tamara Lee Bailey Sipe, by and through counsel of record, and submit that the facts of this matter are as follows:

1. Decedent Carol Bailey died April 11, 1998 at the age of 63 years. Decedent Francis A. Bailey died September 22, 2006 at the age of 76 years. The decedents left the following children, heirs, and devisees: F. Kim Bailey, Kerry L. Bailey, Kyle J. Bailey, and Tamara Lee Bailey Sipe.
2. On or about October 26, 2006, F. Kim Bailey filed a Petition for Informal Probate and Informal Appointment of Personal Representative pursuant to the last wills and testaments of the decedents. At the time of decedents' deaths, they had real property and personal property. According to the last wills and testaments, and except for a few small items that were specifically devised, all children were to share equally in the estate.

3. From the date of the decedent's death until the date of trial of April 28, 2008, F. Kim Bailey resided in the Carol Bailey and Francis A. Bailey estate home and used the estate real and personal property as his own possessions, including pasturing his personal horses (up to thirteen (13) horses at various times) on the estate property. This was supported by Kim Bailey's own testimony at trial. The record contains affidavit testimony by petitioner Kerry Bailey that the fair market rental of the home as furnished is \$1,000 per month. The record also contains affidavit testimony by petitioner Kerry Bailey that the fair market rental of the pasture is \$100 per horse per month. The total amount of rent owed for the residence and pasture as of today's date would be \$19,700 for rental of the home and \$25,610 for rental of the pasture for a total amount reimbursable to the estate of \$45,310. This would not include any amounts due for rents for the period beginning May 13, 2008 and ending on the date of closing of the purchase of the property by the personal representative. The calculation of these amounts is set forth on Attachment A to this Post Trial Brief, attached hereto and incorporated herein by reference.

4. From the date of the decedent's death until the date of trial of April 28, 2008, Kim Bailey, as personal representative, made no significant efforts to gather, prioritize, or evaluate the estate property, nor prepare the real property for sale or take any efforts to finalize the estate and obtain a distribution of the assets for the heirs. This is supported by affidavit testimony in the Court's record.

5. From the date of the decedent's death until the date of trial of April 28, 2008, Kim Bailey, as personal representative, without reasonable cause, failed to allow the heirs access to the property, nor did he provide any information to which they have a right so as to confirm that the property is being handled in an appropriate manner and in the estate's best interest. This is supported by affidavit testimony in the Court's record.

6. Since September 22, 2006, Kim Bailey, as personal representative, has failed to maintain the real property in a condition that would preserve its value. Specifically, the personal representative has allowed the yard, trees, and landscaping to die and has allowed the property to fall into a general state of disrepair.

7. At the time of trial, it was agreed between the parties that the personal representative would purchase the estate real property for an amount equal to \$129,000. It was also agreed that the property purchase would be closed within eight (8) weeks of trial, or specifically, by June 30, 2008. The purchase price (less standard closing costs) was agreed to be distributed evenly between the heirs.

8. At the time of trial, it was also agreed that the parties would jointly meet during the days following trial for the purpose of dividing and distributing personal items of the estate to the heirs. It was also agreed that the only parties to be present at the meeting would be the siblings, i.e., the personal representative, Kerry L. Bailey, Kyle Bailey, and Tamara Lee Bailey Sipe. No spouses or other parties were to be present. However, while the meetings did take place, the personal representative's spouse and children remained at the home and refused to vacate the premises as agreed to and ordered by the Court. While the presence of the personal representative's spouse did make the process more lengthy and difficult, the parties were able to divide the personal property.

7. With the agreement for purchase of the home in place and the successful division of the personal property having occurred, there are two remaining issues for the Court to decide:

- a. Whether the personal representative should be required to pay rent to the estate for the period of his personal use of the estate residence between the time of the decedent's death on September 22, 2006 and the date of closing of the purchase on or before June 30, 2008.

- b. Whether the personal representative should be required to pay rent to the estate for the period of his personal use of the estate pasture for his horses between the time of the decedent's death on September 22, 2006 and the date of closing of the purchase on or before June 30, 2008.

LAW OF THE CASE

Idaho Code § 15-3-703 governs the duties and behavior of a personal representative:

§ 15-3-703. General duties -- Relation and liability to persons interested in estate -- Standing to sue

(a) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by section 15-7-302 of this code. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this code, the terms of the will, if any, and any order in proceedings to which he is party for the best interests of successors to the estate.

Idaho code section 15-7-302 states as follows:

Except as otherwise provided by the terms of the trust, the trustee shall observe the standards in dealing with the trust assets that would be observed by a prudent man dealing with the property of another, and if the trustee has special skills or is named trustee on the basis of representations of special skills or expertise, he is under a duty to use those skills.

In the case before this court, Kim Bailey, the personal representative, has effectively transferred property to himself without benefit to the estate, by retaining control of the assets, and living in the estate's home since September 2006 without fair compensation. This qualifies as a violation of the personal representative's fiduciary duties and should result in his removal. In addition, the personal representative is asking the Court to accept the notion that a prudent person would allow someone to stay in a home and use valuable pasture ground rent free for more than a year and a half without any compensation. This position is simply ridiculous. No prudent person,

if dealing with his own property, would allow such a scenario to continue even short term, let alone for the better part of two years. The fact of the matter is that the personal representative is using his position as personal representative for his own personal gain, in violation of his duties as set forth in Idaho Code § 15-3-702 and § 15-7-302. As set forth in Attachment A, the benefit conferred to the personal representative is in excess of \$40,000. As such, he should be required to reimburse the estate the fair value of the benefit.

The personal representative's reliance upon the old case of *Estate of Randall*, 64 Idaho 629 (1942) is misplaced. Even if it were an accurate statement of current law (which petitioners believe it is not), the Court in *Randall* made it clear that as surviving children equally entitled to the estate, all parties were in effect joint tenants, and the personal representative could not refuse the other cotenants the same use and possession of the estate property as asserted by the personal representative. *Id.* at 636-37. The *Randall* court also clarified that the personal representative is entitled to possession of the estate residence so long as he is "duly and regularly administering [the estate for the heirs]." *Id.* at 637. Petitioners believe the evidence shows clearly that the personal representative denied them access to and use of the residence, in violation of the law as set forth above. The evidence also shows that the personal representative was not "duly and regularly administering the estate for the heirs" but in fact did little or nothing at all in that regard. Therefore he was not entitled to rent-free possession of the estate residence. The personal representative's reliance on this case stretches the holding of the case to a logical and legal extreme.

Petitioners have alleged that the personal representative has violated the duties placed on him as the personal representative. "A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by § 15-7-302 of this Code." Idaho Code § 15-3-703(a). A trustee's standard of care as outlined in Idaho Code §15-7-302, is that which would be

observed by a prudent man dealing with the property of another. The record shows that the personal representative has taken little if any effort to preserve the real and personal property and has actually damaged the property with his actions.

The behavior by the personal representative is a perfect example of the type of self-dealing that Idaho Code § 15-3-703 and § 15-3-703 serve to prevent. While there is no Idaho case specifically on point, other states have dealt with this issue. For example, the Court of Appeals of Indiana held as follows:

The personal representative of an estate is regarded as a trustee appointed by law for the benefit of and the protection of creditors and distributees of that estate. By acting in the capacity of personal representative and renting to himself the farmland he held in his life estate at an amount less than one-third of the fair market rental value, we agree with the trial court that Ken engaged in self-dealing.

See *Estate of Scholz v. Kirk*, 859 N.E.2d 731, 736 (2007).

In a case involving no rent or reduced rent benefitting the personal representative, the Court of Appeals of Texas found that such behavior was a violation of the personal representative's duties of good faith and fair dealing and that it constituted gross mismanagement of estate property. See *In the Interest of Roy*, 2008 Tex. App. LEXIS 512 (2008).

There are other cases involving the improper use of estate property by the personal representative and the requirement that the personal representative not benefit from his position at the expense of the other heirs. There can be no doubt that the use of estate property by the personal representative in this case constitutes the type of self-dealing and mismanagement prohibited by Idaho law. As such, the personal representative should be required to reimburse the estate for the benefit he received since the decedent's death.

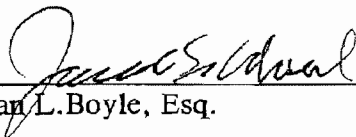
CONCLUSION

Based on the foregoing, the petitioners respectfully ask that the Court make the following findings of facts and law:

1. That the personal representative breached his fiduciary duty to the other heirs by residing in the estate residence without payment of fair market rent from the date of the decedent's death until the date of the closing of the purchase of the property by the personal representative.
2. That the personal representative breached his fiduciary duty to the other heirs by pasturing his horses on the estate property without payment of fair market pasture rent fees from the date of the decedent's death until the date of closing of the purchase of the property by the personal representative.
3. That the personal representative be ordered to reimburse the estate for back rent for his use of the residence and pasture in the amount of \$45,310 as set forth in Attachment A.
4. That the personal representative be ordered to pay the attorney fees of the petitioners incurred in the prosecution of this action.

DATED this 12th day of May, 2008.

THOMSEN STEPHENS LAW OFFICES, P.L.L.C.

By: 
For Brian L. Boyle, Esq.

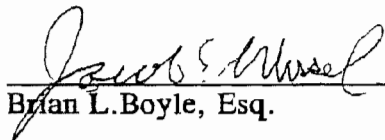
CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the 12th day of May, 2008, I caused a true and correct copy of the foregoing **POST TRIAL BRIEF** to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon or by hand delivering or by transmitting by facsimile as set forth below.

REGINALD R REEVES
690 CAMBRIDGE DRIVE
PO BOX 1841
IDAHO FALLS ID 83403
FAX: 522-2516

- Mail
- Hand Delivery
- Facsimile
- Courthouse Box

THOMSEN STEPHENS LAW OFFICES, PLLC

By: 
For Brian L. Boyle, Esq.

MJW:es
J:\data\BLB\6186\PLEADINGS OURS\041 Post Trial Brief.wpd

Attachment A -- Post Trial Brief

Rent Calculation Schedule

In the Matter of the Estates of Carol Bailey and Francis Andrew Bailey

Residence Monthly Rental Amount	\$1,000.00
Pasture Montly Rental Amount	\$100.00
Number of Horses Using Pasture	13
Assumed Number of Days for Proration per Month	30

Month	Number of Days Rent Due	Residence Rent Due	Pasture Rent Due
Sep-06 (Partial Month 9/22 - 9/30)	9	\$300.00	\$390.00
Oct-06	30	\$1,000.00	\$1,300.00
Nov-06	30	\$1,000.00	\$1,300.00
Dec-06	30	\$1,000.00	\$1,300.00
Jan-07	30	\$1,000.00	\$1,300.00
Feb-07	30	\$1,000.00	\$1,300.00
Mar-07	30	\$1,000.00	\$1,300.00
Apr-07	30	\$1,000.00	\$1,300.00
May-07	30	\$1,000.00	\$1,300.00
Jun-07	30	\$1,000.00	\$1,300.00
Jul-07	30	\$1,000.00	\$1,300.00
Aug-07	30	\$1,000.00	\$1,300.00
Sep-07	30	\$1,000.00	\$1,300.00
Oct-07	30	\$1,000.00	\$1,300.00
Nov-07	30	\$1,000.00	\$1,300.00
Dec-07	30	\$1,000.00	\$1,300.00
Jan-08	30	\$1,000.00	\$1,300.00
Feb-08	30	\$1,000.00	\$1,300.00
Mar-08	30	\$1,000.00	\$1,300.00
Apr-08	30	\$1,000.00	\$1,300.00
5/1/2008 (Partial Month 5/1 - 5/12)	12	\$400.00	\$520.00
Total Amounts Due		\$19,700.00	\$25,610.00
Combined Amount Due		\$45,310.00	

DENMAN & REEVES
 ATTORNEYS AND COUNSELLORS
 CAMBRIDGE LAW CENTER
 BOX 1841
 IDAHO FALLS ID 83403
 Telephone 522-2513
 FAX 522-2516
 IDAHO STATE BAR NO. 712

2008 MAR 14 9:22
 DISTRICT COURT
 SEVENTH JUDICIAL DISTRICT
 BONNEVILLE COUNTY
 IDAHO

Attorneys for Personal Representative
 By REGINALD R. REEVES, ESQ.
 Our File 16338

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

///

In The Matter of the Estates of	}	Civil No. CV-06-6496
	}	
	}	AFFIDAVIT RE RENT
CAROL BAILEY and	}	
FRANCIS ANDREW BAILEY,	}	
	}	
Deceased.	}	

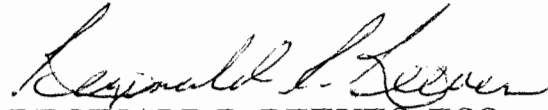
KIM BAILEY, Personal Representative, affirms that no rent is required or due herein, but if the property in question should be rented, a reasonable amount therefor would be from \$600 to \$750, monthly -- after the expenditure of \$5,000 to \$6,000 on repairs, as set forth in the realtor estimate and property management letters

attached hereto.




KIM BAILEY
Personal Representative

Subscribed and affirmed before me this May 13, 2008, at Idaho Falls, Idaho.



REGINALD R. REEVES, ESQ.
Notary Public
Idaho Falls, Idaho
My Commission Expires:



REGINALD R. REEVES, ESQ
Personal Representative's Attorney
Cambridge Law Center
Idaho Falls, Idaho

CERTIFICATE OF SERVICE
[IRCP 5(f)]

I HEREBY CERTIFY That on this day I served the foregoing upon the designated party, by faxing a copy to their attorney, as follows:

PLAINTIFFS

BRIAN L. BOYLE, ESQ.
FAX 522-1277

May 13, 2008



M. Bird



Homestead Realty

Chris Schmalz 
Sales Associate
208-390-8441
chris@realestate-idahofalls.com

1301 E 17th Street, Idaho Falls, ID 83402 208-529-5600

April 26, 2007

Kim Bailey
4673 S 15th W
Idaho Falls, ID 83402

Dear Mr. Bailey:

After looking at comparable homes that have sold in the last six months, I have determined what I believe to be fair market value for your home.

In present condition I feel that your home will sell for between \$103,000 and \$109,000. This value is with no repairs to the property, but I would recommend removing all rubbish from the lot.

With the repairs needed to the property, it will most likely appeal to investors or individuals looking for a "fixer upper" type house. If you are looking to obtain a higher sales price I would at minimum address the following items: basement bathroom and shower, well function, septic problems, and the electrical issues. I would estimate that those repairs would cost about \$5,000 - \$6,000.

With those items addressed, I believe we could obtain a sales price of between \$112,000 and 118,000.

In order to rent the property, I feel that you would need to make the above mentioned repairs, and that you should be able to rent the house for \$700-\$750 per month.

If you have any questions, do not hesitate to contact me.

Best regards,

Chris Schmalz

KIM BAILEY - PERSONAL REPRESENTATIVE
OF
FRANCIS A BAILEY ESTATE

Rentmaster Property Management

1. 170 N. Holmes

Idaho Falls, ID 83401

208-523- 0039 Fax. 208-523-0079

March 14, 2008

Kim and Bonnie Bailey

kcquarterpaints@msn.com

Dear Kim and Bonnie:

Thank you for allowing me to inspect your dad's home for possible rental. At present, the house is a 2 bedroom, 1 bath. First, a few items need to be addressed:

- 1- The house has not been updated which affects the rental value
- 2- The electrical problem in the living room and the plumbing problems will have to be repaired before rental could be possible.
- 3- The debris in and around the property, garage and acreage, including vehicles, would need to be taken to the dump or other storage.
- 4- The pasture area is in very poor condition and needs to be replanted and watered. The dead trees also need to be removed.
- 5- The house should be rented unfurnished.

As the safety items above are taken care of, the house would rent for \$600.00 to \$700.00. It may be possible to obtain more rent, but only if the house were updated, the carpet replaced, the downstairs bathroom put in working condition and the property painted and cleaned thoroughly.

If you need further information, please let us know. Thank you for your help.

Sincerely,

Michael D. Baird

Rentmaster

DENMAN & REEVES
 ATTORNEYS AND COUNSELLORS
 CAMBRIDGE LAW CENTER
 BOX 1841
 IDAHO FALLS ID 83403
 Telephone 522-2513
 FAX 522-2516
 IDAHO STATE BAR NO. 712

DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
 BONNEVILLE COUNTY, IDAHO

8 MAY 19 P4:52

Attorneys for Personal Representative
 By REGINALD R. REEVES, ESQ.
 Our File 16338

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

///

In The Matter of the Estates of	}	Civil No. CV-06-6496
	}	
CAROL BAILEY and	}	PERSONAL REPRESENTATIVE'S
FRANCIS ANDREW BAILEY,	}	RESPONDING MEMORANDUM
	}	
Deceased.	}	

Personal Representative responds to the post-trial brief of petitioners, as follows:

A. Personal Representative re affirms the assertions and authorities cited in his pre-trial memorandum.

B. In their post-trial brief (as before), petitioners refer, disparagingly, to what they characterize as "personal representative's reliance upon the old case of Estate of Randall." [Emphasis added]. Although stating, gratuitously, that Randall is not "an accurate statement of current law,"

petitioners cite no instance in which such decision has been overruled, altered, modified, or even challenged. The holding of the Idaho Supreme Court, in that "old case," therefore, remains the law in Idaho.

C. The Texas case cited by petitioners (In the interest of Roy, 2008 TXCA-10 10-07-00028) is completely inapplicable to the instant issue. Roy involved an executor who leased estate property (to a company of which he was president) at a below-the-market price. Holding that that, in itself, was not sufficient for removal of the executor, the court stated that the executor should have made a disclosure to the other heirs, and therefore voided the lease. There was no occupancy of estate property by the executor, and it is significant that petitioners herein failed to disclose this fact in their brief.

D. Petitioners cited only two cases, neither of which related to the issue at hand: the occupancy of an estate residence, by the personal representative, without paying rent therefor -- a right sanctioned by the Idaho Supreme Court.

E. Petitioners, challenging the personal representatives' occupancy without paying rent, failed to carry their burden of proof to show that such conduct was wrongful, or that under Idaho law he was required to pay such rent.

F. Petitioners did not, in any way, challenge the statute or cases cited in support of personal representative's position.

CONCLUSION

The personal representative is not obligated to and should not be required to , pay rent for his occupancy of the estate residence.

Respectfully submitted, this May 19, 2008.



REGINALD R. REEVES, ESQ.
Personal Representative's Attorney
Cambridge Law Center
Idaho Falls, Idaho

CERTIFICATE OF SERVICE

[IRCP 5(f)]

I HEREBY CERTIFY That on this day I served the foregoing upon the designated parties, by faxing a copy to their attorney, as follows:

PETITIONERS

BRIAN L. BOYLE, ESQ.
Fax 522.1277

May 19, 2008


M. Bird

Minutes Report

Case: CV-2006-0006496

In The Matter Of The Estate Of Carol Bailey, etal. Deceased

Selected Items

Hearing type:	Motion	Minutes date:	05/20/2009
Hearing judge:	L. Mark Riddoch	Start time:	03:00 PM
Court reporter:		End time:	03:00 PM
Minutes clerk:	Linda Newton	Audio tape number:	

Parties: Bailey, F. Kim; Reeves, Reginald
 Bailey, Kerry; Whyte, Michael
 Bailey, Kyle; Whyte, Michael
 Bailey, Tamra; Whyte, Michael

digital session 052009PMRiddoch

J calls case. Reginald Reeves appears with Kim Bailey; Michael Whyte appears with Kerry Bailey and on behalf of other heirs.

Mr. Reeves addresses the Motion to Strike which he states was filed (there is no record that this motion was received by the Court.)

Mr. Whyte responds to Mr. Reeves' comments.

Mr. Reeves' responds to Mr. Whyte's comments.

Mr. Whyte responds.

J addresses counsel and parties.

J denies motion to strike and denies motion for relief.

Mr. Reeves to prepare minute entry.

End of Record.

2/20/08

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

IN THE MATTER OF THE ESTATES	)	ORDER
OF)	
)	
CAROL BAILEY and)	
FRANCIS ANDREW BAILEY,)	
)	
<u>Deceased.</u>	)	CASE NO. CV-2006-6496

The Court held trial on April 28, 2008 with the personal representative appearing in person and with counsel, Reginald Reeves; petitioners appearing in person and with their counsel, Brian L. Boyle. The parties reached a partial stipulation and reserved issues for the Court's decision.

As Mr. Boyle has apparently left the firm representing the Petitioners and did not prepare the Order from the hearing on April 28, 2008, Mr. Reeves submitted a proposed Interim Order. The Court appreciates his efforts under the circumstances; however, the proposed order needs clarification and therefore the Court enters this Order.

First the Court corrects its Order of April 24, 2008. There was a hand written order entered on 4/10/2008 which noted as questions, "stipulation, submit on brief ?, factual issues ?, legal issues ?, did PR discharge duties timely, properly?" The only order was "Mr. Boyle respond to Mr. Reeves' on his request to submit and resolve on briefs on April 16 at noon or sooner." Thus, this order did not constitute petitioner's stipulation, agreement or waiver of a trial. Mr. Reeves filed a Notice of Noncompliance at 9:21 a.m. on April 18, 2008. However, at 8:22 a.m. on April 18, 2008 Mr. Boyle on behalf of petitioners filed a Notice of Objection declining to stipulate to submitting the matter on

briefs for the reasons explained at the pretrial conference on April 10, 2008 and further requesting trial. Previously, Mr. Boyle on April 10, 2008 had filed his witness and exhibit lists and memorandum of facts and law in preparation for trial. As a matter of law, the Court cannot imply Mr. Boyle's stipulation and waiver of trial from this record. Thus, the Court affirms the remaining conclusions in its order of April 24, 2008 that the petitioner's had a right to proceed to trial.

Further, the Court finds that its order of November 29, 2007 did not bar petitioners from proceeding or require dismissal of their original or amended petition. Petitioners timely filed their amended petition on December 4, 2007 and a notice of hearing on a motion for temporary orders on December 5, 2007.

Also, the Court's order of February 8, 2008 did not require dismissal of their original or amended petitions or bar the petitioners from proceeding to trial. The parties complied with the directive to submit nominations for an appraiser. The parties further complied with the directive for an inspection of the estate property. The parties also attempted mediation pursuant to the order which unfortunately was unsuccessful. The court reserved all other issues in the petitioner's motion for temporary orders. Therefore, this order did not hinder the petitioners from proceeding.

On April 28, 2008 the parties stipulated to the following:

Personal Representative was authorized to purchase the real property of the estate for \$129,000; petitioners Kyle Bailey was allowed to purchase the coin collection for the appraised price of \$5,681.15; the silverware at issue was awarded to the personal representative; all other memorabilia of the estate was awarded to the petitioners. The parties did not stipulate to and reserved the issue of whether the personal representative was required to pay rent for his occupancy of the real property of the estate. On that issue the court concurs with the statement of facts set forth in Mr. Boyle's Post-Trial Brief paragraphs 1 and 2 on page 1 and the first sentence of paragraph 3 on page 2 as follows:

1. Decedent Carol Bailey died April 11, 1998 at the age of 63 years. Decedent Francis A. Bailey died September 22, 2006 at the age of 76 years. The decedents left the following children, heirs and devisees: F. Kim Bailey, Kerry L. Bailey, Kyle J. Bailey and Tamara Lee Bailey Sipe.

2. On or about October 26, 2006, F. Kim Bailey filed a Petition for Informal Probate and Informal Appointment of Personal Representative pursuant to the last wills and testaments of the decedents. At the time of decedents' deaths, they had real property and personal property. According to the last wills and testaments, and except for a few small items that were specifically devised, all children were to share equally in the estate.

3. From the date of the decedents' deaths until the date of trial April 28, 2008, F. Kim Bailey resided in the Carol Bailey and Francis A. Bailey estate home and used the estate real and personal property as his own possessions, including pasturing his personal horses (up to thirteen (13) horses at various times) on the estate property.

Kerry Bailey's affidavit declared that the fair market rental of the home as furnished was \$1,000 per month and the pasture of \$100 per horse per month claiming a total rental amount owed for the residence and pasture through May 12, 2008 of \$19,700 for the rental of the home and \$25,610 for rental of the home for a total amount reimbursable to the estate of \$45,310, plus rent from May 13, 2008 to the date of closing by the personal representative. These amounts were set forth in Attachment A to petitioner's Post-Trial Brief. Kim Bailey disputed the petitioner's alleged rental figures and the duty to pay the same. He contended that if he were required to pay rent it should be substantially less.

Petitioners contended that since September 22, 2006, that Kim Bailey as personal representative failed to maintain the real property in a condition that would preserve its value. Specifically they alleged that Mr. Bailey had allowed the yards, trees and landscaping to die and allowed the property to fall into a general state of disrepair.

CONCLUSIONS OF LAW

Petitioner's correctly cited I.C. §15-3-703 as setting forth the duties of a personal representative.

§15-3-703. General duties – Relation and liability to persons interested in estate –

Standing to sue

(a) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by section 15-7-302 of this code. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this code, the terms of the will, if any, and any order in proceedings to which he is party for the best interests of successors to the estate.

Idaho code section 15-7-302 states as follows:

Except as otherwise provided by the terms of the trust, the trustee shall observe the standards in dealing with the trust assets that would be observed by a prudent man dealing with the property of another, and if the trustee has special skills or is named trustee on the basis of representations of special skills or expertise, he is under duty to use those skills.

Petitioners contended that personal representative violated his fiduciary responsibility duties by living in the estate home and use of the pasture ground rent free and thus without fair compensation to the estate.

A prudent personal representative may have a reasonable time to reside in the house and even use the pasture on a limited basis while conducting an inventory, appraising the property as needed and preparing estate property for sale, rent or other use to maximize return to the estate for the benefit of all of the heirs. The personal representative cited the case of *Estate of Randall*, 64 Idaho 629 (1942) in support of his position that the personal representative is entitled to have some use of the premises as he completes his duties. However, *Randall* does not provide support for the personal representative's unreasonable, extended personal use of estate property. The Court in *Randall* stated that where the heirs are surviving children who are equally entitled to the estate, all parties became in effect joint tenants and the personal representative did not

have authority to exclude the other co-tenants with equal use and possession of the estate property. *Id* at 636-37. The Court in *Randall* also stated that the personal representative was entitled to possession of the estate residence as long as he is “duly and regularly administering {the estate for the heirs}.” *Id* at 637. Despite the personal representative’s denial of unauthorized personal use for 22 months, petitioners’ evidence in support of their claims was persuasive. However, the stipulation providing for the personal representative’s purchase of the estate at a given price constituted petitioners’ waiver of that claim. Yet that stipulation reserved petitioners’ claim for rent. A prudent man acting as a personal representative should have completed his duties in a more timely fashion. Petitioners’ raised these issues as early as the hearing on March 8, 2007. The personal representative’s failure to timely and properly complete his fiduciary duties in regards to estate property while at the same time receiving personal financial benefit (living in the residence without rent and pasturing his horses) becomes the type of self-dealing precluded by I.C. §15-3-703. See also the reasoning and conclusion of the Indiana Court of Appeals in *Estate of Scholz v. Kirk*, 859 NE 2d 731, 736 (2007), and also *In the Interest of Roy*, 2008 Tex. App. Lexus 512 (2008).

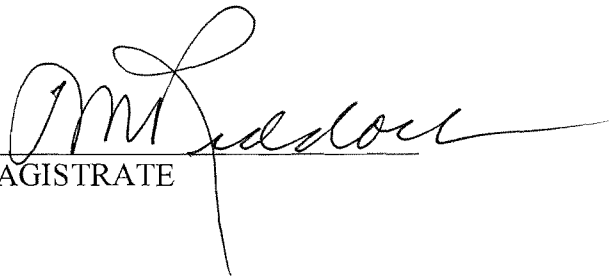
Based on this record and the foregoing findings and conclusions, the Court concludes that the personal representative should have completed his duties in this estate within 12 months, and after August 31, 2007, exceeded any right as personal representative to remain on the property, residing in the residence and pasturing his horses without paying rent and pasture fees. Thus, from September 1, 2007 to present the personal representative owes and must reimburse the estate as follows: \$700 rent per month for the residence and \$200 pasture fee per month totaling \$9,900 which he can pay

either as part of an additional fee for the sale of the residence and real property or as otherwise agreed in writing by the parties.

Regarding attorney's fees, after consideration of I.C. §12-121 and I.R.C.P. Rule 54(e), the Court finds that each party prevailed in part and neither presented a frivolous argument or defense. Thus each party shall pay his or her own attorney's fees.

IT IS SO ORDERED.

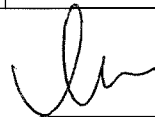
DATED July 2, 2008.


MAGISTRATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 7/2/2008, I served a true and correct copy of the foregoing document to the following by mailing, with correct postage thereon, by facsimile transmission, by delivery to the attorney's courthouse box, or by causing the same to be hand delivered.

Reginald Reeves Cambridge Law Center PO Box 1841 Idaho Falls, ID 83403	<input type="checkbox"/> Courthouse Box <input checked="" type="checkbox"/> US Mail <input type="checkbox"/> FAX <input type="checkbox"/> Hand Delivery
Brian L. Boyle Thomsen Stephens	<input checked="" type="checkbox"/> Courthouse Box <input type="checkbox"/> US Mail <input type="checkbox"/> FAX <input type="checkbox"/> Hand Delivery
	<input type="checkbox"/> Courthouse Box <input checked="" type="checkbox"/> US Mail <input type="checkbox"/> FAX <input type="checkbox"/> Hand Delivery



Deputy Clerk

BONNEVILLE COUNTY
IDAHO

8 JUL 22 P1:32

DENMAN & REEVES
ATTORNEYS AND COUNSELLORS
CAMBRIDGE LAW CENTER
BOX 1841
IDAHO FALLS ID 83403
TELEPHONE 522-2513
FAX 522-2516
IDAHO STATE BAR NO. 712

Attorneys for Personal Representative
By REGINALD R. REEVES, ESQ.
Our File 16338

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

///

In the Matter of the Estates of	}	Civil No. CV-06-6496
	}	
CAROL BAILEY and	}	NOTICE OF APPEAL
FRANCIS ANDREW BAILEY,	}	[§17-2017 I.C., IRCP 83(a)(4),
	}	83(e) & (f) & IAR 11(b)]
	}	
	}	FEE CATEGORY: R1(c)
Deceased.	}	FEE: \$53

PLEASE TAKE NOTICE That personal representative hereby
appeals, as follows:

1. From the Magistrate Division of the District Court of the Seventh Judicial District of the State of Idaho, in and for Bonneville County.
2. To such district court.
3. From the Order entered herein on July 2, 2008.
4. The appeal is taken upon matters of law and fact.

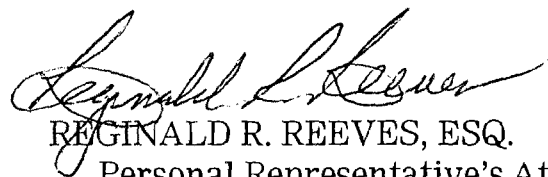
5. The testimony and proceedings of the original hearing were recorded electronically, and the tape thereof is in the possession of the Deputy Clerk of the Magistrate Court.

6. The issues intended to be asserted in this appeal are:

- a. WHETHER THE COURT ERRED IN DETERMINING THAT PETITIONERS WERE NOT REQUIRED TO COMPLY WITH THE ORDERS OF APRIL 24, 2008?
- b. WHETHER THE COURT ERRED IN DETERMINING THAT THE ORDER OF NOVEMBER 29, 2007, DID NOT BAR PETITIONERS FROM PROCEEDING OR REQUIRE DISMISSAL OF THEIR PETITIONS?
- c. WHETHER THE COURT ERRED IN DETERMINING THAT THE ORDER OF FEBRUARY 8, 2008, DID NOT REQUIRE A DISMISSAL OF THE PETITIONS?
- d. WHETHER THE COURT ERRED IN ADOPTING ¶3 OF THE POST-TRIAL BRIEF OF PETITIONERS?
- e. WHETHER THE COURT ERRED IN FAILING TO FIND THAT PERSONAL REPRESENTATIVE RESIDED IN THE REAL PROPERTY OF DECEDENTS, TO TAKE CARE OF HIS FATHER, FROM PRIOR TO HIS DEATH, UNTIL SUCH DEATH?
- f. WHETHER THE COURT ERRED IN FAILING TO FIND THAT THE DELAY IN CLOSING THE ESTATE WAS DUE TO THE FAULT OF PETITIONERS?

- g. WHETHER THE COURT ERRED IN DETERMINING THAT OCCUPANCY OF THE PROPERTY BY THE PERSONAL REPRESENTATIVE WAS UNREASONABLE?
- h. WHETHER THE COURT ERRED IN FAILING TO DETERMINE THAT THERE WAS NO PASTURE?
- i. WHETHER THE COURT ERRED IN IN CONCLUDING THAT THE PERSONAL REPRESENTATIVE SHOULD HAVE CONCLUDED HIS DUTIES HEREIN WITHIN 12 MONTHS, WHEN SUCH CONCLUSION WAS DELAYED BY REPEATED PROCEEDINGS INITIATED OR NECESSITATED BY ACTIONS OF PETITIONERS?
- j. WHETHER THE COURT ERRED IN CONCLUDING THAT PERSONAL REPRESENTATIVE IS INDEBTED TO THE ESTATE FOR RENT AND PASTURE FEES?

July 17, 2008



REGINALD R. REEVES, ESQ.

Personal Representative's Attorney
Cambridge Law Center
Idaho Falls, Idaho

CERTIFICATE OF SERVICE

[IRCP 5(f)]

I HEREBY CERTIFY That on this day I served the foregoing
upon the designated party, by faxing a copy to their attorney, as follows:

PETITIONER

COURT

MICHAEL J. WHYTE, ESQ.
Fax 522-1277

Hon. L. MARK RIDDOCH
Fax 522-1300

July , 2008

M. BIRD

BONNEVILLE COUNTY

DENMAN & REEVES
ATTORNEYS AND COUNSELLORS
CAMBRIDGE LAW CENTER
BOX 1841
IDAHO FALLS ID 83403
TELEPHONE 522-2513
FAX 522-2516
IDAHO STATE BAR NO. 712

AUG 5 2008

Attorneys for Personal Representative
By REGINALD R. REEVES, ESQ.
Our File 16338

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

///

In the Matter of the Estates of }
 }
CAROL BAILEY and }
FRANCIS ANDREW BAILEY, }
 }
Deceased. }

Civil No. CV-06-6496

NOTICE OF COMPLIANCE
RE STATEMENT OF ISSUES

NOTICE IS HEREBY GIVEN That the statement of Issues herein
was included in the Notice of Appeal.

August 5, 2008

CERTIFICATE OF SERVICE
(IRCP 5(F))

I HEREBY CERTIFY That on this day
I served the foregoing upon the
designated party, by Faxing a
copy to or to their attorneys
as follows

Reginald R. Reeves
REGINALD R. REEVES, ESQ.
Personal Representative's Attorney
Cambridge Law Center
Idaho Falls, Idaho

PETITIONERS

MICHAEL J. WHYTE, ESQ.
Fax 522-1277

August 5, 2008 *M. Bird*
M. BIRD

NOTICE OF COMPLIANCE RE STATEMENT OF ISSUES

BONNEVILLE COUNTY
IDAHO

2008 AUG 13 PM 12:50

DENMAN & REEVES
ATTORNEYS AND COUNSELLORS
CAMBRIDGE LAW CENTER
BOX 1841
IDAHO FALLS ID 83403
TELEPHONE 522-2513
FAX 522-2516
IDAHO STATE BAR NO. 712

Attorneys for Personal Representative
By REGINALD R. REEVES, ESQ.
Our File 16338

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

///

In the Matter of the Estates of	}
CAROL BAILEY and	}
FRANCIS ANDREW BAILEY,	}
Deceased.	}

Civil No. CV-06-6496
RESPONSE TO
PETITION FOR DISTRIBUTION

PERSONAL REPRESENTATIVE Responds to the petition for distribution, by objecting thereto, as the court is without jurisdiction to hear such motion, pursuant to IAR 13 (b), and by admitting, denying, or alleging as follows:

1. Admitted.
2. Denied, except as to the closing of the sale, which is admitted; and no Exhibit A was served with the petition herein.
3. The personal representative cannot make any distribution herein, as there can be no distribution until the assets and liabilities of the

estate have been determined, and a final accounting submitted and approved, which cannot be done until after a determination on the appeal herein.

4. Objected to , as immaterial. A ruling on the appeal is necessary in order that the extent of the assets and liabilities might be determined.

5. Denied.

6. Objected to, as merely precatory, but to the extent that the same might be deemed to be a proper allegation, the same is denied.

7. Denied.

WHEREFORE Personal Representative requests that such motion be dismissed or denied.

August 13, 2008

Reginald R. Reeves
REGINALD R. REEVES, ESQ.
Personal Representative's Attorney
Cambridge Law Center
Idaho Falls, Idaho

CERTIFICATE OF SERVICE

[IRCP 5(f)]

I HEREBY CERTIFY That on this day I served the foregoing upon the designated parties, by faxing a copy to their attorney, as follows:

PETITIONERS

MICHAEL J. WHYTE
FAX 522.1277

August 13, 2008 *M. Bird*
M. BIRD

2008 AUG 13 PM 4:35

Brian L. Boyle, Esq., ISB #6233
Michael J. Whyte, Esq., ISB #4645
THOMSEN STEPHENS LAW OFFICES, PLLC
2635 Channing Way
Idaho Falls ID 83404
Telephone (208)522-1230
Fax (208)522-1277

DISTRICT COURT
MAGISTRATE DIVISION
BONNEVILLE COUNTY
IDAHO

Attorneys for Kerry L. Bailey, Kyle Bailey, and Tamara Lee Bailey Sipe

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

IN THE MATTER OF THE ESTATES	)	Case No. CV-06-6496
OF)	
)	
CAROL BAILEY and	)	AMENDED PETITION
FRANCIS ANDREW BAILEY,	)	FOR DISTRIBUTION
	)	(I.C. 15-3-1001)
Deceased.)	
_____)	

COME NOW petitioners, Kerry L. Bailey, Kyle Bailey and Tamara Lee Bailey Sipe, by and through their attorney of record, Michael J. Whyte, and move this court pursuant to Idaho Code §15-3-1001 for the distribution of the sale proceeds following personal representative's purchase of the real property previously held by the estate. This motion is based on the following:

1. At the trial in this matter, the personal representative stipulated that he would purchase the real property from the estate at the agreed upon value of \$129,000.00.
2. Upon information and belief provided by personal representative's attorney, the personal representative has closed the financing for the purchase of this residence and is able to make

final distribution of those proceeds. Attached and incorporated as Exhibit A to this petition is a letter dated July 16, 2008 from personal representative's attorney advising that the sale has been closed and distribution is available.

3. The personal representative is refusing to make this distribution because of the pending appeal.

4. The issues pending on appeal do not address or concern the personal representative's stipulation to purchase the real property or any issues associated with the sale of said real property.

5. The personal representative is withholding the distribution of these sale proceeds as a tool to force the remaining heirs to waive their claim pursuant to the court's order that personal representative owes rental fees for his personal use of the estate assets.

6. Heirs request the court's order forcing the personal representative to distribute the sale proceeds to all heirs pursuant to the agreement of the parties reached at the time of the last hearing.

7. The Court previously ordered that the vehicles are to be awarded to the children other than the personal representative.

8. The personal representative still holds the titles to all vehicles.

9. Without these titles, the heirs are not able to register and use these vehicles.

10. Heirs request the Court's order requiring personal representative to sign over the titles to the vehicles to the other heirs.

11. The personal representative is in control of hand and power tools that need to be equally divided among the heirs.

12. The Heirs request the Court's order requiring the personal representative and the heirs to meet and divide the hand and power tools still in the personal representative's control.

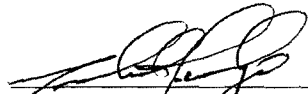
13. The distribution of these assets will not affect the remaining issues in the estate, nor will it affect the issues personal representative has claimed on appeal. Distribution of these assets can be made without waiving or prejudicing personal representative with respect to those claims.

Oral argument is requested.

DATED this 13th day of August, 2008.

THOMSEN STEPHENS LAW OFFICES, P.L.L.C.

By:



Michael J. Whyte, Esq.

CERTIFICATE OF SERVICE

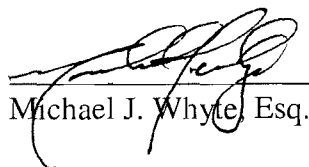
I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the 13th day of August, 2008, I caused a true and correct copy of the foregoing **AMENDED PETITION FOR DISTRIBUTION** to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon or by hand delivering or by transmitting by facsimile as set forth below.

REGINALD R REEVES
690 CAMBRIDGE DRIVE
PO BOX 1841
IDAHO FALLS ID 83403
FAX: 522-2516

Mail
 Hand Delivery
 Facsimile

THOMSEN STEPHENS LAW OFFICES, PLLC

By:


Michael J. Whyte, Esq.

MJW:clm
6186043 Pet for Distribution

6/18/08

*Denman and Reeves
Attorneys and Counsellors*

Alvan Denman (1895 - 1983)

Reginald R. Reeves

Cambridge Law Center • 690 Cambridge Drive

Post Office Box 1841

Idaho Falls, Idaho 83403-1841

(208) 522-2513 Fax (208) 522-2516

In reply, please refer to:

BAILEY Estates

July 16, 2008

Michael J. Whyte, Esq.

Fax 522.1277

Dear Mr. Whyte:

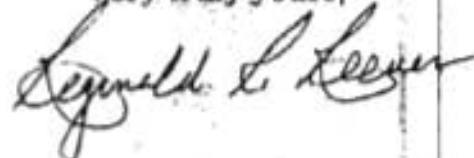
The financing has closed, on the purchase of the residence by the Personal Representative. We could be ready to file the final accounting and make distribution, within a short time.

Unfortunately, there must be a delay -- of from four or five months, to two years -- because of the necessity to appeal from the recent decision regarding rent.

Appeals could be avoided, costs, fees, and time saved, and distribution made promptly, if we could stipulate to a waiver of the claim for rent.

Your early response will be appreciated.

Very truly yours,



pc: Mr. Kim Bailey

EXHIBIT
A

RETURN \$25.00
 Fee Not Paid
 Wrong Filing Fee
 No Return of Service
 WRIT Not Returned
 Other
 JUN 12 11 37
 BONNEVILLE COUNTY

Brian L. Boyle, Esq., ISB #6233
 Michael J. Whyte, Esq., ISB #4645
 THOMSEN STEPHENS LAW OFFICES, PLLC
 2635 Channing Way
 Idaho Falls ID 83404
 Telephone (208)522-1230
 Fax (208)522-1277

Attorneys for Kerry L. Bailey, Kyle Bailey, and Tamara Lee Bailey Sipe

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

IN THE MATTER OF THE ESTATES)	Case No. CV-06-6496
OF)	
)	
CAROL BAILEY and)	PETITION FOR DISTRIBUTION
FRANCIS ANDREW BAILEY,)	(I.C. 15-3-1001)
)	
Deceased.)	
)	

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2. Upon information and belief provided by personal representative's attorney, the personal representative has closed the financing for the purchase of this residence and is able to make

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3. The personal representative is refusing to make this distribution because of the pending appeal.

4. The issues pending on appeal do not address or concern the personal representative's stipulation to purchase the real property or any issues associated with the sale of said real property.

5. The personal representative is withholding the distribution of these sale proceeds as a tool to force the remaining heirs to waive their claim pursuant to the court's order that personal representative owes rental fees for his personal use of the estate assets.

6. Heirs request the court's order forcing the personal representative to distribute the sale proceeds to all heirs pursuant to the agreement of the parties reached at the time of the last hearing.

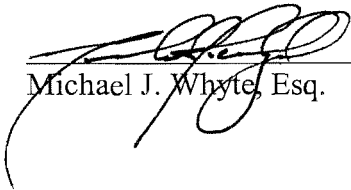
7. The distribution of these assets will not affect the remaining issues in the estate, nor will it affect the issues personal representative has claimed on appeal. Distribution of these assets can be made without waiving or prejudicing personal representative with respect to those claims.

Oral argument is requested.

DATED this 12 day of August, 2008.

THOMSEN STEPHENS LAW OFFICES, P.L.L.C.

By:


Michael J. Whyte, Esq.

CERTIFICATE OF SERVICE

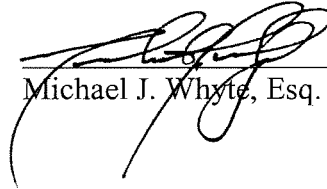
I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the 12 day of August, 2008, I caused a true and correct copy of the foregoing **PETITION FOR DISTRIBUTION** to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon or by hand delivering or by transmitting by facsimile as set forth below.

REGINALD R REEVES
690 CAMBRIDGE DRIVE
PO BOX 1841
IDAHO FALLS ID 83403
FAX: 522-2516

Mail
 Hand Delivery
 Facsimile

THOMSEN STEPHENS LAW OFFICES, PLLC

By:



Michael J. Whyte, Esq.

MJW:clm
6186\043 Pet for Distribution

BONNEVILLE COUNTY

DENMAN & REEVES
ATTORNEYS AND COUNSELLORS
CAMBRIDGE LAW CENTER
BOX 1841
IDAHO FALLS ID 83403
TELEPHONE 522-2513
FAX 522-2516
IDAHO STATE BAR NO. 712

8/20/08 10:26

Attorneys for Personal Representative
By REGINALD R. REEVES, ESQ.
Our File 16338

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

///

Civil No. CV-06-6496

In the Matter of the Estates of }
CAROL BAILEY and }
FRANCIS ANDREW BAILEY, }
Deceased. }

MOTION TO STRIKE
AMENDED PETITION FOR DISTRIBUTION
[IRCP 12 (h) & 15 (a)]

PERSONAL REPRESENTATIVE Hereby moves the court for an order striking the amended petition for distribution, filed herein, upon the ground that such amended petition was filed in violation of IRCP 15 (a), a response to the original petition having already been filed, and to strike the exhibit attached to such petition and amended petition, as the same constitutes an offer of settlement, and therefore is not admissible.

THIS MOTION Is based upon the file herein, and will be submitted without the need for oral argument thereon, unless desired by the court.

August 20, 2008

Reginald R. Reeves
REGINALD R. REEVES, ESQ.
Personal Representataive Attorney
Cambridge Law Center
Idaho Falls, Idaho

CERTIFICATE OF SERVICE
[IRCP 5(f)]

I HEREBY CERTIFY That on this day I served the foregoing upon the designated parties, by faxing a copy to their attorney, as follows:

PETITIONERS

Michael J. Whyte, Esq.
Fax 522.1277

August 20 , 2008

M. Bird
M. BIRD

Minutes Report

Case: CV-2006-0006496

In The Matter Of The Estate Of Carol Bailey, etal. Deceased

Selected Items

Hearing type:	Motion	Minutes date:	10/09/2008
Hearing judge:	L. Mark Riddoch	Start time:	11:30 AM
Court reporter:		End time:	11:30 AM
Minutes clerk:	Linda Newton	Audio tape number:	

Parties: Bailey, F. Kim; Reeves, Reginald
 Bailey, Kerry; Boyle, Brian
 Bailey, Kyle; Boyle, Brian
 Bailey, Tamra; Boyle, Brian

digital session 100908AMRiddoch

J opens and calls case. Michael Whyte appears with his client; Reginald Reeves appears with his client.

Mr. Reeves addresses the Motion to Strike the Petition to Distribute the Estate.

Mr. Whyte responds to Mr. Reeves' comments.

Mr. Reeves responds.

Mr. Whyte responds.

Mr. Reeves responds.

J addresses counsel.

J grants Mr. Reeves' motion to deny the Amended Petition.

J grants Mr. Whyte's motion to hearing on the original petition.

J reviews rules regarding decisions of magistrate during the appellate process.

J questions Mr. Whyte re: issues on appeal.

Mr. Reeves addresses the Court.

J addresses Mr. Reeves.

Mr. Reeves responds.

Mr. Whyte responds.

Mr. Reeves responds.

J questions Mr. Reeves re: delay in filing Notice to Creditors.

Mr Reeves responds.

J questions Mr. Reeves.

Mr. Reeves responds.

Seventh Judicial District Court - Bonneville County

User: LMESSICK

Minutes Report

Case: CV-2006-0006496

In The Matter Of The Estate Of Carol Bailey, etal. Deceased

Selected Items

J will require the partial stipulation be transcribed. Moving party must show that J retains jurisdiction.

J defers hearing at this time the Petition to Distribute. J grants leave to Mr. Whyte to file an Amended Petition. Offer of Compromise included in Mr. Whyte's Petition is stricken. J will consider attorney's fees if it is shown that the filing of Notice to Creditors is meant to delay.

Mr. Whyte to prepare minute entry and order.

End of Record.

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2008 NOV 18 AM 10: 22

Attorneys for Appellant
By REGINALD R. REEVES, ESQ.
Our File 16338

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

///

_____	}	Civil No. CV-06-6496
In the Matter of the Estates of	}	
	}	
CAROL BAILEY and	}	
FRANCIS ANDREW BAILEY,	}	
	}	
	}	
	}	
Deceased.	}	
_____	}	

APPELLANT'S BRIEF

Appeal from the Magistrate's Court of the
Seventh Judicial District of the State of Idaho

In and for Bonneville County

Honorable L. Mark Riddoch, Presiding

REGINALD R. REEVES, ESQ.
Appellant's Attorney
Cambridge Law Center
Idaho Falls, Idaho

MICHAEL J. WHYTE, ESQ.
Respondents' Attorney
Idaho Falls, Idaho

TABLE OF CONTENTS

	PAGE
Table of Contents	i
Table of Cases & Authorities	ii
Statement of the Case	1
(i) Nature	1
(ii) Course of Proceedings in the Trial Court	1
(iii) Statement of Facts	2
Issues Presented on Appeal	4
Argument	5
Conclusion	12

TABLE OF CASES & AUTHORITIES

CASES

Canady v. Kaufman (CO), 142 p. 2d 1027..... 12

Estate of Countryman (Kan.), 494 p. 2d 1163..... 12

In re Anderton’s Estate (Idaho 1946), 67 Idaho 160..... 10

In re Catenack’s Estate (Pa.), 117 A.178..... 12

In re Chisholm’s Estate (N.Y.), 37 N.Y.S 2d 442..... 11

In re Estate of Randall (Idaho 1972) 64 Idaho 629, cited in ALR 2d 243..... 10,11

In re Ridge’s Estate (Cal.), 28 P. 2d 705..... 12

Peterson v. Neal (Idaho 1972), 94 Idaho 816..... 9,10

Turner v. Morson (Mass.), 57 N.E. 2d 18..... 12

STATUTES

§15-3-709 I.C..... 8,10,11

TREATISES

31 Am. Jur. 2d Executors and Administrators §248, p. 181, n 8.....12

STATEMENT OF THE CASE

i. Nature of the Case.

This is an appeal from an order entered herein on July 2, 2008.

ii. Course of Proceedings.

(a) On October 26, 2006, appellant filed a petition for informal probate and informal appointment as personal representative.

(b) Although appellant was named in his father's will as personal representative, his siblings, respondents, challenged his appointment, delaying the proceedings until December, 2006. After so delaying the proceedings, respondents did not even appear (in person or by counsel) at the hearing on such petition for appointment.

(c) Respondents retained new counsel, who filed repeated motions, resulting in hearings on January 27, 2007, June 5, 2007, June 18, 2007, August 15, 2007, and November 20, 2007.

(d) By order of November 29, 2007, respondents were directed to file a detailed petition "setting forth all matters to be heard by the Court," such petition to be filed not later than December 4, 2007. It was not filed.

(e) The parties agreed that the personal representative might purchase the real property, at its appraised value.

(f) Respondents disagreed with the appraisal, and refused to allow such sale.

(g) On February 8, 2008, the court ordered a re-appraisal.

(h) On April 10, 2008, respondent's not having complied with the order of November 29, 2007, the court allowed respondent's until April 16, 2008, to respond to appellant's assertion that the parties had agreed that the matter be submitted on briefs. Respondents failed to respond.

(i) By order of April 24, 2008, the trial court asserted that it could find no such order of April 10, 2008. On April 24, 2008, appellant provided to the court a copy of the signed order of April 10, 2008.

(j) Notwithstanding such orders, the court directed that the matter proceed to trial.

(k) Following a trial, on April 28, 2008, the court -- on July 2, 2008 -- entered an order requiring appellant to pay rent, for his occupancy of the premises during the pending of the probate proceedings.

(l) Appellant filed his notice of appeal, on July 22, 2008.

iii. STATEMENT OF FACTS

(a) On April 11, 1998, decedent , Carol Bailey died, at the age of 63 years.

(b) On June 2, 2006, at the request of his father, Francis A. Bailey, appellant moved into the family home, to care for his father and the property.

(c) Decedent, Francis A. Bailey, died on September 22, 2006.

(d) Appellant filed a petition for probate.

(e) Notwithstanding the fact that the father's will named appellant as personal representative, respondents objected to his appointment,

thus delaying the proceeding for months.

(f) Appellant continued to reside in the family residence, to care for the property.

(g) The court allowed time for respondents to provide an affidavit listing issues in the matter, causing a further delay in the proceedings. They provided no such affidavit.

(h) Despite being required to do so, respondents refused to turn over to the personal representative certain personal property of the estate.

(i) During visitations and inspections of the estate property, responders destroyed appellant's personal property, damaged estate property, and verbally abused and harassed appellant and his family.

(j) Appellant and respondents agreed to the sale of the residence, to appellant, at the appraised value. An appraisal was obtained, but respondents objected to the sale.

(k) Respondents obtained a second appraisal, which was lower in price than the first appraisal. In another attempt to delay closure, respondents failed to inform appellant, until February, 2008, of such second, lower, appraisal, and again refused to agree to the sale of home to appellant.

(l) Despite their having caused the delays in concluding the probate, respondents demanded that appellant pay rent for his occupancy of the premises.

ISSUES PRESENTED ON APPEAL

I

WHETHER THE COURT ERRED IN DETERMINING THAT RESPONDENTS WERE NOT REQUIRED TO COMPLY WITH THE ORDER OF APRIL 24, 2008?

II

WHETHER THE COURT ERRED IN DETERMINING THAT THE ORDER OF NOVEMBER 29, 2007, DID NOT BAR RESPONDENTS FROM PROCEEDING OR REQUIRE DISMISSAL OF THEIR PETITIONS?

III

WHETHER THE COURT ERRED IN DETERMINING THAT THE ORDER OF FEBRUARY 8, 2008, DID NOT REQUIRE A DISMISSAL OF THE PETITIONS?

IV

WHETHER THE COURT ERRED IN ADOPTING ¶3 OF THE POST-TRIAL BRIEF OF RESPONDENTS?

V

WHETHER THE COURT ERRED IN FAILING TO FIND THAT APPELLANT RESIDED IN THE REAL PROPERTY OF DECEDENTS, TO TAKE CARE OF HIS FATHER, AND THE PROPERTY, FROM PRIOR TO HIS DEATH, UNTIL SUCH DEATH?

VI

WHETHER THE COURT ERRED IN FAILING TO FIND THAT DELAY IN CLOSING THE ESTATE WAS DUE TO THE FAULT OF RESPONDENTS?

VII

WHETHER THE COURT ERRED IN DETERMINING THAT OCCUPANCY OF THE PROPERTY BY APPELLANT, THE PERSONAL REPRESENTATIVE, WAS UNREASONABLE?

VIII

WHETHER THE COURT ERRED IN FAILING TO DETERMINE THAT THERE WAS NO PASTURE?

IX

WHETHER THE COURT ERRED IN CONCLUDING THAT APPELLANT SHOULD HAVE CONCLUDED HIS DUTIES HEREIN WITHIN 12 MONTHS, WHEN SUCH CONCLUSION WAS DELAYED BY REPEATED PROCEEDING INITIATED OR NECESSITATED BY ACTIONS OF RESPONDENTS?

X

WHETHER THE COURT ERRED IN CONCLUDING THAT APPELLANT IS INDEBTED TO THE ESTATE FOR RENT AND PASTURE FEES?

ARGUMENT

I

At the hearing on April 8, 2008, the court was informed that the parties had agreed to submit the matter on briefs. Upon respondents' objection thereto, the court allowed respondents six days to respond to such representation. There was no such response, and, by order of April 24, 2008, the court denied having entered such order of April 10, 2008.

II

The court refused to strike the affidavit of one of the respondents, even though it was not properly verified, pursuant to the applicable statute.

III

By order of November 29, 2007, the court allowed respondents additional time in which to inform the court of issues to be tried. There was no compliance.

IV

Respondents agreed that appellant could purchase the real property of the estate at its appraised value. Not being satisfied with appraisal, respondents objected to such sale. Following still another hearing, the court, on February 8, 2008, ordered a new appraisal. In the meantime, respondents had procured an appraisal -- which set a lower figure than that of the appraisal obtained by appellant.

V

The appellant objects to the court's adoption, in its order of July 2, 2008, of ¶3 of the Post-Trial Brief filed by respondents. The paragraph in question reads as follows:

From the date of the decedents' death until the date of the trial April 28, 2008, F. Kim Bailey resided in the Carol Bailey and Francis A Bailey estate home and used the estate real and personal property as his own possessions, including pasturing his horses (up to thirteen (13) horses at various times) on the estate property.

The phrase: "From the date of decedents' death until the date of trial . . ." fails to recognize that appellant moved into his father's home, at his father's request, prior to his father's death. Appellant testified that he moved some of his things into his father's home in May of 2006, at his father's request. Tr Vol.I, p.83,

L. 8-11. Further, appellant stated, “He [Francis A. Bailey] had asked my wife, Bonnie, and I [sic] to move in to take care of the place prior to him even coming home after suffering his strokes. He was worried about vandalism, destruction of property, theft of property, so I did move in at his request.” Id. at L. 11-15. Appellant and his wife actually moved into the home on June 2, 2006. Id. at L 18. In addition, the phrase, “including pasturing his horses (up to thirteen (13) horses at various times) on the estate property” is also deceptive. First, respondents have never established how many horses have been kept at the Bailey home. Under questioning, appellant testified that he had twelve horses at the time of his father’s death. Tr Vol. 1, p.96., L. 9. Appellant stated he kept his horses in a pasture in Shelly, Idaho, from May, until the end of October. Id. at L. 11-13. Before his testimony about the horses was interrupted, appellant did not testify that his father’s home has a pasture. He did not state if he kept horses at his father’s home. He did not indicate the number of horses he kept at his father’s home nor the time he kept horses at his father’s home. In fact, there was no pasture there.

Due to the deceptive language and inaccurate portrayal of facts, the court erred in adopting such paragraph.

VI

Since respondents’ actions have caused the delay in completing distribution of the estate, the court mistakenly blamed appellant for the delay in closing the estate. First, respondents, not appellant, initiated court action in an attempt to prevent his appointment, or to remove appellant as the personal representative.

Second, respondents, and (according to respondents) the U.S. military, are also responsible for the holdup in obtaining the affidavits of Kyle Bailey. While respondent , Kyle Bailey did serve his country in Iraq, he communicated with his siblings and had ample opportunity during his free time, both in Iraq and the United States, to file his affidavit in a timely manner. Tr Vol. I., p. 43, L. 14-25. Appellant should not be held responsible for the delay in Kyle Bailey’s filing of his

affidavit.

Third, respondents caused the impediment of obtaining a reasonable appraisal of the Bailey home. In May or June of 2007, appellant obtained an appraisal from Avery Finance, the financial institution which had prequalified appellant's loan request. Tr Vol. I., p. 91, L. 19-22. Appellant offered to buy the property and end this dispute. Id. at L. 22-23. Respondents did not approve of the appraisal and obtained a second appraisal, which was actually less than the first appraisal. Id. at 23-25. Furthermore, respondents withheld information of the lower appraisal from appellant until February, 2008, causing more delay. Tr Vol. I., p. 92, L. 1-3.

VII

The court erred in determining that appellant occupancy of the real property was unreasonable. Idaho law clearly establishes that a personal representative has a right (and duty) to take possession of the decedent's property.

Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration . . . The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection and preservation of, the estate in his possession.
I.C. § 15-3-709.

In 1972, the Idaho Supreme Court further clarified this statute: ". . . It is clear that an Idaho [personal representative] is entitled to possession of the property of the estate in Idaho until the estate is settled or until the property is

delivered or otherwise disposed of pursuant to an order of the court.” Peterson v. Neal, 94 Idaho 816, 819 (Idaho 1972). While this ruling may be old, Peterson remains the law of the State of Idaho. Under Peterson, therefore, appellant, as Personal Representative, is entitled to possession of the estate until the estate is settled, delivered, or disposed of by court order.

In its Order of July 2, 2008, the court decided that appellant had unreasonably used the property for 22 months, in violation of the law. The court failed to find that the appellant damaged or destroyed any portion of the estate. It reasoned that a prudent personal representative “should have completed his duties in a more timely fashion.” Order p.3 (July 2, 2008). However, as previously argued, appellant, as personal representative, is not liable for the delays caused by respondents. In addition, the uncontradicted testimony of appellant establishes an ongoing need for supervision and management of the property. Appellant testified that the initial reason he moved into the Bailey home prior to his father’s death was that his father “was worried about vandalism, destruction of property, theft of property.” Tr Vol. I, p.83, L. 13-15. Because these threats continue, from respondents and others, appellant has acted as a responsible personal representative, fulfilling his duties under I.C. § 15-3-709, to “take all steps reasonably necessary for the management, protection and preservation of, the estate in his possession.”

Since the estate has not been settled or disposed of by court order, appellant (under Peterson) is entitled to possession of the property, despite 22 months of occupancy. The court erred in determining that his occupancy of the home is unreasonable.

VIII

The court erred in determining that the Bailey estate contains a pasture. Respondents have never established that horses were kept at the Bailey estate. Appellant testified that he had twelve horses at the time of his father’s death. Tr Vol. I, p. 96, L. 9. He did not testify that he kept any horses at

his father's home. Appellant stated he kept his horses in a pasture in Shelly, Idaho, from May, until the end of October. Id. at L 11-13. Before his testimony about the horses was interrupted, appellant did not testify that his father's home has a pasture. Because the court has no basis to determine whether the Bailey estate has a pasture, the court erred by assuming that appellant moved some or all of his horses to a pasture at the Bailey estate.

IX

The court erred in its conclusion that appellant should have concluded his work in 12 months. By statute, a personal representative's duty is to "take all steps reasonably necessary for the management, protection and preservation of, the estate in his possession." § 15-3-709 I.C. Under Peterson, appellant's duty does not end until the estate is "settled or until the property is delivered or otherwise disposed of pursuant to an order of the court." Peterson, 94 Idaho 819.

Appellant took all necessary steps to close the estate, including his work to obtain a loan and his bid to purchase the home at a reasonable price, in June 2007. Tr Vol. I., p. 91, L- 19-23. However, due to respondents' delaying tactics discussed herein, the estate has not been closed.

Until the estate closes, a personal representative is "charged with the fiduciary duty of "taking into his possession all assets of his testator" and is responsible for any loss incurred by his culpable failure to do so." In re Anderton's Estate (Idaho 1946), 67 Idaho 160. If appellant had conformed with the court's arbitrary 12-month deadline, despite respondents delaying tactics, appellant would be liable for all loss and damages incurred after 12-months. In addition, the court should not reward respondents with rent for 10-months resulting from respondents' own delaying actions.

X

The court should not charge appellant rent or pasture fees. In In Re: Estate of Mary Elizabeth Randall, the Idaho Supreme Court compared the

relationship of a personal representative and cotenants as tenants in common. “A tenant in common is entitled to the use and possession of the common property, subject only to the condition that he may not exclude another cotenant from like use and possession.” 64 Idaho 629, 630 (Idaho 1972). “A cotenant in possession is liable for rent only in cases where has leased or let property for profit, in which case he must account for the profits realized.” Id. at 637. [Personal representatives] are not liable for rent for the period of their occupancy.” Id. In Re: Randall remains the law of Idaho. The court erred when it used cases from Indiana and Texas to justify its position that personal representatives should pay rent.

In addition to use, possession, and free rent of the estate property, [a personal representative has] the duty to “take all steps reasonably necessary for the management, protection and preservation of, the estate in his possession.” §15-3-709 I.C. “An Idaho [personal representative] is entitled to possession of the property of the estate in Idaho until the estate is settled or until the property is delivered or otherwise disposed of pursuant to an order of the court.” Peterson, 94 Idaho at 819.

As a cotenant, the personal representative can use the property for his own benefit as long as he does not destroy the estate property, rent the property out to a third party, or unreasonably exclude a cotenant from similar use. However, the personal representative has a higher duty than a cotenant. He must also manage, protect, and preserve the estate.

XI

The uncontradicted affidavit of appellant - - dated May 13, 2008 -- supported by statements from realtors, states that the property could not have been rented without the expenditure of from \$5,000 to \$7,000, on repairs. There was no cash in the estate from which such sum could have been paid.

XII

The law being clear on the point (by statute and Supreme Court

decisions), it should not be necessary to look to the decisions of courts of other states. There are, however, many decisions from other states, concurring with the law in Idaho. Reference is hereby made to some of such decisions:

The personal representative is the legal owner of the estate property. *Murray v. Stuart* (N.Y.), 30 N.Y.S. 2d 870, and *In re Chisholm's Estate* (N.Y.), 37 N.Y.S. 2d 442.

A personal representative is not liable for rent, where he has occupied the realty for the purpose of preserving or protecting it.

In re Ridge's Estate (Cal.) 28 P.2d 705. *In re Catenack's Estate* (Pa.) 117 A. 178; *Cannady v. Kaufmann* (Col.), 142 P. 2d 1027; and *Turner v. Morse* (Mass.), 57 N.E. 2d 18.

[A personal representative] may, in his discretion, take possession of the decedent's real estate during the period of administration for any purpose reasonably related to his fiduciary duties without subjecting the estate for liability for rent to the devisee or heirs. *Estate of Countryman* (Kan.), 494 P.2d 1163, 31 Am. Jur. 2d *Executors and Administrators* § 248, p. 181n. 8.

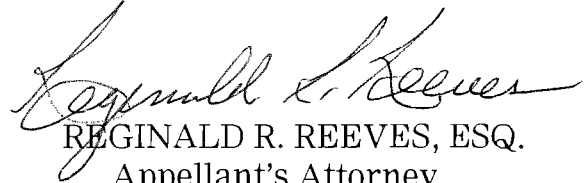
The personal representative [is exonerated from liability] for use or occupancy of real estate where the occupancy was necessary for the benefit of the property. 31 Am. Jur 2d, *supra*.

CONCLUSION

The trial court's failure to follow the directive of Idaho statutory and case law, was improper, and an abuse of discretion. The order requiring

appellant to pay rent and “pasture fees” should be reversed, with fees and costs to appellant.

Respectfully submitted, this November 18, 2008.



REGINALD R. REEVES, ESQ.
Appellant's Attorney
Cambridge Law Center
Idaho Falls, Idaho

CERTIFICATE OF SERVICE
[IRCP 5(f)]

I HEREBY CERTIFY That on this day I served the foregoing upon the designated parties, by faxing a copy to their attorney, as follows:

RESPONDENTS

MICHAEL J. WHYTE, ESQ..
FAX 522.1277

November 18, 2008 M.BIRD

DISTRICT 7TH JUDICIAL COURT
SEVENTH JUDICIAL DISTRICT

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

IN THE MATTER OF THE ESTATES)
OF)
CAROL BAILEY and)
FRANCIS ANDREW BAILEY,)
Deceased.)
_____)

Case No. CV-06-6496

RESPONDENT'S BRIEF

Appeal from the Magistrate's Court of the
Seventh Judicial District of the State of Idaho
in and for Bonneville County

Honorable L. Mark Riddoch, Presiding

REGINALD R. REEVES, ESQ.
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TABLE OF CONTENTS

TABLE OF CONTENT i

TABLE OF CASES & AUTHORITIES ii

STATEMENT OF THE CASE 1

STATEMENT OF FACTS 2

ISSUES PRESENTED ON APPEAL 2

ARGUMENT 3

 I. WHETHER THE COURT ERRED IN DETERMINING THAT THE
 ORDER OF NOVEMBER 29, 2007 BARRED RESPONDENTS FROM
 PROCEEDING 3

 II. APPELLANT ALLEGES THAT THE COURT ERRED IN
 DETERMINING THAT THE FEBRUARY 8, 2008 ORDER DID
 NOT REQUIRE DISMISSAL OF THE PETITIONS 5

 III. APPELLANT ALLEGES THAT THE COURT ERRED
 IN ADOPTING PARAGRAPH 3 OF RESPONDENTS'
 POST-TRIAL BRIEF 5

 IV. APPELLANT ALLEGES THAT THE COURT
 FAILED TO FIND THAT THE RESPONDENTS DELAYED THE
 PROBATE IN THIS MATTER 6

 V. APPELLANT ALLEGES THAT THE COURT ERRED IN
 DETERMINING THE OCCUPANCY OF THE PROPERTY
 WAS UNREASONABLE 7

 VI. APPELLANT ALLEGES THE COURT ERRED IN
 DETERMINING THAT THERE WAS A PASTURE 9

 VII. APPELLANT ALLEGES THE COURT ERRED IN THAT THE
 APPELLANT SHOULD HAVE CONCLUDED HIS DUTIES
 WITHIN 12 MONTHS 9

 VIII. APPELLANT ALLEGES THE COURT ERRED IN
 DETERMINING THE APPELLANT WAS INDEBTED
 TO THE ESTATE 10

 IX. ATTORNEY FEES 10

CONCLUSION 11

TABLE OF CASES & AUTHORITIES

Thomas v. Medical Center Physicians, 138 Idaho 200, 61 P.3d 557 (2002) 3

Black Canyon Racquetball Club, Inc. v. Idaho First National Bank, N.A.,
119 Idaho 171, 804 P.2d 900 (1991) 4

Farmers Insurance Exchange v. Tucker, 142 Idaho 191, 125 P.3d 1067 (2005) 4

Sun Valley Shopping Center, Inc. v. Idaho power Co., 119 Idaho 87, 803 P.2d 993 (1991) .. 4

Idaho Code §15-3-703 7

Idaho Code §15-7-302 7

Idaho Code §15-3-709 7

Estate v. Randall, 64 Idaho 629 (1942) 8, 9

IRCP §12-121 11

STATEMENT OF THE CASE

Respondents agree with Appellant's Statement of the Case except for the following particulars:

A. Respondents deny that after the petition for informal probate was filed, respondents delayed any proceedings.

B. Respondents complied fully with the November 29, 2006 order and filed an Amended Petition on December 4, 2007. This is confirmed as part of the court's July 2, 2008 order.

C. There was no agreement that the appellant could purchase the estate real property until the parties stipulated that the appellant could purchase the property as part of the April 28, 2008 order. Until that time, both the appellant and respondents had expressed an interest in purchasing the estate real property.

D. Contrary to appellant's assertions, respondents fully complied with the court's November 29, 2007 order.

E. Respondents disagree that the April 10, 2008 Pretrial Conference Minute Entry/Order specifically ordered this matter be submitted on briefs. Although appellant asserts the parties had agreed to submit the matter on briefs, there was no such agreement. Based the Court's notes contained in its April 10, 2008 "Pretrial Conference Minute Entry/Order" it is clear that there were several unresolved issues, including, but not limited to whether respondents would agree to appellant's proposal that the outstanding issues be submitted through briefing. However, there are no notes or an order from the Court indicating that respondents stipulated to this proposal. In support of this, the Court clarified its finding in the July 2, 2008 Order and specifically stated that

respondents' attorney had objected to submitting the matter on briefs at the time of the pretrial conference.

STATEMENT OF FACTS

Respondents agree with appellant's statement of facts except for the following:

A. Respondents deny that their motions were the sole cause of any delay and this probate matter.

B. Respondents disagree that they failed to provide affidavits listing the issues in this matter. Respondents contend that they filed all affidavits and documents requested by the court outlining the issues in this matter.

C. Respondents turned over all estate assets which they were required to do. There was a dispute with respect to some of the assets for which respondents requested, and were granted a protective order on July 9, 2007.

D. Respondents deny appellant's allegations that they destroyed appellant's personal property and damaged the estate property, verbally abused and harassed appellant and his family.

E. Respondents disagree that prior to the April 2008 hearing, there was a stipulation that appellant would purchase the property in that respondents had also expressed an interest in purchasing the real property.

F. Respondents deny the allegation that any non-disclosure of an appraisal was done in an attempt to delay closure of this estate.

ISSUES PRESENTED ON APPEAL

The only additional issue to be discussed is the payment of attorney fees on appeal.

ARGUMENT

The first appealed issue is whether the trial court erred in determining that respondents did not comply with the April 24, 2008 Order. The original April 24, 2008 Order states that respondents declined the appellant's proposal to resolve the issues by submission on briefs instead of a trial. The trial Court clarified the April 24, 2008 Order as part of its July 2, 2008 Order, but did not modify that April 24, 2008 Order. Specifically, in the July 2, 2008 Order, the trial Court again stated that no stipulation was reached between the parties to submit this matter solely on briefs. He trial Court further stated that respondents filed a written objection stating the same or similar objections as were expressed during the pretrial. Appellant is mistaken that the notes contained in the April 10, 2008 "Pretrial Conference Minute Entry/Order" required that respondents submit this matter on briefing as opposed to proceeding with the trial. The trial Court notes from that final pretrial conference merely reflect that the submission on briefs was an unresolved issue. Appellant is unable to direct the Court to an actual Order or written stipulation from the respondents that the issues would be submitted on briefs. Therefore, respondents complied with all orders of the court relating to the April 10, 2008 pretrial and any subsequent hearings and this issue should be dismissed.

I. WHETHER THE COURT ERRED IN DETERMINING THAT THE ORDER OF NOVEMBER 29, 2007 BARRED RESPONDENTS FROM PROCEEDING

The hearing which resulted in the November 29, 2007 Order was on Appellant's Motion to Strike an Kyle Bailey's affidavit and on Respondent's motion to file an amended petition. "The grant or denial of leave to amend after a responsive pleading has been filed is a matter that is within the discretion of the trial court and is subject to reversal on appeal only for an abuse of that discretion." *Thomas v. Medical Center Physicians*, 138 Idaho 200, 205, 61 P. 3d 557 (2002); citing

Black Canyon Racquetball Club, Inc., v. Idaho First Nat'l Bank, N.A. 119 Idaho 171, 175, 804 P.2d 900, 904 (1991). "An 'abuse of discretion' standard requires this Court to inquire as to: (1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and, (3) whether the trial court reached its decision by an exercise of reason." *Farmers Insurance Exchange v. Tucker*, 142 Idaho 191, 193, 125 P.3d 1067 (2005); Citing *Sun Valley Shopping Center, Inc. v. Idaho Power Co.*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991).

Likewise it is within the trial Court's discretion to allow other pleadings, including the Affidavit of Kyle Bailey. The November 29, 2007 Order denied appellant's request to strike the affidavit of Kyle Bailey. This affidavit provided information that the personal representative was failing to complete his duties as required by law and was abusing his powers as the personal representative and using the estate property for his own benefit. This information was later used by the trial Court to reach its decisions as outlined in the July 2, 2008 Order. The trial Court granted respondent's motion to file an amended petition so long as that was done by December 4, 2008. The record is clear that the amended petition was filed on December 4, 2007. The trial Court properly used its discretion and acted within its discretion to allow the amended petition and therefore, there was no error by the trial Court with respect to the November 29, 2007 Order.

**II. APPELLANT ALLEGES THAT THE COURT ERRED
IN DETERMINING THAT THE
FEBRUARY 8, 2008 ORDER DID NOT REQUIRE
DISMISSAL OF THE PETITIONS**

The basis of the hearing on February 5, 2008 which resulted in the February 8, 2008 Order was Respondents' motion for temporary orders. The trial Court order states that the parties agreed to each submit three qualified appraisers and the court would appoint one of those appraisers from the candidates submitted. It was also ordered that the parties attend mediation and that the respondents have an opportunity to go on the real property for the purposes of conducting an inspection and inventory of said property. There is no reference by the trial Court regarding dismissal of any petition if respondents failed to comply with the February 8, 2008 Order. Even if there was such a reference, the trial Court stated in its July 2, 2008 Order, that respondents had complied with the directive to submit nominations for the appraisers; that the respondent had complied with the directive for inspection of the estate property; and had attempted mediation as ordered. Therefore, the court did not err with respect to anything requested of it leading up to the February 8, 2008 order and following the February 2008 conclusions.

**III. APPELLANT ALLEGES THAT THE COURT ERRED
IN ADOPTING PARAGRAPH 3 OF RESPONDENTS'
POST-TRIAL BRIEF**

Appellant claimed that the phrase "from the date of decedent's death until the date of trial..." fails to recognize the appellant moved into the father's home prior to the father's death. The trial Court committed no error in adopting this phraseology as it accurately reflects the circumstances. Regardless of whether the appellant was residing at the decedent's home prior to death, it does not alter the condition, status or ownership of the property. The real property was owned by decedent

at the time of his death. Appellant residing there with permission does not alter that. At the time of Francis Bailey's death, the property then belonged to the estate. The probate court does not have any jurisdiction over the property and the disposition of the property prior to the decedent's death and the opening of a probate cause. The adoption of the language "from the date of decedent's death until the date of trial..." was accurate, and therefore the trial Court did not error in the use of that language.

**IV. APPELLANT ALLEGES THAT THE COURT
FAILED TO FIND THAT THE RESPONDENTS
DELAYED THE PROBATE IN THIS MATTER**

Part of appellant's allegation is that respondents unduly delayed providing affidavits, specifically an affidavit from Kyle Bailey, who was serving in the U.S. military. Appellant attempted to strike Kyle Bailey's affidavit by motion. In the trial Court's November 29, 2007 Order, it allowed that affidavit. Contained in Kyle Bailey's affidavit and Kerry Bailey's affidavit were statements that the appellant had not taking any action to vacate the real property nor purchase the property. (Kerry Bailey's affidavit ¶3; Kyle Bailey's affidavit ¶3). Kerry Bailey further stated by affidavit that the estate home and property had been damaged and had fallen into disrepair since the appellant took control (Kerry Bailey's affidavit ¶5); that he had attempted to contact appellant to discuss and resolve issues, but that appellant would not return telephone calls (Kerry Bailey's affidavit ¶7); and that appellant had refused to account for the safe deposit box contents and to allow respondents to acquire their personal property still located at decedent's home (Kerry Bailey's affidavit ¶ 8,9, 10). The trial Court further had testimony from Curtis Boarn, the Court appointed appraiser about the general state of the real property at the time the appraisal was completed. The trial Court evaluated this information along with the limited testimony provided at the April 2008

hearing and concluded that appellant did not administer the estate in a timely manner. There was sufficient information for the trial Court to rely on and therefore did not error in its conclusions.

**V. APPELLANT ALLEGES THAT THE COURT ERRED IN
DETERMINING THE OCCUPANCY OF THE PROPERTY
WAS UNREASONABLE**

Idaho Code §15-3-703 governs the duties and behaviors of the personal representative.

A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by Section 15-7-302 of this Code. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this Code, and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this Code, the terms of the will, if any, and any order in proceedings to which he is a party for the best interests of the successors of the estate.

Idaho Code 15-3-703

Idaho Code §15-7-302 states as follows:

“Except as otherwise provided by the terms of the trust, the trustee shall observe the standards in dealing with the trust assets that would be observed by a prudent man dealing with the property of another, and if the trustee has special skills or is named trustee on the basis of representation of special skills or expertise, he is under a duty to use those skills.”

There is no dispute that the personal representative occupied the decedent's home prior to decedent's death. However, upon the decedent's death, and upon appellant's application to be appointed as personal representative, the decedent's property did not transform to the appellant's personal property, but remained estate assets over which appellant had a duty to administer the estate "...as expeditiously and efficiently as is consistent with the best interests of the estate." Idaho Code §15-3-703.

Nor is it disputed that the personal representative has a right to take possession and control of decedent's property pursuant to the powers outlined in Idaho Code §15-3-709. However, this control and possession is not unlimited. The personal representative does not need to occupy the estate real property to establish control over the assets. Nonetheless, if the personal representative does occupy and control the assets, as happened in this case, the control and occupancy is limited so long as the personal representative is duly and regularly administering the estate of the heirs. *Estate of Randall*, 64 Idaho 629, 637 (1942). The affidavits in the Court file and testimony available to the trial Court clearly outlines appellant's inactivity as well as the damage and disrepair to the property following the appellant control (Kerry Bailey's affidavit ¶3, ¶5, ¶8, ¶9 and ¶10; Kyle Bailey's affidavit ¶2, ¶5, ¶9 and ¶10). Neither the appellant's inactivity nor the damage caused during his occupation should be ignored when evaluating whether the appellant was duly and regularly administering the estate and whether he was acting as a prudent man would have acted in dealing with the property of another. The trial Court had possession of this information at the time it entered the July 2008 Order that appellant had unreasonably occupied the decedent's real property.

An additional factor to be considered is that the heirs of the estate are tenants in common. "It is an established rule in this state, as well as elsewhere, that a tenant in common is entitled to the use and possession of the common property, subject only to the condition that he may not exclude another cotenant from like use and possession." *Id.* at 636. Under such joint tenancy, all tenants are entitled to use and possession so long as no other co-tenant is excluded from similar use and possession. The affidavits available to the trial Court outlined the appellant's refusal to allow the other heirs access to information and to the property. (Kerry Bailey's affidavit ¶2, ¶7, ¶8, ¶10 and ¶11; Second Affidavit of Kerry Bailey ¶3; Kyle Bailey's affidavit ¶2, ¶8, ¶10 and ¶11). Although

the appellant had the initial right to occupy and control the property, the evidence before the Court determined that the appellant was not administering his duties and that he had precluded the respondents from like use and possession. The trial Court had sufficient information before it to determine that the appellant's continued occupation was unreasonable under the circumstances.

**VI. APPELLANT ALLEGES THE COURT ERRED IN
DETERMINING THAT THERE WAS A PASTURE**

The affidavit testimony provided by respondents is contrary to this allegation. Specifically, Kyle Bailey's affidavit paragraph 4 and Kerry Bailey's affidavit paragraph 4 both state that appellant was maintaining up to 13 horses on this property. The court had sufficient evidence to reach its conclusion and therefore there was no error.

**VII. APPELLANT ALLEGES THE COURT ERRED IN
THAT THE APPELLANT SHOULD HAVE CONCLUDED
HIS DUTIES WITHIN 12 MONTHS**

As indicated earlier, it is not disputed that the personal representative can occupy and possess the decedent's property during the probate process. Again, however, that control is not unlimited and must be done as a prudent man dealing with the property of another would act. Idaho Code §15-7-302. Additionally, the personal representative is allowed the control and occupancy so long as he is duly and regularly administrating the estate for the heirs. *Randall* at 637. The trial Court in this matter determined from the evidence available to it that there was unauthorized personal use of the appellant during the 22 months leading up to the stipulation that he purchase the property. Based on the court's review of the evidence, it determined that appellant did not duly and regularly administer the duties after 12 months. Therefore, the court did not err in its determination under these factual circumstances that had the appellant acted as a reasonably prudent person in similar

circumstances, his duty would have been concluded within 12 months and therefore any occupancy after that time was unreasonable.

VIII. APPELLANT ALLEGES THE COURT ERRED IN DETERMINING THE APPELLANT WAS INDEBTED TO THE ESTATE

With respect to the amount the trial Court awarded in rental payments, the affidavit testimony provided by respondents was that a fair market rental was in the amount of \$800.00 per month for the residence and \$200.00 per month for the pasture. (Second Affidavit of Kerry Bailey ¶6) The trial court, after reviewing all the information presented to it, determined that instead of adopting respondents' rental values, it reduced the fair rental value to \$700.00 per month, and the pasture fee to \$200.00 per month. The basis for this determination was the trial Court's finding was the same for prior issues in that appellant failed to timely administer the estate and had precluded respondent's access to the estate property. Therefore, the trial court did not make any errors in making this determination.

IX. ATTORNEY FEES

Appellant has unreasonably brought this appeal and has unreasonably outlined several issues which clearly were within the discretion of the trial court and without providing any specific information as to why the court abused its discretion with respect to those matters. With respect to the other issues on appeal, specifically whether the appellant was required to pay any rental fee to the estate, the court had sufficient information to reach its conclusions that the appellant was not fulfilling his duties as the personal representative and therefore reasonably determined that his occupancy of the real property was unreasonable and he was required to reimburse the estate for his

inactivity. Because of those reasons, respondents believe they are entitled to attorney fees and costs on this appeal under Idaho Rule of Civil Procedure §12-121 and respectfully request the court to enter such order.

CONCLUSION

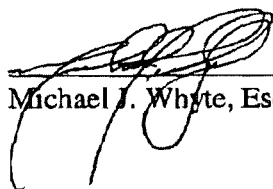
The trial court did not make any errors with respect to any pretrial proceedings. Appellant mistakenly made arguments that respondents did not comply with the court's orders; however, the trial court outlined in its July 2, 2008 order these same issues and provided evidence as to respondents' compliance.

Similarly, the trial court given all the information presented to it in court pleadings and affidavits as well as the testimony provided at the April 2008 hearing, reached a reasonable conclusion that the appellant was not fulfilling his duties as the personal representative as required by statute and therefore was required to reimburse the estate for his personal use of the decedent's property. Based on these things, respondents respectfully request the court dismiss this appeal and appellant take nothing thereby.

DATED this 16th day of December, 2008.

THOMSEN STEPHENS LAW OFFICES, PLLC

By:



Michael J. Whyte, Esq.

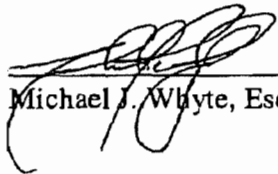
CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the 16th day of December, 2008, I caused a true and correct copy of the foregoing **RESPONDENTS' BRIEF** to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon or by hand delivering or by transmitting by facsimile as set forth below.

REGINALD R REEVES
690 CAMBRIDGE DRIVE
PO BOX 1841
IDAHO FALLS ID 83403
FAX: 522-2516

Mail
 Hand Delivery
 Facsimile

THOMSEN STEPHENS LAW OFFICES, PLLC

By: 
Michael J. Whyte, Esq.

MJW:clm
6186047 Respondents' Brf

2005-11-10 12

Michael J. Whyte, Esq., ISB #4645
THOMSEN STEPHENS LAW OFFICES, PLLC
2635 Channing Way
Idaho Falls ID 83404
Telephone (208)522-1230
Fax (208)522-1277

Attorneys for Kerry L. Bailey, Kyle Bailey, and Tamara Lee Bailey Sipe

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

IN THE MATTER OF THE ESTATES)
OF)
)
CAROL BAILEY and)
FRANCIS ANDREW BAILEY,)
)
Deceased.)
_____)

Case No. CV-06-6496

MINUTE ENTRY

This matter having come before the court on Petitioners' Amended Petition for Distribution and the Personal Representative's Motion to Strike the Amended Petition for Distribution. Present at the hearing was Personal Representative and his attorney of record, Reginald R. Reeves. Also present were the petitioners, represented by Kerry Bailey, and their attorney of record Michael J. Whyte.

1. As a preliminary matter, the Personal Representative noted for the court that the amended petition filed by petitioners was filed after the Personal Representative filed an answer to the original petition. No leave to amend the petition pursuant to Idaho Rules of Civil Procedure

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15(a) and 12(h) was filed. Therefore, as of this hearing, the court orders the amended petition be stricken.

2. The court finds that sufficient notice was provided under petitioners' notice of hearing to proceed with the hearing on petitioners' original petition filed in this matter.

3. The court determined that it needed a clearer statement with respect to the partial stipulation as listed in the court's July 2, 2008 order. Therefore, it is ordered that the stipulation be transcribed and provided to the parties.

4. The court further indicated it needed better clarification on the authority for the court to proceed with petitioners' petition while this matter is pending appeal. It may be necessary to seek leave of the appellate court for the trial court to proceed if petitioners file an amended petition.

5. The court finds that sufficient notice and sufficient argument was made by petitioners for leave to amend their original petition in this matter. The court grants leave to file an amended petition. If petitioners file an amended petition, and attach a letter from the attorney for personal representative previously referenced as "Exhibit A" to the original petition, petitioner must redact paragraph 3 in said exhibit as said paragraph dealt with an offer of settlement and compromise and is not admissible.

DATED this 17 day of December, 2008.



Honorable L. Mark Riddoch

APPROVED AS TO FORM AND CONTENT:

Reginald R. Reeves, Esq.

CLERK'S CERTIFICATE OF MAILING

I certify that I am the duly elected and qualified Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville; that I mailed [or delivered by courthouse box] a copy of the foregoing **MINUTE ENTRY** to the following attorneys this 17 day of December, 2008.

REGINALD R REEVES
PO BOX 1841
IDAHO FALLS ID 83403

MICHAEL J WHYTE ESQ
THOMSEN STEPHENS LAW OFFICES, PLLC
COURTHOUSE BOX

Clerk

By:  _____

Deputy Clerk

MJW:clm
6186\PLEADINGS OURS\046 Minute Entry

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

IN THE MATTER OF THE ESTATES OF)
)
CAROL BAILEY and) Case No. CV-06-6496
FRANCIS ANDREW BAILEY,)
) MINUTE ENTRY
Deceased.)
_____)

On the 8th day of January, 2009, oral argument on appeal came before the Honorable Joel E. Tingey, District Judge, in open court at Idaho Falls, Idaho.

Mr. Jack Fuller, Court Reporter, and Mrs. Marlene Southwick, Deputy Court Clerk, were present.

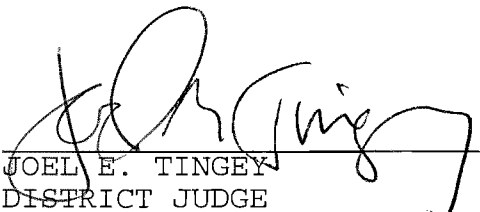
Mr. Reginald Reeves appeared on behalf of the Petitioners.

Mr. Michael Whyte appeared on behalf of the Respondents.

Mr. Reeves presented Petitioner's argument on appeal. Mr. white presented Respondent's argument on appeal. Mr. Reeves presented rebuttal argument.

The Court will take the matter under advisement and issue an opinion as soon as possible.

Court was thus adjourned.


JOEL E. TINGEY
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 8 day of January, 2009, I caused a true and correct copy of the foregoing document to be delivered to the following:



Deputy Court Clerk

Reginald R. Reeves
PO Box 1841
Idaho Falls, ID 83403

Michael J. Whyte
Brian L. Boyle
2635 Channing Way
Idaho Falls, ID 83404

9 JAN 15 01:24

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

<p>IN THE MATTER of the Estates of</p> <p>CAROL BAILEY and FRANCIS ANDREW BAILEY,</p> <p>Deceased.</p>	<p>Case No. CV-06-6496</p> <p>DECISION ON APPEAL</p>
--	---

This matter comes before the Court on the appeal of the Personal Representative Kim Bailey (P.R.), with respect to a decision by the magistrate assessing rental charges against the P.R.

I. FACTUAL AND PROCEDURAL BACKGROUND

Carol Bailey died on April 11, 1998. Decedent Francis A. Bailey died on September 22, 2006. Survivors and heirs of the couple were their children, F. Kim Bailey, Kerry L. Bailey, Kyle J. Bailey and Tamara Lee Bailey Sipe.

Prior to the death of Francis Bailey, Kim Bailey resided in the Estate's home with Francis Bailey. Following the death of Francis Bailey, Kim Bailey filed a petition for informal probate of the Estate and was appointed as the personal representative. Pursuant to the wills of the decedents, the children were to share equally in the Estate with the exception of some specific bequeaths of some personal property. While there was some

dispute among the P.R. and heirs on how to liquidate the real property, the Parties eventually entered into an agreement in April, 2008, whereby the P.R. purchased the property for \$129,000. That purchase price and the subsequent distribution is not at issue.

The other children however continued to claim that the P.R. owed the Estate for the fair rental value of the real property inasmuch as the P.R. lived on the property following the death of Francis Bailey. Those heirs also claimed that the P.R. was using the property to pasture his horses and the P.R. should also be subject to a monthly pasture fee.

A trial on the disputed issues was held on April 28, 2008. Following the trial, the magistrate entered its Order on July 2, 2008, concluding that the P.R. "should have completed his duties in this estate within 12 months". The magistrate ruled that from September 1, 2007 through the date of the Order, the P.R. was obligated to the Estate for \$700 a month as a fair rental value and \$200 a month as a pasture fee, for a total of \$9,900. The gist of the appeal in this matter is the P.R.'s challenge to the magistrate's ruling and conclusion.

II. STANDARD OF REVIEW

The district court must review a magistrate judge's decision on appeal upon the same standards of review as an appeal from the district court to the Idaho Supreme Court. *Winn v. Winn*, 101 Idaho 270, 272, 611 P.2d 1055, 1057 (1980). Rulings by the magistrate that are discretionary are reviewed based on an abuse of discretion standard.

The trial court's decision will not be overturned absent an abuse of discretion. *Roberts v. Roberts*, 138 Idaho 401, 403, 64 P.3d 327, 329 (2003). An abuse of discretion does not exist if the trial court (1) recognizes the issue as one of discretion, (2) acts within the limits of discretion and consistently with the legal standards that apply, and (3) reaches the conclusion through an exercise of reason. *Roberts*, 138 Idaho

at 403, 64 P.3d at 329 citing *Sun Valley Shopping Ctr. v. Idaho Power Co.*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991).

Navarro v. Yonkers, 144 Idaho 882, 173 P.3d 1141, 1144 (2007).

In reviewing factual findings of the magistrate, this court on appeal does not reweigh the evidence, but rather determines whether the evidence presented at trial was substantial and competent to sustain the magistrate's findings:

It is well established that appellate courts in Idaho do not reweigh evidence. See, e.g., *State v. Doe*, 143 Idaho 383, 388, 146 P.3d 649, 654 (2006). Instead, we defer to the trial court's unique ability to "accurately weigh the evidence and judge the demeanor of the witnesses" and take into account the trial court's "superior view of the entire situation." *Doe*, 133 Idaho at 809, 992 P.2d at 1209 (citations omitted).

State v. Doe, 144 Idaho 839, 172 P.3d 1114 (2007).

Where the magistrate's findings of fact are supported by substantial and competent evidence, even if the evidence is conflicting, the magistrate's decision will not be disturbed on appeal. *Stonecipher v. Stonecipher*, 131 Idaho 731, 734, 963 P.2d 1168, 1171 (1998).

Brinkmeyer v. Brinkmeyer, 135 Idaho 596, 21 P.3d 918, 920 (2001).

As to conclusions of law, the appellate court exercises free review over the trial judge's conclusions of law. *Opportunity, L.L.C. v. Ossewarde*, 136 Idaho 602, 605, 38 P.3d 1258, 1261 (2002).

III. ANALYSIS

A. Procedural Rulings

In his brief on appeal, the P.R. assigns as error a number of procedural rulings by the magistrate such as continuances, additional time to submit filings, requiring a trial as opposed to submitting the case on the briefs, etc. These alleged errors were not particularly argued at the time of oral argument. In any event, this Court finds that the

magistrate had discretion to determine the process by which the disputed issues would be resolved, and this Court finds no abuse of discretion in such rulings.

B. Legal Conclusions

Again, the primary issue in this appeal is whether the magistrate erred in determining that the P.R. was subject to rental charges after twelve months on the property. As noted by the magistrate, Idaho law places a fiduciary obligation on the P.R. to settle the estate as quickly as possible. Idaho Code § 15-3-703 states as follows:

A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by section 15-7-302 of this code. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate.

The P.R. argues that he, as the P.R., had a right an absolute right to possession of the property unfettered by any time constraints. This Court can not agree with such a proposition.

Again, §15-3-703 places a duty on a P.R. to settle the estate expeditiously. Failure to do so subjects the P.R. to a number of possible consequences. As acknowledged by the P.R., violation of the statute may be grounds for removal of the P.R. In this case, it would also be appropriate to require the P.R. to return to the Estate any benefit gained by the P.R. from the unreasonable delay.

The magistrate's conclusion that §15-3-703 authorized the magistrate to assess rental charges against the P.R. was not in error.

C. Findings of Fact

As previously set out, the magistrate's findings of fact will not be set aside if the findings are supported by substantial and competent evidence. The P.R. challenges the

magistrate's findings on that the grounds that (1) delays in settling the estate were due to the actions of the other heirs for which the P.R. should not be penalized and (2) the magistrate's findings as to a fair rental value is not supported by the evidence.

With regard to the alleged delays in settling the estate, the magistrate was in a position to consider the progress of the probate of the estate and determine, under all the circumstances, what would have been a reasonable time to settle the Estate. To suggest that the magistrate, in determining a twelve month period, did not consider any delays caused by any party would require sheer speculation. Instead, a fair reading of the magistrate's order indicates he considered all applicable factors in determining that twelve months was a reasonable time to settle the estate, and that after that time the P.R. was gaining a personal benefit for which reimbursement to the Estate was proper.

Additionally, evidence indicated that shortly after the P.R.'s appointment, he refused access by the other heirs to the property, refused to distribute personal property as agreed by the P.R. and heirs, and refused to keep the other heirs informed as to his efforts to settle the Estate. Affidavit of Kerry Bailey, March 15, 2007; Affidavit of Kyle Bailey, September 11, 2007; Affidavit of Kyle Bailey, October 29, 2007.¹ The affidavits further indicated that the P.R. was keeping horses on the property, which would purely be a benefit to the P.R. Pasturing horses on the property has nothing to do with the P.R.'s duties to settle the Estate.

This evidence supports the magistrate's conclusion that after twelve months, the P.R. was gaining personally by residing on the property for which the Estate was entitled

¹ The P.R. sought to strike the first affidavit of Kyle Bailey on the grounds that it was not signed in the presence of a notary. The magistrate denied that motion. The second affidavit of Kyle Bailey contained the same information as the first affidavit, with no question as to it being properly executed. The second affidavit was proper and contained admissible evidence and to the extent the magistrate erred in not striking the first affidavit, such was harmless error.

to receive rental payments. Indeed, this Court finds, based upon the record, that such a finding was supported by substantial and competent evidence.

Again, the magistrate found that a fair rental value after the twelve month period was \$700 a month. Following the trial in this matter, the magistrate allowed the Parties to supplement the record by affidavit as to fair rental/pasture values in the event the court assessed the P.R. for such rental values. The P.R. subsequently submitted an affidavit indicating that rental value for the property would be \$600 to \$750 once repairs were made to the property. Significantly, the Respondents filed a "Post Trial Brief" wherein their counsel represented that affidavit testimony from Kerry Bailey set out values for rental of the house and pasture and then identifying those alleged values in the brief. The magistrate thereafter referred to such values in determining the rental value.

However, this Court has been unable to find any such affidavit or testimony in the record.² Inasmuch as the magistrate relied upon representations of counsel regarding rental values as opposed to actual evidence, the magistrate's determination of rental value can not stand. While there may be evidence in the record by which the magistrate could determine a fair rental value, it can not be based upon the representations made in Respondents' post trial brief. Furthermore, this Court finds that while there is evidence of the P.R. pasturing horses on the Estate property, there is no evidence as to a fair pasture fee. The P.R. can not be assessed a pasture fee.

IV. CONCLUSION

It is possible that the referenced testimony of Kerry Bailey is in fact part of the record, despite this Court's inability to locate it. The Parties shall have fourteen days

² The March 15, 2007 affidavit of Kerry Bailey does not give any opinion as to rental values. The case docket does not reflect any other affidavit of Kerry Bailey.

from service of this Decision in which to file pleadings identifying the alleged testimony and directing the Court to it.

Unless this Decision is thereafter withdrawn or modified pursuant to the above referenced supplemental pleadings, the decision and order of the magistrate is affirmed in part and reversed in part. This matter shall be remanded to the magistrate to determine a fair rental value, if any, as to the Estate property, not to include a pasture fee, based upon evidence in the record.

IT IS SO ORDERED.

DATED this 15 day of January, 2009.


JOEL E. TINGEY
DISTRICT JUDGE

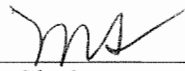
CERTIFICATE OF SERVICE

I hereby certify that on this 15 day of January, 2009, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be hand-delivered.

Reginald R. Reeves
CAMBRIDGE LAW CENTER
Box 1841
Idaho Falls, ID 83403

Michael J. Whyte
THOMSEN STEPHENS
2635 Channing Way
Idaho Falls, ID 83404

RONALD LONGMORE
Clerk of the District Court
Bonnevill County, Idaho

By 
Deputy Clerk

BONNEVILLE COUNTY
IDAHO
2009 JAN 30 AM 10:05

Brian L. Boyle, Esq.
THOMSEN STEPHENS LAW OFFICES, PLLC
2635 Channing Way
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Telephone (208) 522-1230
Fax (208) 522-1277
ISB # 6233

Attorneys for Kerry L. Bailey and Kyle Bailey

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

IN THE MATTER OF THE ESTATES)
OF)
CAROL BAILEY and)
FRANCIS ANDREW BAILEY,)
Deceased.)
_____)

Case No. CV-06-6496

SECOND
AFFIDAVIT OF KERRY L. BAILEY

STATE OF IDAHO)
) ss.
County of Bonneville)

Kerry L. Bailey, being first duly sworn upon oath, deposes and says:

1. I am the petitioner in this matter and I have personal knowledge of the matters stated herein.

2. I reaffirm and restate all items in the Affidavit of Kerry L. Bailey signed by me on March 13, 2007 and filed with the court in connection with the Renewed Petition for Supervised Probate filed with the Court on March 15, 2007. This affidavit, in addition to my original affidavit (attached hereto as Exhibit 1) is offered in support of the Renewed Petition for Supervised Probate

as well as in support of the Motion to Require the Sale of Estate Property; for Unpaid Rent; and for Removal of Personal Representative filed with this Affidavit.

3. All of the allegations and facts made in such Affidavit are still true and have not changed in the past months. Especially the fact that the personal representative continues to remain in the home without paying rent, pasturing his horses and forbidding any meaningful access to the home of the deceased.

4. Attached is a true and correct copy of a professional appraisal I requested and paid for attached hereto as Exhibit 2. According to the appraisal, the home is worth approximately \$110,000. In addition, attached hereto is a document I received from the Bonneville County Assessor which has assessed the home and property at \$128,839. A true and correct copy of the form received from Bonneville County is attached hereto as Exhibit 3. With these in mind, I am willing to average the two values and purchase the estate home for \$120,000. These funds are readily available and closing can occur as soon as fourteen (14) days or as soon as the purchase documents can be prepared. While the personal representative has also indicated his willingness to purchase the home, he has indicated that he would like to pay much less for the home than \$120,000 and, in addition, has had complete access to the home since my father's death in September, 2006 and, rather than accomplish his desire to purchase the home, has merely elected to live in the home at the expense of the estate and the heirs. It is my opinion that he has had sufficient opportunity to do so if he were able and/or willing to purchase the home.

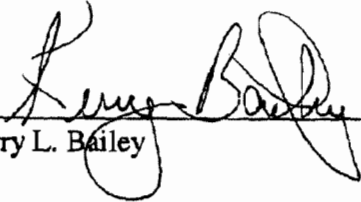
5. If the personal representative does wish to purchase the home for less than \$120,000, he does so solely for his own benefit. Therefore, in order to maximize the value of the estate in the event that the personal representative does wish to sell the home to me for the same price as listed

above, I believe it would be fair for the Court to order that the home be sold to the party, family member or third party, that is willing to pay the most for the home. Specifically, for lack of a better term, that a private auction be held with the family members and the party that is willing to pay the highest price for the home should be allowed to do so. However, the party that submits the highest bid must have funds available and be ready to close within thirty (30) days from the date that the highest bidder is identified. If the highest bidder is unable to close within thirty (30) days, then the home should be sold to the next highest bidder that is able to accomplish the purchase within thirty (30) days after it is determined that the highest cannot make the purchase.

6. With regard to the personal representative remaining in the home without the payment of rent, this cannot continue and rent for past months since the death of my father should be reimbursed to the estate. Based on my research, a similar residence would receive a fair market rent of \$800 per month and pasturage of his horses on similar property would cost approximately \$200 per month. Therefore, as of the date of this affidavit, the personal representative should reimburse the estate for \$1,000 per month starting on September 6, 2006 which would amount, including the month of August 2007, to twelve months of rent for the home and pasturage, or \$12,000.

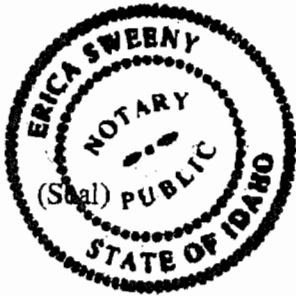
7. Finally, due to the lack of diligence, self-serving actions of the personal representative, and other failures to perform as required in his capacity, I also believe that the personal representative should be removed and that I should be named personal representative in his place. As personal representative, I would expeditiously and correctly administer the estate.

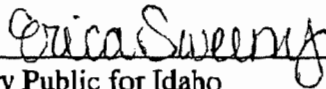
DATED this 2nd day of August, 2007.



 Kerry L. Bailey

SUBSCRIBED AND SWORN to on oath before me this 2nd day of August, 2007.





 Notary Public for Idaho
 Residing at Idaho Falls, Idaho
 My Commission Expires: 4-19-2010

CERTIFICATE OF SERVICE


I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the ____ day of August, 2007, I caused a true and correct copy of the foregoing **AFFIDAVIT OF KERRY L. BAILEY** to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon or by hand delivering or by transmitting by facsimile as set forth below.

REGINALD R REEVES
690 CAMBRIDGE DRIVE
PO BOX 1841
IDAHO FALLS ID 83403
FAX: 522-2516

Mail
 Hand Delivery
 Facsimile
 Courthouse Box

THOMSEN STEPHENS LAW OFFICES, PLLC

By:



Brian L. Boyle, Esq.

Brian L. Boyle, Esq.
THOMSEN STEPHENS LAW OFFICES, PLLC
2635 Channing Way
Idaho Falls, ID 83404
Telephone (208) 522-1230
Fax (208) 522-1277
ISB # 6233

FILE COPY

Attorneys for Kerry L. Bailey and Kyle Bailey

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

IN THE MATTER OF THE ESTATES)
OF)
)
CAROL BAILEY and)
FRANCIS ANDREW BAILEY,)
)
Deceased.)
_____)

Case No. CV-06-6496

AFFIDAVIT OF KERRY L. BAILEY

STATE OF IDAHO)
) ss.
County of Bonneville)

Kerry L. Bailey, being first duly sworn upon oath, deposes and says:

1. I am the petitioner in this matter and I have personal knowledge of the matters stated herein.
2. Upon my father's death in September of 2006, my siblings and I (consisting of all heirs under my father's will), met and performed an inventory of our father's property in anticipation of the probate of his will. All of us, including my brother, the personal representative, created the inventory and agreed upon its contents and distribution consistent with my father's will. Since that time, the personal representative has refused to recognize or honor the inventory, the distribution of

347



property under the will, and has prevented any of us from having any access to the property itself and has not provided us with any information regarding his responsibilities regarding the distribution of the property under the will.

3. Since my father's death in September 2006, the personal representative (Kim) has taken up residence in my father's home and has not made any indication that he intends to vacate the premises, purchase the premises, or any other acceptable solution with regard to the home. At the very least, he should be paying fair market value rent to the estate of my father for the months since October and for each and every month he is in the home until final resolution of the estate is accomplished.

4. Further, he is keeping thirteen horses on the property without paying any pasture fees or rents to the estate. In any event, the property and pasture is not large enough to handle so many horses and they are damaging the property due to over-grazing and use.

5. There is significant cleaning, upkeep, necessary maintenance and repairs that need to be made to the property to get it ready for sale. I regularly drive past the house and stop in to check on it and rather than getting it ready for sale, the home is falling into a greater state of uncleanliness and disrepair. In fact, since the personal representative took up residence in the home, there has been significant damage to it, including but not limited to a large hole in the garage door that has come into existence only since the personal representative took up residence in the home.

6. My brother, Kyle, has given me power of attorney to speak on his behalf in this matter because he has been deployed to Iraq, and, due to the difficulties of communication and logistics, wishes that I take care of his affairs while he is overseas. A true and correct copy of the executed Power of Attorney is attached hereto as Attachment 2. Kyle is also very concerned about the lack

of proper execution of duties as personal representative on the part of Kim and would like to see more accountability be placed upon him.

7. I have attempted to contact the personal representative to resolve this matter peaceably and within the family, but he refuses to call me back or provide any meaningful updates with regard to the probate proceedings. Co-representatives, court supervised or dismissal of personal representative due to lack of keeping other three siblings up-to-date on the estate and not getting estate ready for sale. I have called Kim (the personal representative) many times and left messages and Kim has not returned any calls. I have no interest in harassing him or keeping him from performing his duties as personal representative in any way, but would like and have the right to know what is going on as an heir and interested party.

8. It is my desire, and the desire of my other non-personal representative siblings, that the probate proceedings take place smoothly, in a manner absolutely consistent with the will and desires of my father. However, it has become increasingly clear that Kim has no interest in performing his duties as personal representative. Rather, it is my opinion based on his behavior, including but not limited to moving into the home for what appears to be indefinitely and refusing to allow any of the other siblings and heirs any access or provide meaningful information, he is taking advantage of his position as personal representative as a way to take a disproportionate share of the estate's assets at the expense of the other heirs and the estate.

9. Another example of my concern is a safe deposit box in which my father kept an extensive rare coin collection along with other important and valuable items. Kim has refused to account for the whereabouts of such items and does not appear to have any intention of accounting for such items.

10. Also, there are many items that belong to my brother, Kyle, and/or me that were being kept at my father's home. These items are listed in Attachment 1, attached hereto. Kim has prevented us any access to such items.

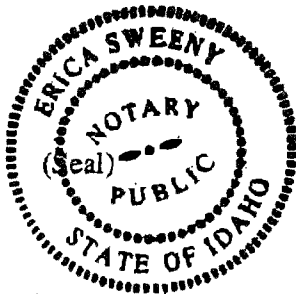
11. Further, it is part of the healing process for the children to be able to get inside the house and clean it and get it ready for the sale. We would like to help him with the performance of his duties as personal representative in part to make sure that my father's wishes are followed but also as a way to get some closure and be able to begin the healing process from the deep absence left in each of us by our father's death. Thus far, we have been denied under the guise of Kim's power as personal representative, from being able to go through that part of the healing process for reasons that appear to be solely for his own self-serving and disingenuous purposes.

12. Therefore, at the very least, it is clear to me that the probate of my father's estate should at the very least be supervised by the Court to make sure that the personal representative is performing his duties consistent with his legal and ethical responsibilities.

DATED this 13th day of March, 2007.

Kerry L. Bailey
Kerry L. Bailey

SUBSCRIBED AND SWORN to on oath before me this 13th day of March, 2007.



Erica Sweeny
Notary Public for Idaho
Residing at Idaho Falls, Idaho
My Commission Expires: 4-19-2010


CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the 15th day of March, 2007, I caused a true and correct copy of the foregoing AFFIDAVIT OF KERRY L. BAILEY to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon or by hand delivering or by transmitting by facsimile as set forth below.

REGINALD R REEVES
690 CAMBRIDGE DRIVE
PO BOX 1841
IDAHO FALLS ID 83403
FAX: 522-2516

- Mail
- Hand Delivery
- Facsimile
- Courthouse Box

THOMSEN STEPHENS LAW OFFICES, PLLC

By: 
Brian L. Boyle, Esq.

BLB:es
6186006 Aff KLB

Attachment 1

Miscellaneous items of Kerry's and Kyle's on the estate:

- 1977 Blazer
- Six vehicle doors
- Two small block motors
- Two bumpers
- Two grills
- Four doors
- Ten tires and wheels
- Three tailgates
- Miscellaneous car parts outside
- Kyle's bedroom closet has intake, model cars, etc.

**SPECIAL POWER OF ATTORNEY
(GIVING AND GRANTING)**

PREAMBLE: This is a **MILITARY POWER OF ATTORNEY** prepared pursuant to Title 10, United States Code, § 1044b, and executed by a person authorized to receive legal assistance from the military services. Federal law exempts this power of attorney from any requirement of form, substance, formality, or recording that is prescribed for powers of attorney by the laws of a state, the District of Columbia, or a territory, commonwealth, or possession of the United States. Federal law specifies that this power of attorney shall be given the same legal effect as a power of attorney prepared and executed in accordance with the laws of the jurisdiction where it is presented.

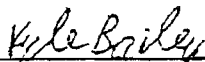
KNOW ALL PERSONS: That I, **KLYE J. BAILEY** ("Grantor" or "Principal"), currently residing at 1372 E TANNERS CREEK DRIVE #6 NORFOLK, VA 23513 by this document do make and appoint **KERRY L. BAILEY** ("Grantee", "Agent" or "Attorney in Fact"), whose address is 341 4TH STREET IDAHO FALLS, ID 83401 as my true and lawful attorney-in-fact to act as follows, **GRANTING** unto my said Attorney full power to:

I, **KYLE BAILEY** GIVE **KERRY BAILEY** PERMISSION TO SIGN MY NAME TO ANY AND ALL DOCUMENTS REQUIRED FOR THE INHERITANCE PROPERTY AND REPRESENT ME ON MY BEHALF.

TERMINATION: This power shall remain in full force and effect until 20 FEBRUARY 2008, unless sooner revoked or terminated by me.

Notwithstanding my insertion of a specific expiration date herein, if on the above specified expiration date I shall be, or have been, carried in a military status of "missing", "missing-in-action" or "prisoner of war", then this power of attorney shall automatically remain valid and in full effect until sixty (60) days after I have returned to the United States Military control following termination of such status. This power of attorney shall not be affected by the disability of the Grantor or Principal.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this day, 20 FEBRUARY 2007.




Grantor's Signature

ACKNOWLEDGEMENT BY NOTARY PUBLIC

WITH THE UNITED STATES ARMED FORCES, SS.

At the Naval Legal Service Mid-Atlantic Branch Office Oceana, Virginia Beach, Virginia, the foregoing instrument was acknowledged before me by **KLYE J. BAILEY** on 20 FEBRUARY 2007. I do further certify that I am a person in United States Armed Forces authorized the general powers of a Notary public under Title 10 U.S.C. 1044a and JAGMAN Chapter IX.

NO SEAL REQUIRED



MICHAEL J. HUSSEY, LT, JAGC, USN

UNIFORM RESIDENTIAL APPRAISAL REPORT

File No. 06627

Property Address: 4673 South 10th West, City: Idaho Falls, State ID, Zip Code 83401
Local Jurisdiction: SW 1/4, SW1/4, Section 26, Township 2 North, Range 21
Assessor's Parcel No.: RP 02437E36621R
Year Built: 2006, S.F. Total: 873.62

Location: Urban, Growth rate: Rapid, Property value: Increasing, Demand/supply: Shortage, Marketing time: Under 3 mos.
Specialty features: None, Present land use %: 100% Residential, Land use change: Not likely

Notes: None and the racial composition of the neighborhood are not appraisal factors.
Neighborhood trends and characteristics: The subject neighborhood is a western edge of Idaho Falls south of Sunnyside Road, east of Highway 20, west of 5th West, and north of 8th South.
Factors that affect the marketability of the property in the neighborhood (proximity to employment and amenities, employment stability, appeal to market, etc.): The subject neighborhood is mainly commercial/industrial. There are developing subdivisions, agricultural lands, and residential properties in the neighborhood.

Market conditions in the subject neighborhood (including support for the above conclusions related to the trend of property values, demand/supply, and marketing time - such as data on comparable properties for sale in the neighborhood, duration of the prevalence of sales and financing concessions, etc.): Market conditions appear average for the area. Most types of financing are available. Conventional financing appears most prevalent.
Financing concessions are not typical. Market appears to be active with steady interest rates. There appears to be no regional obsolescence affecting the subject property. Property values appear stable. Supply and demand appear in balance. Homes in the area vary in size, design, and value.

Project information for HUDs (if applicable) - Is it a development in control of its Home Owners' Association (HOA)? Yes
Approximate total number of units in the subject project: 1
Approximate total number of units for sale in the subject project: 1

Describe current, planned, and potential utilities:
Dimensions: From legal, Site area: .86 Acres, Corner Lot: Yes
Topography: Level, Site: Typical for Area, Shape: Rectangular, Drivage: Appears adequate, View: Homes, Commercial, Landscaping: Adequate, Driveway Surface: Concrete, Apparent easements: None apparent, FEMA Special Flood Hazard Area: No, FEMA Zone: C, Map Date: 11/4/1981, FEMA Map No.: 1501270230C

Table with columns: GENERAL DESCRIPTION, EXTERIOR DESCRIPTION, FOUNDATION, ROOFING, INSULATION, REGISTRATION. Rows include: No. of Units, No. of Stories, Type (Det/Att), Design (Style), Ceiling/Flooring, Age (Yrs), (Selling) Age (Yrs).

Table with columns: ROOMS, Type, Area, Date, Material, Sex, Siding, Fin., Bathrooms, # Baths, Laundry, Other, Area Sq. Ft. Rows include: Basement, Level 1, Level 2.

Finished area where code exists: 4 Rooms, 2 Bathrooms, 1 Entry, 1,098 Square Feet of Gross Living Area.
Interior: Floors: Carpet/Vinyl, Walls: Drywall, Trim/Finish: Wood, Bath Floor: Vinyl, Bath Wainscot: Marble, Doors: HC, W/D/A.
Kitchen: Type: FA, Fuel: Gas, Cooktop: Avg, Cooling: None, Other: None.
Bathroom: Relights: P, Range/Oven: P, Sinks: None, Drop Sill: None, Scaff: None, Floor: None, Heat: None, Wash/Dry: None.
Attic: None, Scaff: None, Floor: None, Heat: None.
Basement: None, Scaff: None, Floor: None, Heat: None.
Garage: None, Attached: 2, Detached: None, Built-in: None, Carpet: None, Other: None.

Additional features (special energy efficient items, etc.): Electric water heater, Rear patio and deck, Fireplace, Shed, Garage has electric opener.

Condition of the improvements, depreciation (physical, functional, and external), repairs needed, quality of construction, remedial actions, etc.: Condition of the improvements is average. Mold in bathroom due to limited ventilation. Damage in basement shown. Other areas of home showing signs of wear. Floor coverings are dated. Overall condition of home appears average.

Adverse environmental conditions (such as, but not limited to, hazardous wastes, toxic substances, etc.) present in the improvements, on the site, or in the immediate vicinity of the subject property: No adverse environmental conditions noted or observed in the improvements, on the site, or on the area of the subject property.



UNIFORM RESIDENTIAL APPRAISAL REPORT

File No. 05837

Table with columns for Estimated Site Value, Estimated Reproduction Cost Less of Improvements, and Depreciation. Includes sub-totals for Physical and Functional depreciation.

Main comparison table with columns for Subject, Comparable No. 1, 2, and 3. Rows include Address, Location, Features, and Value Adjustments.

Comments on Sales Comparison (including the subject property's comparability to the neighborhood, etc.)

Table with columns for Item, Subject, and Comparables No. 1, 2, and 3. Rows include Date, Price and Date, and Source.

INDICATED VALUE BY SALES COMPARISON APPROACH

INDICATED VALUE BY INCOME APPROACH (if Applicable)

Final Reconciliation: The Sales Comparison Approach best indicates the market value of the subject.

The purpose of this appraisal is to estimate the market value of the real property that is the subject of this report.

APPRaiser information including name, date, and state certification details.

353

**UNIFORM RESIDENTIAL APPRAISAL REPORT
MARKET DATA ANALYSIS**

These recent sales of properties are most similar and proximate to subject and have been considered in the market analysis. The description includes a dollar adjustment reflecting market reaction to those items of significant variation between the subject and comparable properties. If a significant item in the comparable property is superior to, or more favorable than, the subject property, a minus (-) adjustment is made, thus reducing the indicated value of the subject. If a significant item in the comparable is inferior to, or less favorable than, the subject property, a plus (+) adjustment is made, thus increasing the indicated value of the subject.

ITEM	SUBJECT	COMPARABLE NO.	COMPARABLE NO.	COMPARABLE NO.
Address	4873 South 15th West Idaho Falls	255 South 45 West Idaho Falls		
Proximity to Subject		4.07 miles NW		
Sales Price	\$ N/A	\$ 118,900	\$	\$
Price/Gross Living Area	\$ /	\$ 114.33 /	\$ /	\$ /
Data and/or Verification Sources	Inspection	MLS/Drive-By		
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION +(-)\$ Adjust.	DESCRIPTION +(-)\$ Adjust.	DESCRIPTION +(-)\$ Adjust.
Sales or Financing Concessions		FHA Typical		
Date of Sale/Time		6-07/8 Days		
Location	Rural	Rural		
Leasehold/Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Site	.88 Acre	1 Acre -1,400		
View	Hrs, Cmnrd	Homes, Ag Land		
Design and Appeal	Ranch	Ranch		
Quality of Construction	Brick	Vinyl Siding		
Age	48 Years	33 Years -1,500		
Condition	Average	Average		
Above Grade Room Count	Total Bdrms, Baths 4 2 1	Total Bdrms, Baths 5 3 1 -2,000	Total Bdrms, Baths	Total Bdrms, Baths
Gross Living Area	1,098 Sq. Ft.	1,040 Sq. Ft. +600	Sq. Ft.	Sq. Ft.
Basement & Finished Rooms Below Grade	1,098/549 Fmr, Bdr, Bth	1040/0 Unfinished +2,200		
Functional Utility	Average	Average	Average	Average
Heating/Cooling	Gas FA/None	Elec/None		
Energy Efficient Items	Average	Average		
Garage/Carport	2 Att. Garage	Onsite Parking +4,000		
Porch, Patio, Deck, Fireplace(s), etc.	Patio, Deck, FP, Shed +3,500	None		
Fence, Pool, etc.	Average	Average	Average	Average
Net Adj. (total)		+ \$ 5,400		
Adjusted Sales Price of Comparable		Net 4.5 % Gross 12.8 % \$ 124,300	Net % Gross % \$	Net % Gross % \$
Date, Price and Data Source for prior sales within year of appraisal	None for past three years.	None for past year.		

Comments: Four sales were considered in support of the value estimate. Due to limited sales, larger than typical adjustments were indicated and sales over 6 months old were considered. No time adjustment indicated.

Supplemental Addendum

File No. 06837

Borrower				
Property Address 4673 South 15th West				
City	Idaho Falls	County	Bonneville	State ID Zip Code 83401
Lender/Client Kerry Bailey				

This report is in compliance with USPAP and is a complete summary report. No departure has been invoked. No extraordinary assumptions or hypothetical conditions have been made or included in this report.

This report was ordered by the client listed on the URAR for the intended use of estimating the fair market value for the client listed on the URAR. The original client listed on the URAR is the only authorized user. The client is permitted use of this appraisal to establish the fair market value for listing or selling the subject on the real estate market. All other users, and uses are unintended and unauthorized by the appraiser.

The highest and best use box on the URAR has been checked as present use. The site is best used as a single family residential home.

The exposure time on the subject is the estimated length of time the property interest appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal. This is based on analysis of market trends and assuming a competitive and open market. The estimated exposure time for this property is 90 to 180 days.

If an electronic signature is contained in this report, it was placed by the appraiser (or upon his authorization) who has the sole personalized identification number and control of affixing the signature. This signature represents the appraiser's authentic signature and should be accepted as an original signature.

Adverse Environmental Conditions

If the home was built prior 1978, this may indicate a lead paint hazard.

Comments: Square footage of improvements is approximate.

Subject Photo Page

Parcel					
Property Address: 4873 South 15th West					
City	Idaho Falls	County	Bonneville	State ID	Zip Code 83401
Parcel/Owner	Kerry Bailey				



Subject Front

4873 South 15th West
 Sale Price 12A
 Gross Living Area 1,068
 Total Rooms 4
 Total Bedrooms 2
 Total Bathrooms 1
 Location Rural
 Year Built 1968, Corrected
 Size 88 Acres
 Quality Brick
 Age 48 Years



Subject Rear



Subject Street

PHOTOGRAPH ADDENDUM

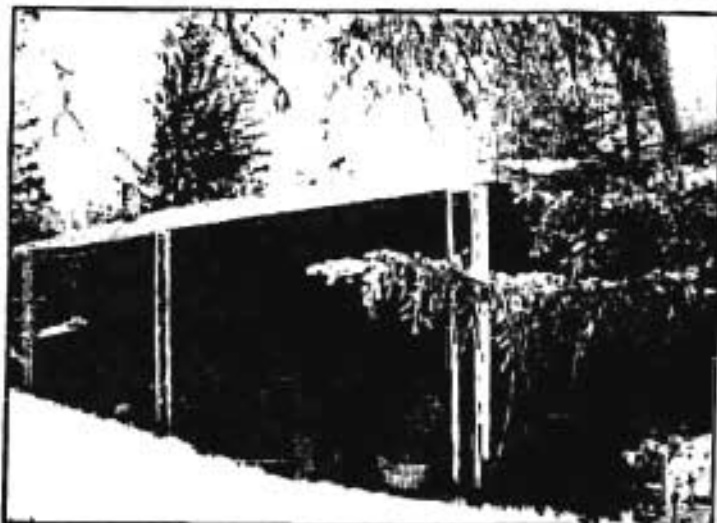
Boschman				
Property Address 4873 South 15th West				
City	Idaho Falls	County	Bonneville	State ID Zip Code 83401
Lender/Clerk	Kerry Bailey			



FRONT VIEW OF SUBJECT PROPERTY



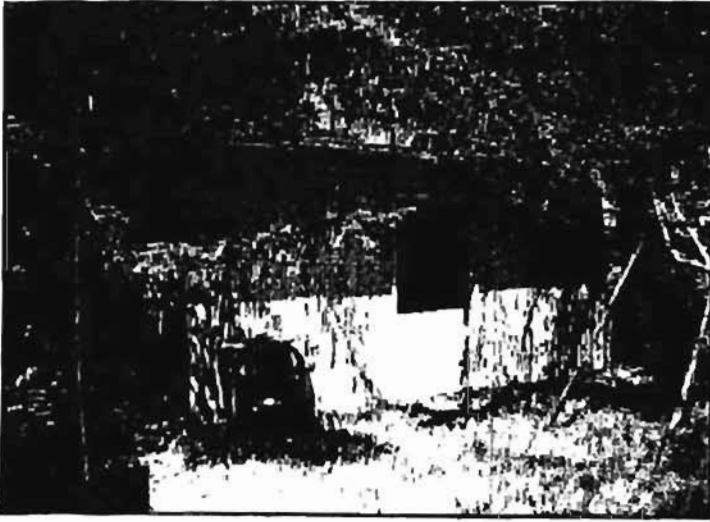
REAR VIEW OF SUBJECT PROPERTY



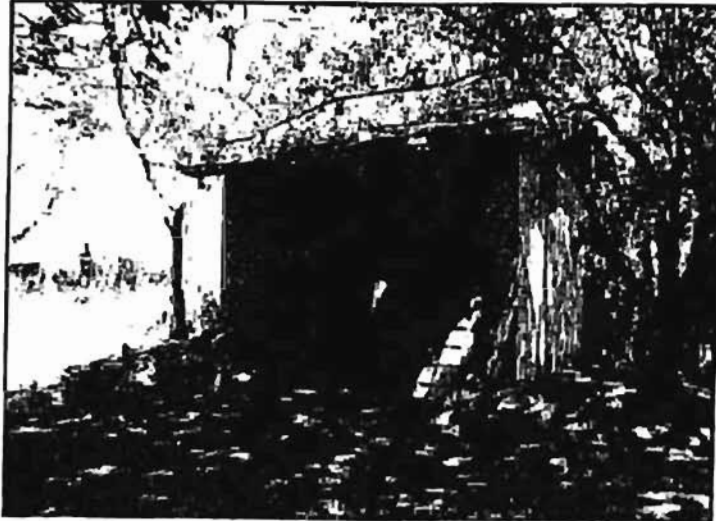
REAR VIEW OF SUBJECT PROPERTY

PHOTOGRAPH ADDENDUM

Borrower				
Property Address 4873 South 15th West				
City	Idaho Falls	County	Bonneville	State ID Zip Code 83401
Lender/Client	Kerry Bailey			



SHED



SHED

Photograph Addendum

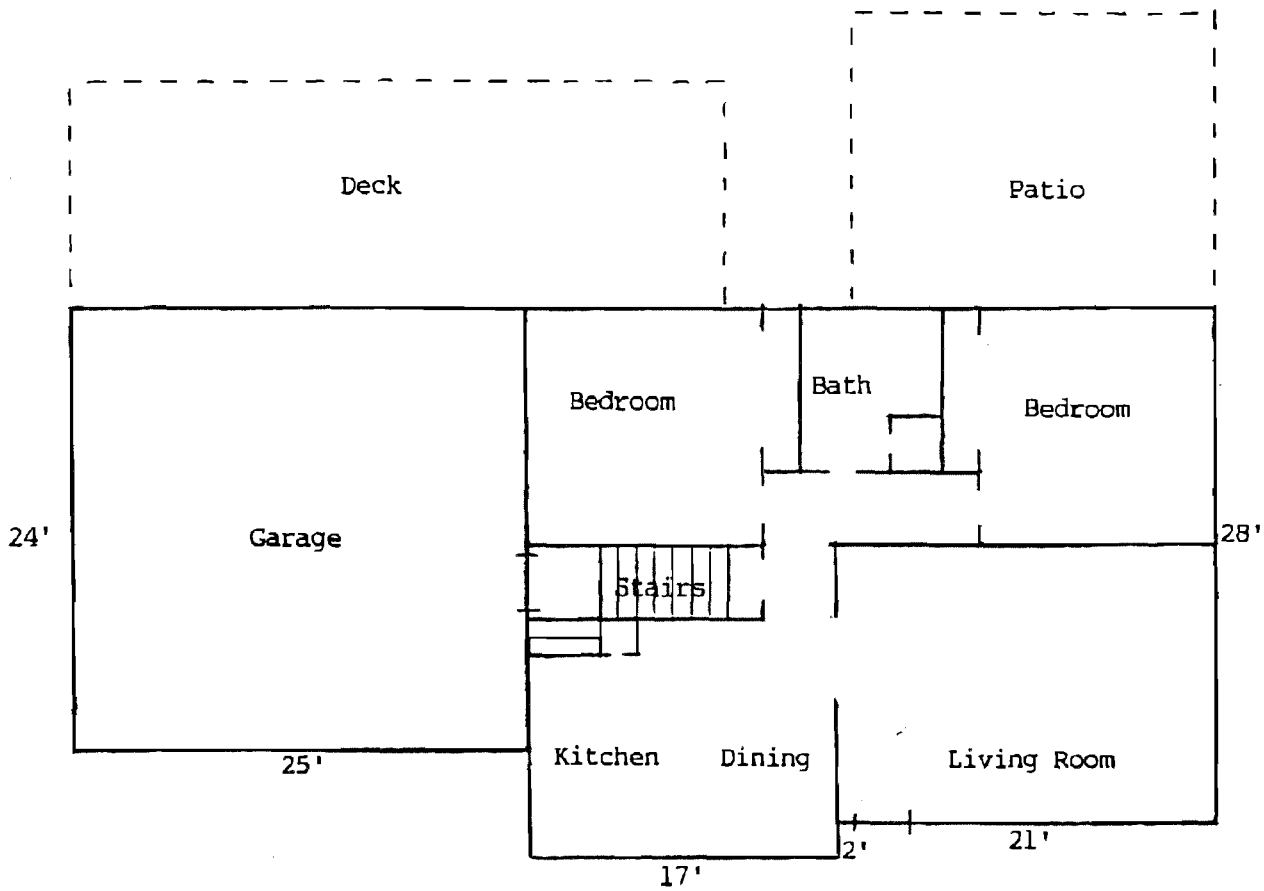
Borrower				
Property Address 4673 South 15th West				
City	Idaho Falls	County	Bonneville	State ID Zip Code 83401
Lender/Client Kerry Bailey				



VIEW OF REAR PROPERTY

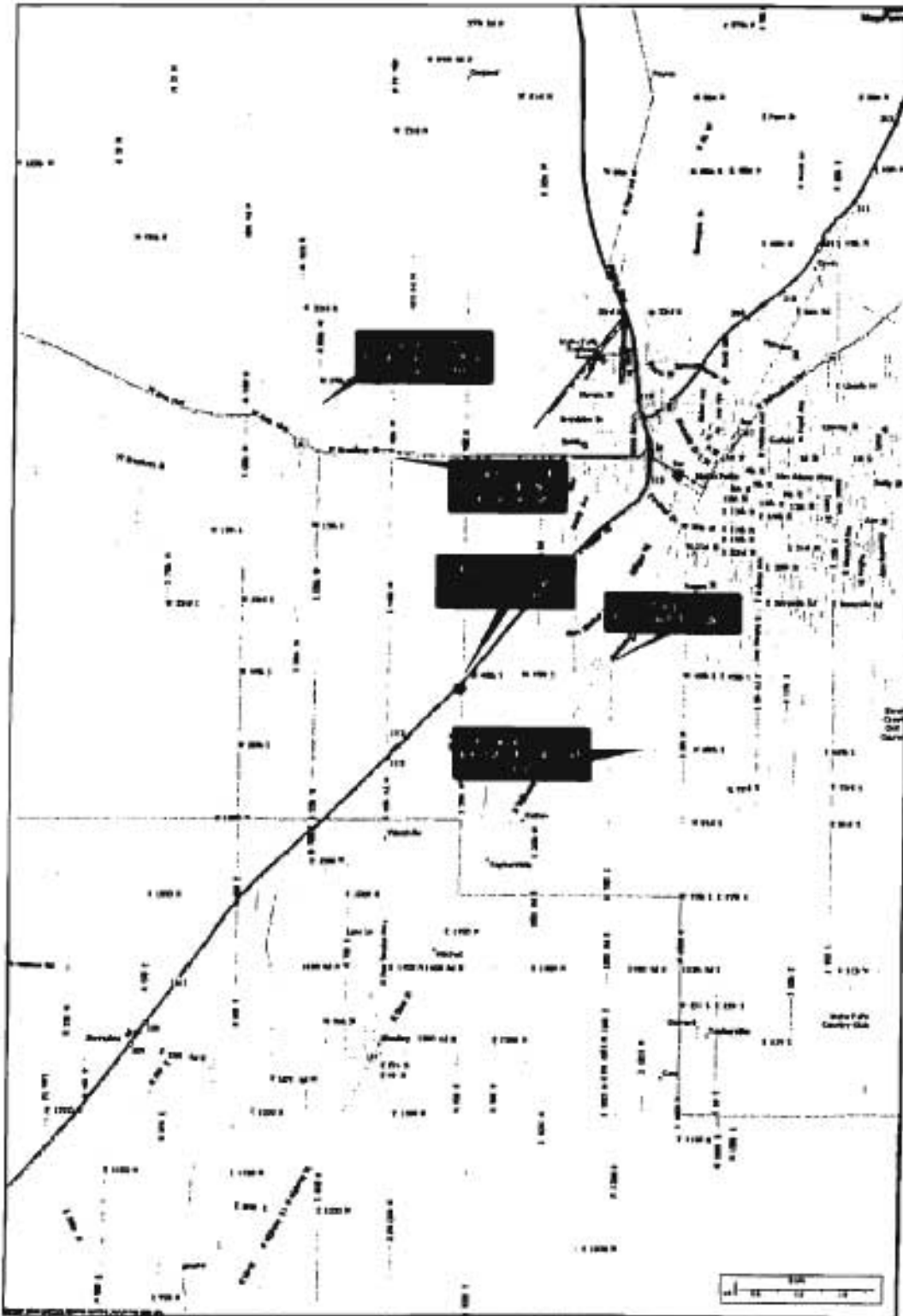


STREET SCENE



Location Map

Borrower				
Property Address 4873 South 15th West				
City	Idaho Falls	County	Bonneville	Zip Code 83401
Lender/Client Kerry Bailey				



Comparable Photo Page

Borrower				
Property Address	4873 South 15th West			
City	Idaho Falls	County	Bonneville	State ID Zip Code 83401
Lender/Client	Kerry Bailey			



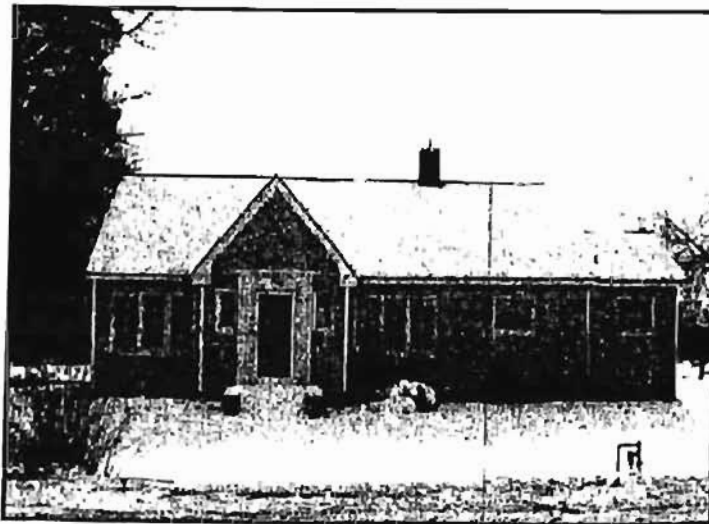
Comparable 1

4831 South 35th West
 Prox. to Subject 1.99 miles W
 Sale Price 120,500
 Gross Living Area 1,204
 Total Rooms 5
 Total Bedrooms 3
 Total Bathrooms 1
 Location Rural
 View Homes, Ag Land
 Site 1.18 Acre
 Quality Stucco
 Age 76 Years



Comparable 2

1234 North 55th West
 Prox. to Subject 5.28 miles NW
 Sale Price 149,000
 Gross Living Area 1,300
 Total Rooms 4
 Total Bedrooms 2
 Total Bathrooms 1
 Location Rural
 View Homes, Ag Land
 Site 5 Acres
 Quality Vinyl Siding
 Age 64 Years

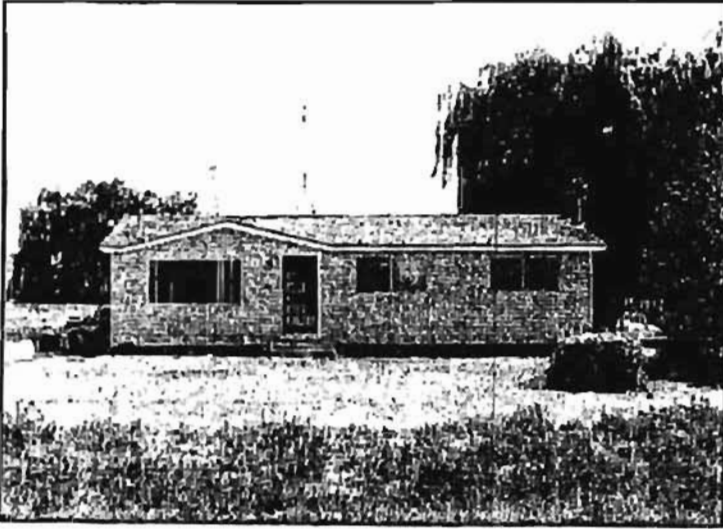


Comparable 3

1061 West 85th South
 Prox. to Subject 1.27 miles SE
 Sale Price 124,900
 Gross Living Area 1,228
 Total Rooms 5
 Total Bedrooms 3
 Total Bathrooms 1
 Location Rural
 View Homes, Ag Land
 Site 5.68 Acres
 Quality Vinyl Siding
 Age 83 Years

Comparable Photo Page

Borrower				
Property Address 4873 South 15th West				
City	Idaho Falls	County	Bonneville	State ID Zip Code 83401
Lender/Client	Kerry Baley			



Comparable 4

255 South 45 West
 Prox. to Subject 4.07 miles NW
 Sale Price 118,900
 Gross Living Area 1,040
 Total Rooms 5
 Total Bedrooms 3
 Total Bathrooms 1
 Location Rural
 View Homes, Ag Land
 Site 1 Acre
 Quality Vinyl Siding
 Age 33 Years

Comparable 5

Prox. to Subject
 Sale Price
 Gross Living Area
 Total Rooms
 Total Bedrooms
 Total Bathrooms
 Location
 View
 Site
 Quality
 Age

Comparable 6

Prox. to Subject
 Sale Price
 Gross Living Area
 Total Rooms
 Total Bedrooms
 Total Bathrooms
 Location
 View
 Site
 Quality
 Age

DEFINITION OF MARKET VALUE: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he considers his own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffacted by special or creative financing or sales concessions* granted by anyone associated with the sale.

*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgement.

STATEMENT OF LIMITING CONDITIONS AND APPRAISER'S CERTIFICATION

CONTINGENT AND LIMITING CONDITIONS: The appraiser's certification that appears in the appraisal report is subject to the following conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.
2. The appraiser has provided a sketch in the appraisal report to show approximate dimensions of the improvements and the sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size.
3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.
5. The appraiser has estimated the value of the land in the cost approach at its highest and best use and the improvements at their contributory value. These separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used.
6. The appraiser has noted in the appraisal report any adverse conditions (such as, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property or adverse environmental conditions (including the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.
7. The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.
8. The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice.
9. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that completion of the improvements will be performed in a workmanlike manner.
10. The appraiser must provide his or her prior written consent before the lender/client specified in the appraisal report can distribute the appraisal report (including conclusions about the property value, the appraiser's identity and professional designations, and references to any professional appraisal organizations or the firm with which the appraiser is associated) to anyone other than the borrower, the mortgagee or its successors and assigns; the mortgage insurer; consultants; professional appraisal organizations; any state or federally approved financial institution; or any department, agency, or instrumentality of the United States or any state or the District of Columbia; except that the lender/client may distribute the property description section of the report only to debt collection or reporting service(s) without having to obtain the appraiser's prior written consent. The appraiser's written consent and approval must also be obtained before the appraisal can be conveyed by anyone to the public through advertising, public relations, news, sales, or other media.

APPRAISER'S CERTIFICATION: The Appraiser certifies and agrees that:

1. I have researched the subject market area and have selected a minimum of three recent sales of properties most similar and proximate to the subject property for consideration in the sales comparison analysis and have made a dollar adjustment when appropriate to reflect the market reaction to those items of significant variation. If a significant item in a comparable property is superior to, or more favorable than, the subject property, I have made a negative adjustment to reduce the adjusted sales price of the comparable and, if a significant item in a comparable property is inferior to, or less favorable than the subject property, I have made a positive adjustment to increase the adjusted sales price of the comparable.
2. I have taken into consideration the factors that have an impact on value in my development of the estimate of market value in the appraisal report. I have not knowingly withheld any significant information from the appraisal report and I believe, to the best of my knowledge, that all statements and information in the appraisal report are true and correct.
3. I stated in the appraisal report only my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the contingent and limiting conditions specified in this form.
4. I have no present or prospective interest in the property that is the subject to this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or the estimate of market value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property.
5. I have no present or contemplated future interest in the subject property, and neither my current or future employment nor my compensation for performing this appraisal is contingent on the appraised value of the property.
6. I was not required to report a predetermined value or direction in value that favors the cause of the client or any related party, the amount of the value estimate, the attainment of a specific result, or the occurrence of a subsequent event in order to receive my compensation and/or employment for performing the appraisal. I did not base the appraisal report on a requested minimum valuation, a specific valuation, or the need to approve a specific mortgage loan.
7. I performed this appraisal in conformity with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place as of the effective date of this appraisal, with the exception of the departure provision of those Standards, which does not apply. I acknowledge that an estimate of a reasonable time for exposure in the open market is a condition in the definition of market value and the estimate I developed is consistent with the marketing time noted in the neighborhood section of this report, unless I have otherwise stated in the reconciliation section.
8. I have personally inspected the interior and exterior areas of the subject property and the exterior of all properties listed as comparables in the appraisal report. I further certify that I have noted any apparent or known adverse conditions in the subject improvements, on the subject site, or on any site within the immediate vicinity of the subject property of which I am aware and have made adjustments for these adverse conditions in my analysis of the property value to the extent that I had market evidence to support them. I have also commented about the effect of the adverse conditions on the marketability of the subject property.
9. I personally prepared all conclusions and opinions about the real estate that were set forth in the appraisal report. If I relied on significant professional assistance from any individual or individuals in the performance of the appraisal or the preparation of the appraisal report, I have named such individual(s) and disclosed the specific tasks performed by them in the reconciliation section of this appraisal report. I certify that any individual so named is qualified to perform the tasks I have not authorized anyone to make a change to any item in the report; therefore, if an unauthorized change is made to the appraisal report, I will take no responsibility for it.

SUPERVISORY APPRAISER'S CERTIFICATION: If a supervisory appraiser signed the appraisal report, he or she certifies and agrees that: I directly supervise the appraiser who prepared the appraisal report, have reviewed the appraisal report, agree with the statements and conclusions of the appraiser, agree to be bound by the appraiser's certifications numbered 4 through 7 above, and am taking full responsibility for the appraisal and the appraisal report.

ADDRESS OF PROPERTY APPRAISED: 4873 South 15th West, Idaho Falls, ID 83401

APPRAISER:

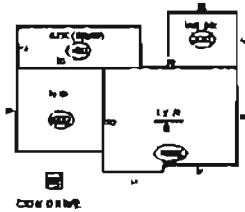
Signature: Curtis J. Boam
 Name: Curtis J. Boam
 Date Signed: July 02, 2007
 State Certification #: CGA-51
 or State License #: _____
 State: ID
 Expiration Date of Certification or License: 11/9/2007

SUPERVISORY APPRAISER (only if required):

Signature: _____
 Name: _____
 Date Signed: _____
 State Certification #: _____
 or State License #: _____
 State: _____
 Expiration Date of Certification or License: _____

Did Did Not Inspect Property

Parcel	Land	Value	Sketch	Improv	Images	Comp
Parcel Information						
Parcel ID:	RFD02N37E36S219	Air PIN:	IDAHO FALLS			
Parcel Parcel		City:	IDAHO FALLS			
Jurisdiction:	ID	Section/Plat:				
Area:	0.01	Routing Number:				
District:	011-08	Assess. Parcel:				
Owner Information			Parcel Address			
BAILEY FRANCIS A.			#673 S 15TH W IDAHO FAL..			
44573 S 15TH W			IDAHO FALLS, ID 83402			
IDAHO FALLS, ID 83402						
Certified Values						
Valuation Method:	Trended	Land:	\$20,500			
Proposed Date:	5/16/2007	Building:	\$108,339			
Change Reason:	Trend	Total:	\$128,839			
Effective Date:	01/01/2007					
Notice Period:	NEEDED					
Current Transfer Info						
Grantor:		Date:		Book:	Page:	Value:
Current Land Info						
Acres:	0.06	Legal Sq Feet:	0			
Legal Description:						
.86 A SW1/4 SW1/4, SEC 36, T 2N, R 37						



000



1809 East 17th Street
Idaho Falls, Idaho 83404
(208) 535-0799
Fax (208) 552-6816

Jan 29 2009 16:49

Thomson Stephens Law Office 208-522-1277

March 11, 2008

To Whom It May Concern:

I (Risa Trane) have viewed the home located at 4673 S. 15th West in Idaho Falls, ID.

This home would rent for \$750.00 as is unfurnished. For a furnished home it would rent for \$900.00.

I consider this home to be a 3 bedroom, 1 ½ bath. The bathroom downstairs shower is not functional as it is filled with storage items.


Risa Trane

096

P.32

Curtis Boam & Associates

REAL ESTATE APPRAISALS

560 3rd Street
Idaho Falls, ID 83401
Phone (208) 528-9200
Fax: (208) 528-9204

Curtis J. Boam
General Certified Appraiser

e-mail: curtisboam@cableone.net

March 20, 2008

Kerry Bailey
351 4th Street
Idaho Falls, ID 83401

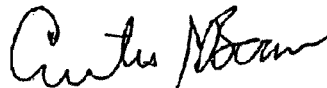
RE: 4673 South 15th West
Idaho Falls, ID
Frances Bailey Estate

Dear Mr. Bailey:

As requested, I have researched the market for horse pasture rent. Rents were indicated from \$100 to as high as \$170 per month per horse. This varied depending on who maintained the fences and corrals and if feed was included. No firm pattern was indicated from the information obtained. You indicate that there is approximately .25 acre of pasture on the above referenced property. From information obtained from the research above, this would be inadequate to support the boarding of one horse for an entire season without some additional supplemental feed. Any more horses than that, the property would mainly be a corral.

The above information was obtained from people in the area that board and stable horses. This survey was made by phone with people involved with the facilities. If there are any questions or if more information is needed, please contact me.

Sincerely,



Curtis J. Boam
Appraiser

CJB:df

BONNEVILLE COUNTY
IDAHO

2009 JAN 30 AM 10:23

Michael J. Whyte, Esq., ISB #4645
THOMSEN STEPHENS LAW OFFICES, PLLC
2635 Channing Way
Idaho Falls ID 83404
Telephone (208)522-1230
Fax (208)522-1277

Attorneys for Kerry L. Bailey, Kyle Bailey, and Tamara Lee Bailey Sipe

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

IN THE MATTER OF THE ESTATES)
OF)
CAROL BAILEY and)
FRANCIS ANDREW BAILEY,)
Deceased.)
_____)

Case No. CV-06-6496

AFFIDAVIT OF MICHAEL J. WHYTE
RE: MAGISTRATE COURT RECORD

STATE OF IDAHO)
) ss.
County of Bonneville)

Michael J. Whyte, being first duly sworn upon oath, and pursuant to the District Court's
Decision on Appeal dated January 15, 2009, provides this affidavit:

1. I am the attorney for respondents and make this affidavit from my personal
knowledge, information and belief.
2. Attached and incorporated to this affidavit is the second affidavit of Kerry L. Bailey
dated August 2, 2007.

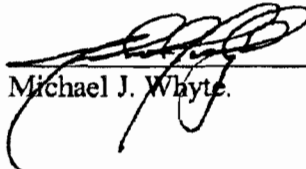
3. Paragraph 6 of this affidavit makes reference to fair market rental value of \$800.00 per month for the property and \$200.00 per month for pasturing horses.

4. It is your affiant's belief that this affidavit was filed by respondents' prior attorney, Brian L. Boyle on or around August 2, 2007, the date it was executed by Kerry L. Bailey.

5. It is further your affiant's belief that this affidavit was the source that the magistrate court was referencing in its July 2, 2008 Order.

6. With this information, respondents respectfully request the court to uphold in full the magistrate's decision that the fair rental value of the property was \$700.00 per month.

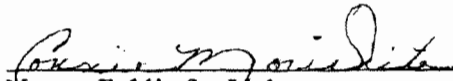
DATED this 29 day of January, 2009.



Michael J. Whyte.

SUBSCRIBED AND SWORN to on oath before me this 29 day of January, 2009.





Notary Public for Idaho
Residing at Idaho Falls, Idaho
My Commission Expires: 5/23/2009

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the 27 day of January, 2009, I caused a true and correct copy of the foregoing **AFFIDAVIT OF MICHAEL J WHYTE RE: MAGISTRATE COURT RECORD** to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon or by hand delivering or by transmitting by facsimile as set forth below.

REGINALD R REEVES ESQ
PO BOX 1841
IDAHO FALLS ID 83403
FAX: 522-2516

Mail
 Hand Delivery
 Facsimile

THOMSEN STEPHENS LAW OFFICES, PLLC

By:



Michael J. Whyte, Esq.

MJW:clm
6186\048 Aff re Magistrate Court Record

DISTRICT COURT
BONNEVILLE
IDAHO

9 FEB -4 8:18

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

IN THE MATTER of the Estates of
CAROL BAILEY and FRANCIS ANDREW
BAILEY,
Deceased.

Case No. CV-06-6496

**SUPPLEMENTAL DECISION ON
APPEAL**

This Court entered its Decision on Appeal on January 15, 2009. In that Decision, the Court affirmed in part and reversed in part the decision of the magistrate assessing rental charges against the Personal Representative Kim Bailey with respect to his use of the Estate property. The reversal was based on this Court's conclusion that respondent and the magistrate relied upon the purported testimony set out in a "Second Affidavit of Kerry L. Bailey" in determining a rental value for the property as well as a pasture fee to be assessed against the P.R.

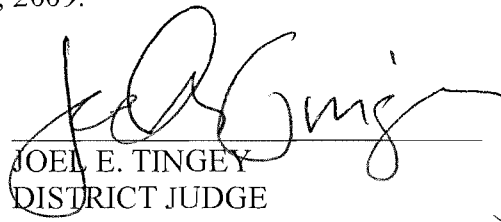
In the Court's Decision of January 15, 2009, the Court indicated that the referenced Second Affidavit could not be located in the court file nor did it appear on the court's record of activity as to this file. As such, the Court allowed the Parties an opportunity to address the issue of whether the Second Affidavit was ever filed.

Following the January 15, 2009 decision, Respondent's counsel provided an affidavit along with a copy of a "Second Affidavit of Kerry L. Bailey". As set out in the copy of the Affidavit, it was signed and notarized on August 2, 2007. In view of the foregoing, the Court has again reviewed the file and the record of activity which again reflects that the Second Affidavit had not been filed and was not part of the record at the time of the magistrate's decision.

Therefore, the Court's Decision of January 15, 2009 will remain in force and effect. The magistrate's decision is affirmed in part and reversed in part consistent with that Decision. This matter shall be remanded to the magistrate to determine a fair rental value, if any, as to the Estate property, based upon evidence in the record.

IT IS SO ORDERED.

DATED this 4 day of February, 2009.


JOEL E. TINGEY
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of February, 2009, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be hand-delivered.

Reginald R. Reeves
CAMBRIDGE LAW CENTER
Box 1841
Idaho Falls, ID 83403

Michael J. Whyte
THOMSEN STEPHENS
2635 Channing Way
Idaho Falls, ID 83404

RONALD LONGMORE
Clerk of the District Court
Bonneville County, Idaho

By ms
Deputy Clerk

DISTRICT 7TH JUDICIAL CIRCUIT
BONNEVILLE COUNTY, IDAHO

9 FEB -5 P8:17

**DENMAN & REEVES
ATTORNEYS AND COUNSELORS
CAMBRIDGE LAW CENTER
BOX 1841
IDAHO FALLS ID 83403
TELEPHONE 522-2513
FAX 522-2516**

Attorney for Personal Representative
By REGINALD R. REEVES, ESQ.
Our File 16338

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

///

In the Matter of the Estate of }
 }
 }
CAROL BAILEY and }
FRANCIS ANDREW BAILEY }
 }
 } Deceased. }

Civil No. CV-06-6496

NOTICE OF NON-COMPLIANCE

PURSUANT To the decision on appeal, entered herein on January 15, 2009, respondents were allowed until January 29, 2009, to file pleadings identifying testimony of KYLE BAILEY, and directing the court to its position in the record. Such time has expired, and despite the filing of the affidavit of current counsel for respondents, and one by respondent, KERRY BAILEY, no showing has been made that the court file contains such affidavit of KERRY BAILEY, allegedly filed on or about August 2, 2007, and the Clerk reports she has no record of any such filing.

NOTICE OF NON-COMPLIANCE

THERE HAVING BEEN No compliance with such decision, the matter should be remanded, pursuant to such decision.

February 5, 2009

Reginald R. Reeves
REGINALD R. REEVES, ESQ.

Appellant's Attorney
Cambridge Law Center
Idaho Falls ID 83403

CERTIFICATE OF SERVICE
[IRCP 5(f)]

I HEREBY CERTIFY That on this day I served a copy of the foregoing upon the designated parties, by faxing a copy to their attorney, as follows:

RESPONDENTS'

MICHAEL J. WHYTE, ESQ.
Fax 522.1277

February 5, 2009

M. Bird
M. BIRD

DENMAN & REEVES
 ATTORNEYS AND COUNSELLORS
 CAMBRIDGE LAW CENTER
 BOX 1841
 IDAHO FALLS ID 83403
 Telephone 522-2513
 FAX 522-2516
 Idaho State Bar No. 712

2009 FEB 10 AM 8:58

DISTRICT COURT
 MAGISTRATE DIVISION
 BONNEVILLE COUNTY
 IDAHO

Attorneys for Appellant
 By REGINALD R. REEVES, ESQ.
 Our File 16338

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

///

 In the Matter of the Estate of }
 }
 }
 CAROL BAILEY and }
 FRANCIS ANDREW BAILEY }
 }
 Deceased. }

Case No. CV-06-6496


POST-APPEAL MEMORANDUM

While the Personal Representative continues to urge that the law in Idaho allows a Personal Representation to occupy estate property without being required to pay rent therefor, the District Court has held that there might be such an obligation (without referring to Idaho decisions to the contrary). Here, the only evidence as to the amount of reasonable rent was in the form of the Personal Representative's affidavit dated May 12, 2008, in which it is set forth that if required, a reasonable rent would be from \$600 to \$750 -- but only after the expenditure of \$5,000 to \$6,000, to prepare the property for rental. There having been no evidence to the contrary, and no evidence of any such

expenditure or preparation, no rent should be assessed, as the premises have not been made suitable for rental.

WHEREFORE An order should be entered denying the motion that the Personal Representative be charged rent for his occupancy of the premises.

February 9, 2009


REGINALD R. REEVES, ESQ.
Appellant's Attorney
Cambridge Law Center
Idaho Falls, Idaho

CERTIFICATE OF SERVICE
[IRCP 5(f)]

I HEREBY CERTIFY That on this day I served a copy of the foregoing upon the designated parties, by faxing a copy to their attorney, as follows:

RESPONDENTS

MICHAEL J. WHYTE, ESQ.
Fax 522.1277

February 9, 2009


M. BIRD

2009 FEB 18 10 10 AM

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

IN THE MATTER OF THE ESTATES	)	CASE NO. CV-2006-6496
OF)	
	)	ORDER DENYING MOTION TO
CAROL BAILEY and	)	DISQUALIFY AND ORDER TO
FRANCIS ANDREW BAILEY,	)	PRODUCE PROOF OF EVIDENCE
	)	FROM THE RECORD.
Deceased.)	
_____)	

Since Judge Joel Tingey’s decisions of remand did not order a new trial but referred “evidence in the record”, the Personal Representative’s Motion to Disqualify is not authorized and is denied.

Further, the parties shall have fourteen days to produce evidence in the record regarding rental values, or the Court will issue an amended order eliminating the monthly rental payment.

IT IS SO ORDERED.

DATED February 18, 2009.

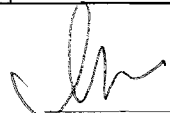


 L. MARK RIDDOCH, Magistrate

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 2/18/2009, I served a true and correct copy of the foregoing document to the following by mailing, with correct postage thereon, by facsimile transmission, by delivery to the attorney's courthouse box, or by causing the same to be hand delivered.

Reginald Reeves, Esq. PO Box 1841 Idaho Falls, ID 83403	<input type="checkbox"/> Courthouse Box <input checked="" type="checkbox"/> US Mail <input type="checkbox"/> FAX <input type="checkbox"/> Hand Delivery
Michael J. Whyte Thomsen Stephens Idaho Falls, ID 83404	<input checked="" type="checkbox"/> Courthouse Box <input type="checkbox"/> US Mail <input type="checkbox"/> FAX <input type="checkbox"/> Hand Delivery
	<input type="checkbox"/> Courthouse Box <input checked="" type="checkbox"/> US Mail <input type="checkbox"/> FAX <input type="checkbox"/> Hand Delivery



 Deputy Clerk

DENMAN & REEVES
 ATTORNEYS AND COUNSELORS
 CAMBRIDGE LAW CENTER
 BOX 1841
 IDAHO FALLS ID 83403
 TELEPHONE 522-2513
 FAX 522-2516

2/27/10

Attorney for Personal Representative
 By REGINALD R. REEVES, ESQ.
 Our File 16338

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

///

In the Matter of the Estate of }
 }
 }
 CAROL BAILEY and }
 FRANCIS ANDREW BAILEY }
 Deceased. }

Civil No. CV-06-6496

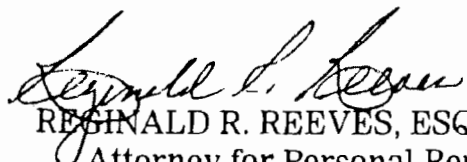
NOTICE OF NON-COMPLIANCE

NOTICE IS HEREBY GIVEN That despite having been allowed time in which to point the court to certain evidence in the record, petitioners have not complied therewith, and such time has expired.

WHEREFORE Personal Representative requests the entry of an amended

order eliminating the need for payment of rent.

March 10, 2009


 REGINALD R. REEVES, ESQ.
 Attorney for Personal Representative
 Cambridge Law Center
 Idaho Falls ID 83403

CERTIFICATE OF SERVICE
[IRCP 5(f)]

I HEREBY CERTIFY That on this day I served a copy of the foregoing upon the designated parties, by faxing a copy to their attorney, as follows:

RESPONDENTS'

MICHAEL J. WHYTE, ESQ.
Fax 522.1277

March 10, 2009


 M. BIRD

223

1000

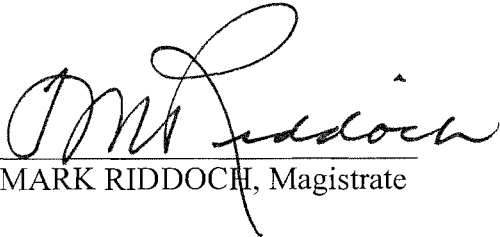
IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

IN THE MATTER OF THE ESTATES )	)	CASE NO. CV-2006-6496
OF))	
	)	ORDER AMENDING PRIOR
CAROL BAILEY and )	)	ORDER
FRANCIS ANDREW BAILEY,))	
)	
Deceased.))	
_____))	

Pursuant to the Appellate Order on Remand and this Court’s Order Denying Motion to Disqualify and Order to Produce Proof of Evidence from the Record and the Notice of Noncompliance, this Court finds and concludes that no evidence was timely produced regarding rental values. Therefore, the Court amends its prior order eliminating the monthly rental payment.

IT IS SO ORDERED.

DATED March 13, 2009.

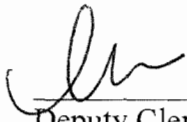


L. MARK RIDDOCH, Magistrate

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 3/13/2009, I served a true and correct copy of the foregoing document to the following by mailing, with correct postage thereon, by facsimile transmission, by delivery to the attorney's courthouse box, or by causing the same to be hand delivered.

Reginald Reeves, Esq. PO Box 1841 Idaho Falls, ID 83403	<input type="checkbox"/> Courthouse Box <input type="checkbox"/> FAX	<input checked="" type="checkbox"/> US Mail <input type="checkbox"/> Hand Delivery
Michael J. Whyte Thomsen Stephens Idaho Falls, ID 83404	<input checked="" type="checkbox"/> Courthouse Box <input type="checkbox"/> FAX	<input type="checkbox"/> US Mail <input type="checkbox"/> Hand Delivery
	<input type="checkbox"/> Courthouse Box <input type="checkbox"/> FAX	<input checked="" type="checkbox"/> US Mail <input type="checkbox"/> Hand Delivery



 Deputy Clerk

BONNEVILLE COUNTY
IDAHO

9 MAR 19 AIO:42

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

IN THE MATTER of the Estates of
CAROL BAILEY and FRANCIS ANDREW
BAILEY,
Deceased.

Case No. CV-06-6496

REMITTITUR

There being no timely appeal from this Court's Supplemental Decision on Appeal, said Decision has become final and this matter is remanded to the Magistrate for further proceedings consistent with said Decision.

DATED this 19 day of March, 2009.


JOEL E. TINGEY
DISTRICT JUDGE

REMITTITUR

1.

387

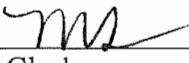
CERTIFICATE OF SERVICE

I hereby certify that on this 19 day of March, 2009, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be hand-delivered.

Reginald R. Reeves
CAMBRIDGE LAW CENTER
Box 1841
Idaho Falls, ID 83403

Michael J. Whyte
THOMSEN STEPHENS
2635 Channing Way
Idaho Falls, ID 83404

RONALD LONGMORE
Clerk of the District Court
Bonneville County, Idaho

By 
Deputy Clerk

Michael J. Whyte, Esq., ISB #4645
THOMSEN STEPHENS LAW OFFICES, PLLC
2635 Channing Way
Idaho Falls ID 83404
Telephone (208)522-1230
Fax (208)522-1277

Attorneys for Kerry L. Bailey, Kyle Bailey, and Tamara Lee Bailey Sipe

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

IN THE MATTER OF THE ESTATES	)	Case No. CV-06-6496
OF)	
)	
CAROL BAILEY and	)	MOTION FOR RELIEF FROM
FRANCIS ANDREW BAILEY,	)	JUDGMENT
	)	(I.R.C.P. 60(b))
Deceased.)	
_____)	

COME NOW petitioners, by and through their attorney of record, and move the court for relief from the March 13, 2009 Order Amending Prior Order pursuant to Idaho Rule of Civil Procedure 60(b). This motion is based on the following:

At the time of the hearing in this matter in April 2008, after some testimony was provided, a recess was called, at which point the parties negotiated a resolution of other remaining issues. The parties presented their agreement to the Court and the Court advised the parties that it would give an opportunity for the presentation of written information regarding the rental value of the estate property. It was not until the appeal filed by the personal representative was completed that the parties and the Magistrate Court realized this information was not provided as had been originally

planned. This mistake is the basis for the Court's Order Amending Prior Order dated March 13, 2009. Therefore, petitioners request relief under Rule 60(b)(1) Mistake, Inadvertence, Surprise or Excusable Neglect and Rule 60(b)(6) Any Other Reason Justifying Relief from the Operation of Judgment.

It was clear from the parties' actions and the Court's actions following the trial in this matter that everyone believed this information had been provided to the court. The Court included very specific rental values of the estate real property in its original order. In the personal representative's appeal, there was no issue raised that rental values had not been presented to the court. The closest issue raised during the appeal was the claimed error that there was no pasture when the trial Court found that rent needed to be paid for the use of pasture ground. However, this issue did not raise the question whether rental value information was presented at all.

As indicated, all parties proceeded with the belief that specific rental information had been presented to the trial Court prior to its initial order. It was only upon the appellate court's review that this excusable neglect, inadvertence and mistake was discovered. Neither the District Court on appeal, nor the Magistrate Court amended or modified that portion of the original Order that the personal representative should be required to pay rental income, it merely amended the value to be paid because of an inability to find that specific value information in the Court file.

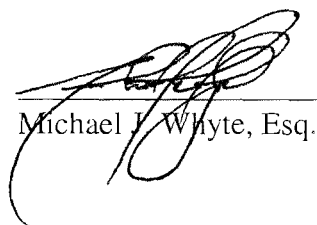
As the court is aware, the member of Thomsen Stephens Law Offices who prepared and appeared at trial in this matter, and the individual who had intimate knowledge of the file, left the firm shortly following the April 2008 trial. There was no written documentation in the Court file in the form of a minute entry, order or other document advising petitioners' new attorneys of the need to supplement information presented at the trial.

Because of the foregoing mistakes, inadvertence, surprise and excusable neglect, relief from the March 13, 2009 Order should be granted under Rule 60(b)(1) and 60(b)(6) to allow petitioners to present the omitted rental information.

DATED this 27th day of April, 2009.

THOMSEN STEPHENS LAW OFFICES, PLLC

By:



Michael J. Whyte, Esq.

CERTIFICATE OF SERVICE

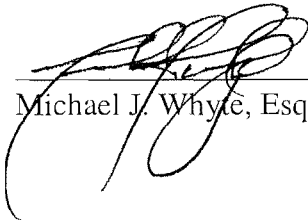
I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the 27th day of April, 2009, I caused a true and correct copy of the foregoing **MOTION FOR RELIEF FROM JUDGMENT** to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon or by hand delivering or by transmitting by facsimile as set forth below.

REGINALD R REEVES
PO BOX 1841
IDAHO FALLS ID 83403
FAX: 522-2516

Mail
 Hand Delivery
 Facsimile

THOMSEN STEPHENS LAW OFFICES, PLLC

By: _____



Michael J. Whyte, Esq.

MJW:clm
6186\PLEADINGS OURS\050 Mot for Relief

DENMAN & REEVES
 ATTORNEYS AND COUNSELORS
 CAMBRIDGE LAW CENTER
 BOX 1841
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Attorney for Personal Representative
 By REGINALD R. REEVES, ESQ.
 Our File 16338

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

///

In the Matter of the Estate of }
 }
 }
 CAROL BAILEY and }
 FRANCIS ANDREW BAILEY }
 }
 Deceased. }

Civil No. CV-06-6496

NOTICE OF MOTION
 AND
 MOTION TO STRIKE

MOTION FOR RELIEF FROM JUDGMENT
 [IRCP 12 (f)]

PLEASE TAKE NOTICE That at 3:00 p.m., on May 20, 2009, before HON.
 L. MARK RIDDOCH, at Idaho Falls, Idaho, respondent will move--and does
 hereby move -- the court for an order striking the motion for relief from judgment
 filed herein, upon the grounds that such motion is insufficient, and impertinent, for
 reasons as follows:

- a. It was not supported by an affidavit or other pleading, but simply contained inadmissible hearsay. See Cueva v. Barraza, 198 P. 3d 740.
- b. It admitted negligence (possibly amounting to malpractice) on the part of a former member of the law firm representing petitioners,

without recognizing that the firm itself bears responsibility for such negligence.

c. Such negligence was not excusable, as a reasonably prudent lawyer would have inspected the file to discover that "the Court advised the parties that it would give an opportunity for the presentation of written information regarding the rental value of the estate property."

d. Counsel alleges that there was "no written documentation in the Court file . . . advising the new attorneys of the need to supplement information presented at the trial," ignoring the fact that at the trial, counsel for petitioners offered and promised to provide a claim of reasonable rental value, by affidavit -- the filing of which affidavit was then ordered by the court, with 14 days being allowed for such filing. See Transcript pp. 135 and 136. Counsel was not a "new attorney," but a member of the same firm.

e. The appellate judge, unable to locate such an affidavit in the file, allowed petitioners an additional 14 days in which to identify and locate any testimony from petitioners as to such rental value. There was no compliance within such 14 days, or at all.

f. The District Court then instructed the trial court to determine a fair rental value, if any, based upon evidence in the record.

g. Following the instruction in the remittitur, the trial court allowed petitioners still another 14 days "to produce evidence in the record regarding rental values," stating that in the absence thereof, "the Court will issue an order eliminating the monthly rental payment." See order dated February 18, 2009.


h. No such evidence having been produced, the court entered its order of March 13, 2009 -- which order petitioners now seek to have set aside.

i. Despite such repeated extensions of time -- and the absence of a proper record -- petitioners now attempt to have the trial court violate the terms of the remittitur and allow them another turn at bat.

j. A Rule 60(b) motion may not be used as a substitute for appeal. *Bubak v. Evans*, 117 Idaho 510, 512 (App.).

THIS MOTION Is based upon the record and file herein, and will be submitted with oral argument in support thereof, unless deemed unnecessary by the court.

April 29, 2009


REGINALD R. REEVES, ESQ.
Personal Representative Attorney
Cambridge Law Center
Idaho Falls, Idaho

CERTIFICATE OF SERVICE
[IRCP 5(f)]

I HEREBY CERTIFY That on this day I served a copy of the foregoing upon the designated parties, by faxing a copy to their attorney, as follows:

PETITIONERS

MICHAEL J. WHYTE, ESQ.
Fax 522.1277

April 29, 2009


M. BIRD

385

DENMAN & REEVES
ATTORNEYS AND COUNSELORS
CAMBRIDGE LAW CENTER
BOX 1841
IDAHO FALLS ID 83403
TELEPHONE 522-2513
FAX 522-2516

Attorney for Personal Representative
By REGINALD R. REEVES, ESQ.
Our File 16338

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

///

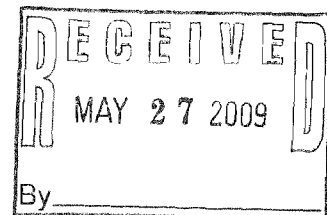
In the Matter of the Estate of }
 }
 }
 }
CAROL BAILEY and }
FRANCIS ANDREW BAILEY }
 }

 } Deceased. }

Civil No. CV-06-6496

ORDER DENYING
MOTION TO STRIKE AND
MOTION FOR RELIEF FROM JUDGMENT

THIS CAUSE Came on regularly for hearing on May 20, 2009, at Idaho Falls, Idaho, upon petitioners' motion for relief from judgment, and personal representative's motion to strike such motion, petitioners appearing by petitioner, KERRY BAILEY, with their attorney, MICHAEL J. WHYTE, ESQ., and personal representative appearing in person and by his attorney, REGINALD R. REEVES, ESQ. It appearing that the court file did not contain a copy of the motion to strike (sent to the court by facsimile), but that counsel for petitioners acknowledged that he had received service thereof, and did not object to proceeding thereon, the Court received argument thereon.



HAVING HEARD And considered arguments adduced on behalf of the respective parties, and being fully advised, it appearing that petitioners' law firm bears the responsibility for actions of one of its members, but that such motion to strike should not be granted; and that the trial court is bound by the decision of the appellate court -- such decision not having been for a new trial, but for remand to consider evidence in the file (if any) -- and there having been no such evidence in the file:

IT IS HEREBY ORDERED That such motion to strike is hereby denied.

AND IT IS ORDERED That such motion for relief from judgment is also hereby denied.

Done at Idaho Falls, Idaho, this May 28, 2009.


L. MARK RIDDOCH
Magistrate

APPROVED As to Form and Content


MICHAEL J. WHYTE, ESQ.

NOTICE OF ENTRY

[IRCP 77(D)]

///

I HEREBY CERTIFY That a copy of the foregoing was this day served upon every party affected thereby, as follows:

PLAINTIFF

REGINALD R. REEVES, ESQ.
Box 1841
Idaho Falls ID 83403

RESPONDENTS

MICHAEL J.WHYTE, ESQ.
2635 Channing Way
Idaho Falls ID 83404

May 29, 2009

RON LONGMORE
Clerk


LINDA NEWTON
Deputy

BONNEVILLE COUNTY
IDAHO

09 JUN 23 PM 4:43

Michael J. Whyte, Esq., ISB #4645
THOMSEN STEPHENS LAW OFFICES, PLLC
2635 Channing Way
Idaho Falls ID 83404
Telephone (208)522-1230
Fax (208)522-1277

Attorneys for Kerry L. Bailey, Kyle Bailey, and Tamara Lee Bailey Sipe

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

IN THE MATTER OF THE ESTATES)
OF)
)
CAROL BAILEY and)
FRANCIS ANDREW BAILEY,)
)
Deceased.)
_____)

Case No. CV-06-6496

AFFIDAVIT OF COUNSEL

STATE OF IDAHO)
) ss.
County of Bonneville)

Michael J. Whyte, being first duly sworn upon oath, deposes and says:

1. Petition for Informal Probate and Informal Appointment of Personal Representative was filed on or about November 14, 2006.

2. A petition against the personal representative was filed on or about December 21, 2006 and an amended petition against the personal representative was filed on or about December 4, 2007.

3. Said petitions raised allegations against the personal representative, and not against the estate.

4. Idaho Code §15-3-720 states that a if a personal representative defends or prosecutes a proceeding in good faith, whether successful or not, he is entitled to receive reasonable attorney fees incurred from the estate. However, the services rendered by the personal representative must benefit the estate and cannot be incurred to protect the personal interests of the personal interest of the personal representative (Eliassen v. Fitzgerald, 105 Idaho 234, 668 P.2d 110 (1983)).”

5. The issues raised by the petition filed against the personal representative remained until the trial was concluded in April 2008. At the conclusion of that trial, the court found that the personal representative had personally received a benefit from his use of the estate assets, and originally ordered the personal representative to reimburse the estate a rental amount for his use of the real property. That order was subsequently amended, but only to the extent that it removed an amount to be paid to the estate because no rental value had been presented at the trial.

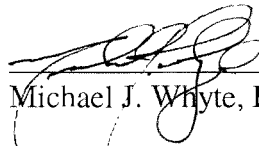
6. Because of the trial court’s findings directly against the personal representative, the personal representative filed an appeal to the district court in which additional attorney fees were incurred. This appeal was not filed on behalf of the estate, nor to stop an adverse decision against the estate, but was to change and stop an adverse decision against the personal representative. The appeal was not for the estate’s benefit, but was for the personal representative’s benefit. The district upheld the trial court, but remanded for a finding of rental value based on the information contained in the record.

7. It is clear that some of the attorney fees incurred were directly related to the administration of the estate. It is also clear that some of the attorney fees incurred were for the

personal defense of the personal representative's actions as an individual. These actions were not for the benefit of the estate. Petitioners do not believe that all attorney fees incurred benefitted the estate, but that a portion, if not a significant majority of the attorney fees were incurred to benefit the personal representative as an individual.

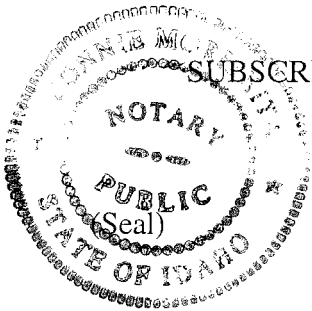
THEREFORE, petitioners request this court to enter an order requiring the personal representative to submit a specific breakdown of attorney fees during his final accounting so that those attorney fees can be reviewed and the court can determine whether the personal representative needs to reimburse the estate for any portion of those attorney fees which were incurred for his personal defense and which did not benefit the estate.

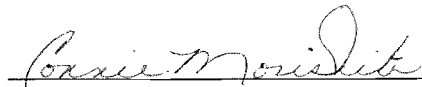
DATED this 25 day of June, 2009.



Michael J. Whyte, Esq.

SUBSCRIBED AND SWORN to on oath before me this 23rd day of June, 2009.





Notary Public for Idaho
Residing at Idaho Falls, Idaho
My Commission Expires: 05/22/2015

CERTIFICATE OF SERVICE

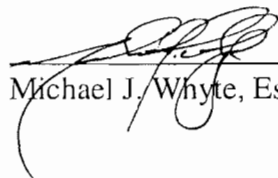
I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the 23 day of June, 2009, I caused a true and correct copy of the foregoing **AFFIDAVIT OF COUNSEL** to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon or by hand delivering or by transmitting by facsimile as set forth below.

REGINALD R REEVES
690 CAMBRIDGE DRIVE
PO BOX 1841
IDAHO FALLS ID 83403
FAX: 522-2516

Mail
 Hand Delivery
 Facsimile

THOMSEN STEPHENS LAW OFFICES, PLLC

By:


Michael J. Whyte, Esq.

MJW:clm
6186\PLEADINGS OURS\053 Aff Counsel