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Boyd-Davis v. Baker Appellant's Brief Dckt. 40438

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IN THE SUPREME COURT OF THE STATE OF IDAHO

TERRI BOYD-DAVIS,

Plaintiff-Counterdefendant-
Respondent-Cross Appellant,

and

BRIAN F. DAVIS and JEAN L. COLEMAN,
an individual,

Plaintiffs-Counterdefendants-
Respondents,

vs.

TIMOTHY BAKER and CAROL BAKER,
husband and wife;

Defendants-Counterclaimants-
Appellants-Cross Respondents,

MARY PANDREA, an individual; JOHN
PANDREA, an individual; and DOES 1-50,
inclusive,

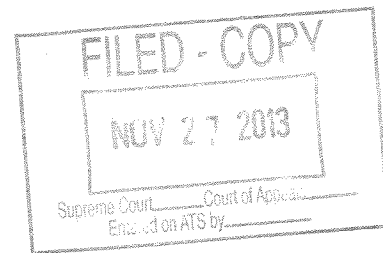
Defendants,

and

JAMES GILBERTSON and NELLIE
GILBERTSON, husband and wife,

Defendants-Counterclaimants.

Supreme Court Docket No. 40438-2012
Bonner County Docket No. CV 2010-00703



APPELLANT'S BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT FOR BONNER COUNTY
HONORABLE STEVE VERBY PRESIDING

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II. COURT RULES

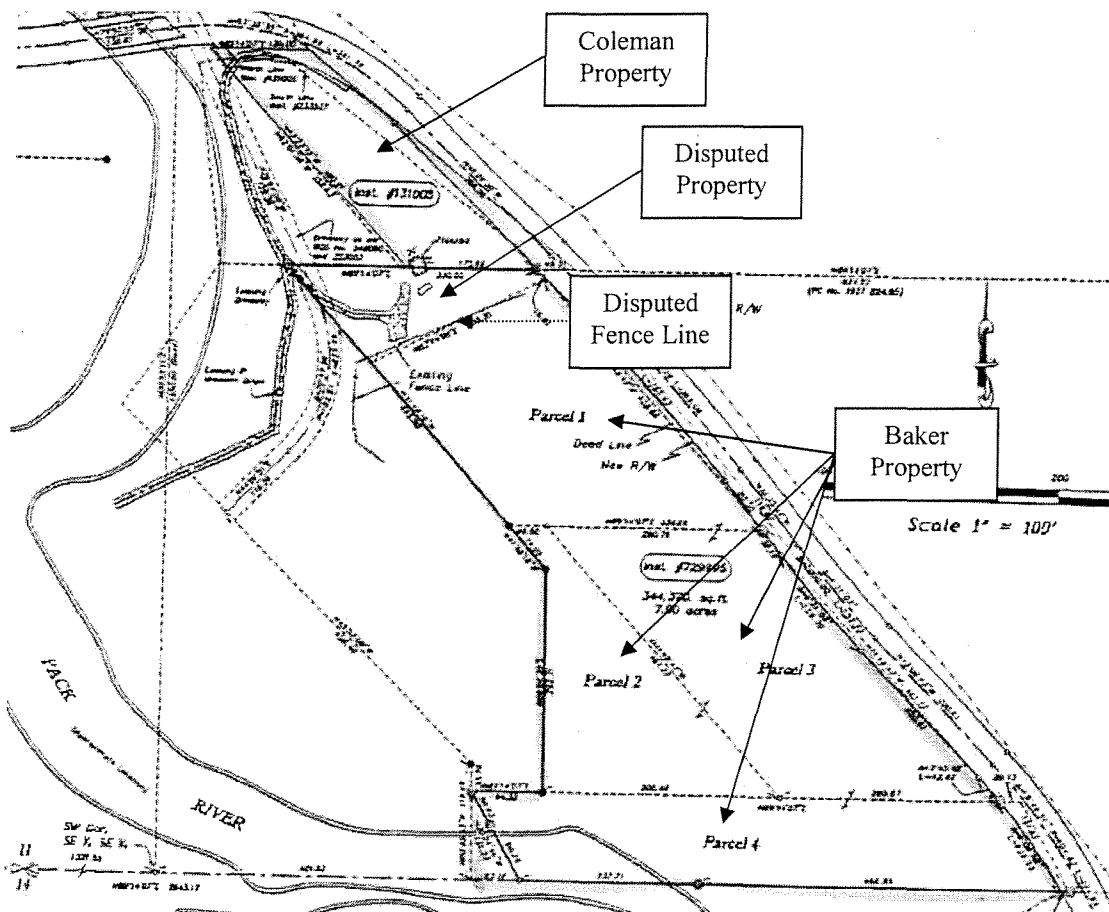
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I. STATEMENT OF THE CASE.

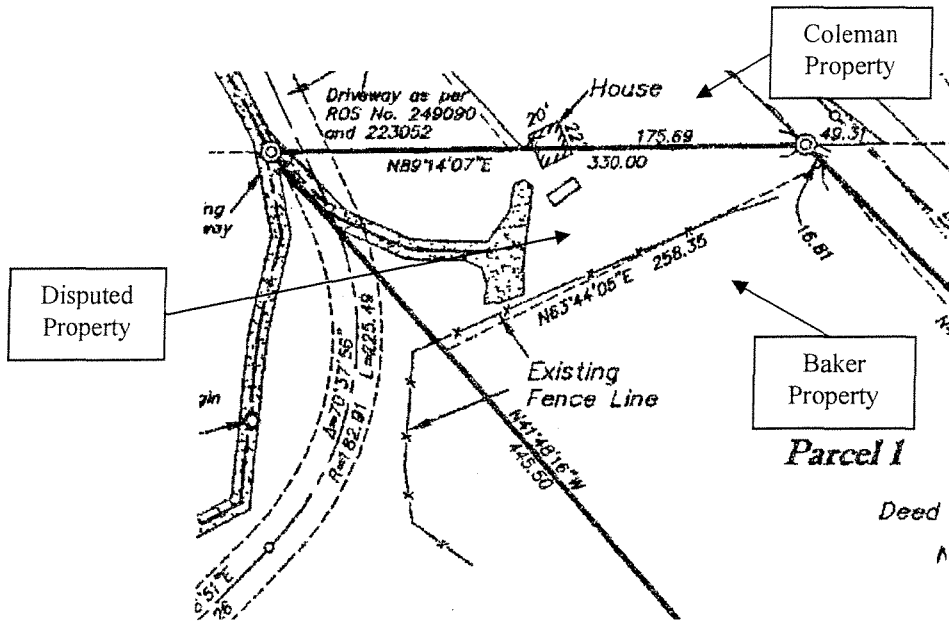
A. Nature of Case.

This case involves a boundary line dispute in Bonner County, Idaho. On April 19, 2010, The Plaintiffs/Respondents Jean Coleman, Terri Boyd-Davis, and Brian Davis (hereinafter collectively referred to as “Coleman”) pled ownership of a portion of the Appellant/Defendants Tim and Carol Baker’s property (hereinafter collectively referred to as “Baker”) up to a fence line based upon claims of adverse possession, boundary by acquiescence, and reformation of Coleman’s warranty deeds.

The following are depictions of the parcels and the “Disputed Property:”



(Ex. C, enhanced).



(A portion of Ex. C).

A four day bench trial was held from March 28, 2011 through March 31, 2011. The Court concluded that the Plaintiffs had failed to prove both their adverse possession and boundary by acquiescence claims, but nevertheless quieted title to a portion of the disputed property to Coleman. In so doing, the Court took the unusual step of issuing two decisions. The Court first issued a primary decision in which the Court concluded that the grantor intended to convey to Coleman the disputed property up to the fence line despite the lack of any call within the deed to the fence line. . The alternative decision issued by the Court is based on overlapping legal descriptions in recorded deeds, and grants to Coleman a lesser amount of Baker’s land.

The District Court’s primary decision is clearly erroneous because the foundation of the decision is the Court’s finding of fact that the grantors intended to convey property up to a fence line that did not exist when the grantor drafted and delivered the relevant deeds. Indeed, the Court’s findings of fact directly conflict, and undermine the basis for the Court’s decision. Specifically, the Court found that Harry Clark, through the Warranty Deed that was executed on

December 23, 1970, intended to gift to Coleman property up to the fence line. (Tr., Court Trial, p.1043). But, the Court also found that the fence line did not exist at the time that Harry Clark drafted the Coleman Deed, because it wasn't constructed until 1971, (Tr., Court Trial, pp.1029, 1040-1041) after the property to the South (now Baker's property) was sold to Cliff and Joan Johnson. The Court found that the grantee, Cliff Johnson, built the fence, not Harry Clark, and there was no evidence admitted at trial to support any finding that Harry Clark knew where the fence was going to be located, or participated in any manner with its construction. (Id.). Therefore, it would have been impossible for the Clarks to have intended to convey up to a fence line which did not exist at the time that the Clarks gifted the property to Coleman. Yet, that was the basis for the Court's decision.

Furthermore, the District Court's decision abandons virtually all of the distance and the bearing calls in the 1970 Coleman Warranty Deed, and results in a bizarrely shaped parcel of property, which cannot be reconciled with the deed itself. In fact, it cannot be reconciled with any deed of record in the case because all of the deeds describe the northerly and southerly boundaries of all of the parcels at issue as running due east and west. None describe a meandering boundary on the North and South. Although it is undisputed that the 1970 Coleman Deed is ambiguous as to the location of the point of true beginning, such a finding does not allow the Court to draw new legal boundaries out of whole cloth, based upon a fence line which did not exist at the time the property was conveyed. The Court cannot ignore all of the calls in the deed simply to set out a more convenient description that cannot be reasonably reconciled with the actual language in the deed itself. In a nutshell, the law does not permit the District Court to wholly "re-imagine" the boundaries of a parcel of land under the guise of interpreting the deed.

It appears the District Court itself recognized that its decision was flawed, as it issued an “Alternative Decision,” in which it quieted title in favor of Coleman to only a small portion of the Disputed Property, based upon a finding that the legal descriptions in the competing deeds overlap. The Court’s interpretation in this alternative decision maintains most of the calls in the deed and grants the overlap between the boundaries to Plaintiff Coleman on grounds that the Coleman deed was recorded first. Unlike the flawed primary decision, this finding is not based upon the location of a fence which did not exist at the time of the conveyance, and is supported by the competent and substantial evidence admitted at trial. This Court should adopt the District Court’s Alternative Decision.

B. The Course of the Proceedings.

This case has an extensive post-trial procedural history. Coleman filed her Complaint on April 19, 2010. (R., Vol. V, Bates 038-050). A four day bench trial was held from March 28, 2011 through March 31, 2011. During trial, the Court bifurcated the issue of ownership of the Disputed Property from that of damages. Consequently, the trial dealt only with the ownership of the Disputed Property. The damages phase of this case has yet to be tried.

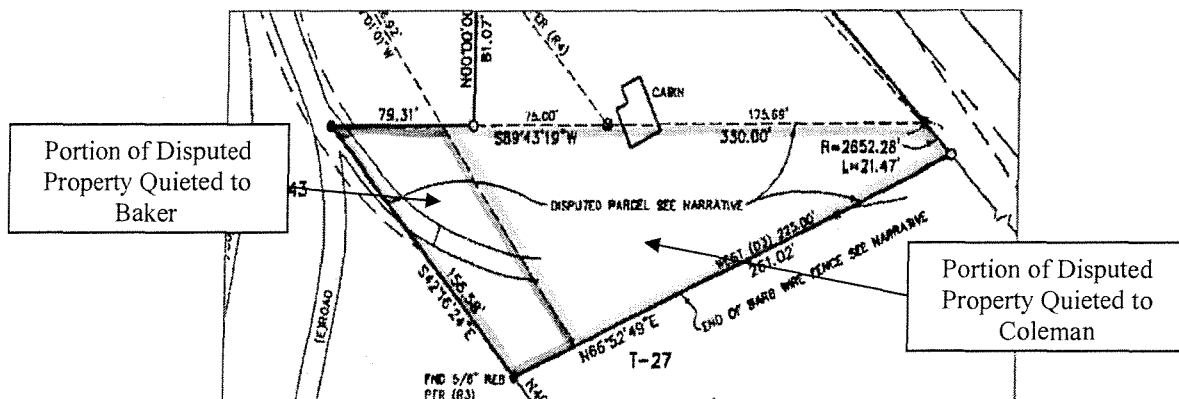
The Court announced its trial decision in open court on April 28, 2011, (Tr., Court Trial, p. 1020-1048) and issued an Order Determining Liability that same day R., Vol. V, Bates 0838-0840), which was amended on May 6, 2011 (R., Vol. V, 0841-0843). Through this decision, the Court quieted title to the Respondent Coleman in the entirety of the Disputed Property.

Baker filed a Motion for Clarification and Reconsideration on May 12, 2011 (R., Vol. V, Bates 0844-0846), which was heard by the trial Court on July 6, 2011. (Tr. Motion for Reconsideration and Clarification, p. 1-36) The Court issued its Decision re: Bakers’ Motion for

Clarification and Reconsideration on September 2, 2011 (R., Vol. V, Bates 0875-0887), in which the District Court denied the motion for reconsideration, but ordered that Coleman conduct a survey of the Disputed Property, and submit a legal description of the Disputed Property with a proposed judgment.

On November 3, 2011, Coleman submitted a fax to the District Court which included her proposed Judgment. (R., Vol. V. Bates 900-0911). Baker submitted their objection to the proposed Judgment on November 15, 2011 (Id.), and supplemented the Objection on January 20, 2012. (R., Vol. VI, Bates 0958-0974). A hearing was held on April 18, 2012, at which time the Court took the matter under advisement.

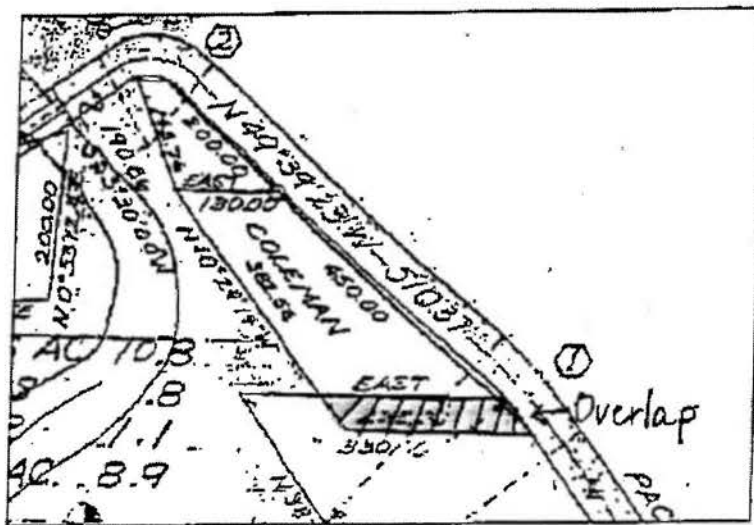
The District Court issued a Memorandum Decision re: Defendants' Objection to Plaintiffs' Proposed Judgment on July 13, 2012 (R. Vol. VI, Bates 1075-1084), in which it reversed its decision, in part, by quieting title to Coleman in only a portion of the Disputed Parcel. According to this decision, the title to the Disputed Property is quieted to the parties as illustrated in the follow diagram:



Also on July 13, 2012, the District Court filed its Memorandum Decision re: Remaining Liability Causes of Action in Plaintiffs' Third Amended Complaint (R., Vol. VI, Bates 1085-

1100), in which it issued an “Alternative Decision,” should its decision be overturned on appeal. In the Court’s Alternative Decision, the Court found that the 1970 Coleman Deed (Ex. 3) and the 1971 Johnson Deed (Ex.7) overlap as to a small portion of the Disputed Property. (R., Vol. VI, Bates 1085-1100). Because the Coleman Deed was recorded first, Coleman is the owner of the portion of the Disputed Property over which the deeds overlap (hereinafter referred to as “the Overlap”). (Id.) The Court also found that Coleman acquired the Overlap by adverse possession through written instrument. (R., Vol. VI, Bates 1085-1100). According to the District Court, if this Court reverses the District Court’s finding as to the then non-existent fence line being the intent of the grantor, then only ownership of the Overlap is quieted to Coleman, with the remainder quieted to Baker. (Id.)

The property quieted to Coleman under the Alternative Decision is depicted as follows:



Plaintiffs'

Trial Exhibit 23

(Id.)

On August 7, 2012, Respondent Terri Boyd-Davis submitted a letter to the Court asking for reconsideration of the Court’s findings. (R., Vol. VI, Bates 1115-1121). After further briefing

by both parties, this matter was noticed for hearing which was held on October 17, 2012, at which time the Court took the matter under advisement.

On September 13, 2012, the District Court issued a Partial Judgment Quieting Title in Disputed Parcel of Real Property to Plaintiffs. (R., Vol. VII, Bates 1200-1203) This Partial Judgment quiets title in conformance with the Court's July 13, 2012, Memorandum Decision re: Defendants' Objection to Plaintiffs' Proposed Judgment (R., Vol. VI, Bates 1075-1084).

On November 29, 2012, the Court issued its Supplemental Decision re: Remaining Liability Causes of Action in Plaintiffs' Third Amended Complaint and Order re: Plaintiff's Motion for Reconsideration, as well as a new Partial Judgment Quieting Title in Disputed Parcel of Real Property to Plaintiffs. (R., Vol. VII, Bates 1200-1203) Through this ruling, the Court granted to the Plaintiffs an easement by implication and prescription over that portion of the Disputed Property that was quieted to Baker. (R., Vol. VII, Bates 1182-1199). The Court also confirmed that Coleman had failed to prove her claim of boundary by agreement/acquiescence. (Id.).

Appellant Baker filed a Notice of Appeal on October 26, 2012 (R., Vol. VII, Bates 1163-1181), and an Amended Notice of Appeal on January 9, 2013 (R., Vol. VII, Bates 1204-1223). . The Respondents filed their Notice of Cross Appeal on January 9, 2013, and Amended Notice of Cross Appeal on January 15, 2013. (R., Vol. VII, Bates 1226-1233).

C. Statement of Facts.

1. Appellant/Defendants Baker own property located at 4430 Upper Pack River Road, Sandpoint, Idaho (hereinafter referred to as "Baker Property"). (Tr., Court Trial p. 1021, L.16-19).

2. Baker's property shares a common boundary to the north with property currently owned by Respondent/Plaintiff Jean Coleman, Brian F. Davis and Terri Boyd-Davis (hereinafter referred to as "the Coleman Property"). (Tr., Court Trial, p. 1021, L. 20-23).

3. In the early 1960's, both the Baker Property and the Coleman Property were owned by Harry and Edith Clark, who are the parents of Plaintiff/Respondent Jean Coleman.

4. The Clarks gifted to Coleman the property she now owns through two warranty deeds, the first of which was executed on October 17, 1966, for the Northern portion of the Coleman property (hereinafter referred to as "the 1966 Coleman Deed"). (Ex. 2; Tr., Court Trial, p.1022, L.7- L16).

5. Four years later, the Clarks gifted to Coleman by Warranty Deed executed on December 23rd, 1970, her southern parcel (hereinafter "the 1970 Coleman Deed"). (Ex. 3; Tr., Court Trial, p. 1022, L.7- L.16).

6. It is this Southern parcel that adjoins the Baker Property.

7. At the time of these conveyances, Harry and Edith Clark owned the property both to the South and to the West of the parcels gifted to Coleman. (Tr., Court Trial, p. 158, L. 15-20, p. 1022, L. 21).

8. Sometime in 1971, a blacksmith's cabin was moved onto the Coleman property by Harry Clark. (Tr., Court Trial, p. 165, L. 2-15, p. 1024, L. 15).

9. On September 3, 1971, the Clarks sold that portion of the Baker Property that is identified on the surveys as "Parcel 1" to Cliff and Joan Johnson, Appellant Baker's predecessors-in-interest. (Ex. 7).

15. Following Harry Clark's death in 1975, the Bank of Idaho was named as Trustee for the Clark Estate.

16. In 1976, Plaintiff Jean Coleman made a request to the Trustee for the conveyance of additional property in lieu of a debt that she claimed was owed from the Trust to Coleman for the payment of funeral expenses.

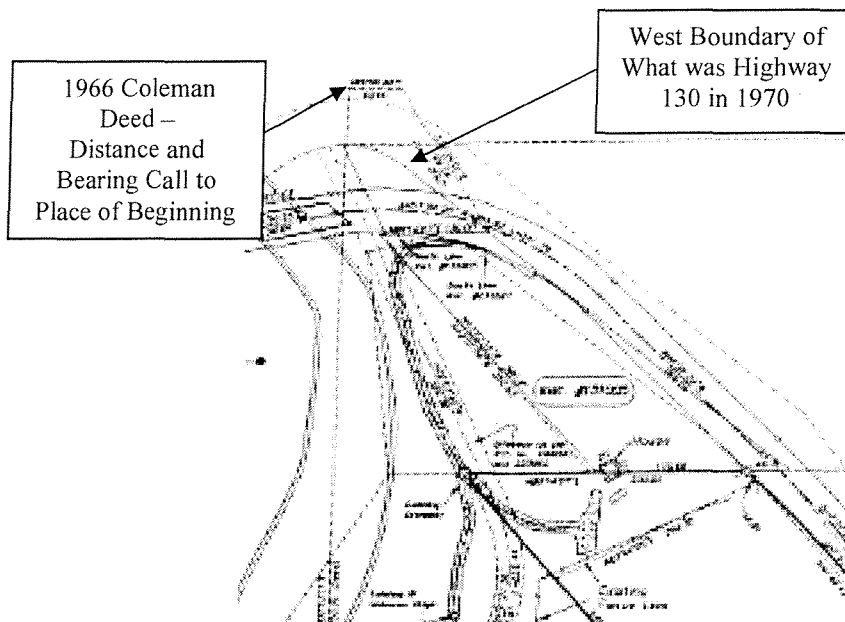
17. The Trustee retained the services of Tucker Engineering Consultants to perform a survey of the land owned by the Clark Estate, and the land which had been transferred from the Clark Estate.

18. Tucker Engineering recorded the "Survey for the Harry Clark Estates," dated July 3, 1979, under instrument number 223083 (hereinafter referred to as "the Clark Survey"). (Ex.17, KKK).

19. In doing so, the Tucker surveyors had difficulty surveying the Coleman deeds, because they contain two conflicting calls. (Ex. 17).

20. On the one hand, the 1966 Coleman Deed for Coleman's Northern parcel starts by defining the point of true beginning by describing the following distance and bearing calls, but also indicates that the Eastern boundary of the parcel is to proceed "200 feet Southeasterly along the West boundary of Highway 130." (Ex. 3).

21. However, when the distance calls are strictly followed, the Northwest corner of the Northern Coleman property falls to the North of what was Highway 130 at the time, so that the property line cannot proceed "200 feet Southeasterly along the West boundary of Highway 130."



(Ex. C, 16; Tr., Court Trial, p.49-50).

22. The 1970 Coleman Deed simply builds off of the legal description in the 1966 Coleman Deed, and therefore contains the same conflict in calls. (Ex. 2, 3).

23. As there is a conflict among the calls in the Coleman deeds, by operation of law the call to the road trumps the distance and bearing calls. *Sun Valley Shamrock Res., Inc. v. Travelers Leasing Corp.*, 118 Idaho 116, 119, 794 P.2d 1389, 1392 (1990) (“Monuments, natural or artificial, or lines marked on ground, control over calls for courses and distances.”)

24. The Tucker surveyors made various attempts to deal with this ambiguity in the Coleman Deeds, and their opinions are reflected in three surveys, which were admitted at trial, including the following:

- Plat of Survey, undated (Ex. 23)
- Survey for Harry Clark Estate, dated July 3, 1979 (Ex. 13).
- Survey for Jean Coleman, dated June 26, 1981 (Ex. 14).

25. All of these Tucker surveys portray a Southern boundary bearing due West, which matches the bearing calls for the Southern boundaries in both Coleman deeds. (Ex. 13, 14, 23).

26. The above referenced 1981 Tucker Survey was commissioned by Jean Coleman as is evidenced by the Survey itself, which indicates it was “for Jean L. Coleman & Clark Estate,” and by the testimony of attorney Michael Stewart, who confirmed that he was in communication about the survey with Jean Coleman at the time it was being conducted. (Ex. 14; Tr., Court Trial, pp. 702-708).

27. Tucker Engineering also provided legal descriptions for the Coleman Property, the Disputed Property, and the property directly to the West of the Coleman Property. (Ex. 21).

28. Consequently, Coleman received *actual and constructive* notice at the time that these Tucker surveys were completed and recorded that she did not own up the fence line; yet, Coleman failed to take any action for 27 years to address what she now asserts are erroneous surveys.

29. The Bakers acquired the Johnsons’ property by Warranty Deed executed and recorded on June, 1, 2007, records of Bonner County, Idaho as instrument number 729995. (Ex. 10).

30. Soon after the Bakers acquired their property, their neighbor to the South indicated that he was the owner of a portion of the land that the Bakers had understood to be theirs.

31. This caused the Bakers to contract with Glahe & Associates to survey the Bakers’ property.

32. A survey was subsequently performed by surveyor David Evans of Glahe & Associates, and the “Record of Survey for Tim Baker” dated November, 2007, was recorded in

Bonner County under instrument number 741564 (hereinafter referred to as “the Baker Survey”). (Ex. 15; Ex. C).

33. On June 11, 2009, Respondent/Plaintiff Jean Coleman transferred an undivided interest in the Coleman Property to Respondent/Cross Appellant/Plaintiff Terri-Lynn Boyd Davis and Respondent/Plaintiff Brian Davis by Quitclaim Deed executed and recorded on June 16, 2009, in the records of Bonner County under instrument number 774089. (Ex. 5).

II. ISSUES PRESENTED.

1. Is the Court’s finding that the Clarks intended to convey to Coleman property up to the fence line clearly erroneous, where the Court also concluded that the fence line did not exist at the time of the conveyance?

2. Did the Court err in determining the intent of the Grantor by relying upon evidence of improvements made after conveyance and the use of the property by those that were not the Grantors?

3. Did the Court err in refusing to find that Coleman was barred under the doctrine of laches from asserting her claims, after having been on notice for almost thirty years prior to bringing her claims?

III. ARGUMENT

A. Standard of Review.

On appeal, the appellate Court will set aside findings of fact only upon a finding that they are clearly erroneous. I.R.C.P 52(a). Appellate review of the decision of the trial court is limited to ascertaining whether substantial, competent evidence supports the findings of fact and whether

the findings of fact support the conclusions of law. *Crea v. Crea*, 135 Idaho 246, 16 P.3d 922 (2000); *Baxter v. Craney*, 135 Idaho 166, 16 P.3d 263 (2000).

In construing a deed of conveyance, the trial court's primary function is to seek and give effect to the real intention of the parties. *Gardner v. Fliegel*, 92 Idaho 767, 770, 450 P.2d 990, 993 (1969); *Hogan v. Blakney*, 73 Idaho 274, 279, 251 P.2d 209, 213 (1952); *Phillips Industries, Inc. v. Firkins*, 121 Idaho 693, 696-97, 827 P.2d 706, 709-10 (Ct.App.1992). Thus, if the language of the deed is unambiguous, the parties' intent will be ascertained from the deed itself as a matter of law, without resort to extrinsic evidence. *Latham v. Garner*, 105 Idaho 854, 857, 673 P.2d 1048, 1051 (1983); *Gardner*, 92 Idaho at 770-71, 450 P.2d at 993-94. If, however, the deed language is found to be ambiguous, the interpretation of the grantor's intent becomes a question of fact to be determined from the instrument itself and from all the surrounding facts and circumstances. *Latham*, 105 Idaho at 857, 673 P.2d at 1051; *Gardner*, 92 Idaho at 771, 450 P.2d at 994.

In this case, there is no dispute that the Coleman deed is ambiguous. (Tr., Court Trial, p. 1035). Thus, the District Court was tasked with determining the intent of the Grantors, Harry and Edith Clark, at the time they conveyed the property to Jean Coleman, on December 23, 1970. As discussed below, the Court's trial decision is clearly erroneous, because it is based upon a finding that the Clark's intended to convey up to a fence that did not exist at the time of the conveyance.

B. The Court's Finding that the Clarks intended to Convey to Coleman all of the Property up to the Fence Line is Clearly Erroneous where the Fence Did Not Exist at the Time of the Conveyance.

Although Coleman asserted claims of adverse possession and boundary by agreement/acquiescence in her claim that she owns the real property extending to the fence line, the Court rejected both claims, finding that she had failed to prove the elements of either claim by clear and convincing evidence. Rather, the Court's decision was based solely upon a finding that Harry and Edith Clark, the original grantors of both Plaintiff's and Defendant's properties, intended in 1970 to convey to Jean Coleman land up to the fence line depicted on the 2007 Glahe Survey. (Ex. C). Yet, the Court also found that Cliff Johnson built the fence in 1971. (Tr., Court Trial, pp. 1040-1041).

Respectfully, Baker submits that the Clarks *could not* have intended to convey property up to a fence line that did not exist at the time of the conveyance. Unless Harry Clark had reason to know in 1970 that a fence line was going to be constructed, and also know the exact location of where the fence would later be constructed, he *could not* have intended that the fence line demarcate the Southern boundary of the Coleman property.

Moreover, the Court found that the fence line was subsequently built by Cliff Johnson, not Harry Clark, and there was not a shred of evidence presented at trial indicating that Johnson and Clark discussed the fence or its location. On the contrary, Cliff and Joan Johnson both testified that the fence was built by Cliff Johnson after the Johnson acquired the property to contain their horses, and no evidence as admitted at trial to indicate that Harry Clark was either involved in the construction of the fence, or knew that it was being built. (Tr., p. 377, L. 6; Tr. P. 412, L. 1-2). Moreover, as the District Court recognized, Cliff Johnson testified at trial that the fence was erected solely to contain his horses and the shape of the fence was never intended to

mark a boundary and was located based upon the topography of the land. (R., Vol. VII, Bates 1195-1196). Unless the Clarks had the ability to see into the future, they could not have intended to convey up to the fence line because they could not have known where it would be built. Thus, the finding that the Clarks intended, by the deed executed in 1970, to convey property up to the fence line is irreconcilable with the finding that Cliff Johnson built the fence after he acquired the property in 1971. The Court's decision to quiet title up to the fence was, therefore, clearly erroneous, and does not support its conclusion of law – that being that it was the Clarks' intent to grant to Coleman property which was defined on its Southern boundary by the fence.

C. In Deciding that the Clarks Intended to Convey up to the Fence Line, The District Court Erroneously Relied Upon Features which did not Exist at the Time that the Clarks Conveyed the Property.

In ruling that the Clarks intended to convey to Coleman property up to the fence line, the Court also based its finding that the Clarks' intended to convey the land up to the fence upon certain features, other than the fence, which also did not exist at the time that the Clarks executed the 1970 Coleman Deed. These include the existence of the cabin, the driveway leading to the cabin, a clothes line, and the parking lot in front of the cabin. (Tr., Court Trial, p. 1039). Jean Coleman testified there were no buildings on the property when she first acquired it from her parents, and that the cabin was moved within a year after the conveyance from the Clarks to her. (Tr., Court Trial, p. 165, L 2 – 7). From the pictures admitted at trial, it is clear that neither the parking lot nor the driveway to the cabin, which now abuts the cabin itself, existed at the time of the conveyance, and no evidence was admitted at trial that the Clarks were involved in any manner with their construction.

No driveway or parking area yet constructed between fence and cabin



Because these features did not exist at the time the Clarks drafted the deed to Coleman, they cannot support a finding that the Clark's intended to include these improvements in the conveyance, unless there was some evidence that, at the time that the Clarks drafted the deed, they knew these improvements would be made, and knew exactly where they would be located. No such evidence was admitted at trial, because no such evidence exists. The Clarks could not predict the future, and could not have intended to convey up to the non-existent fence line.

In fact, the shape of the fence itself contradicts any finding that it was intended to mark a boundary line. All of the deeds drafted by Harry Clark that were admitted at trial contain southern boundaries which run directly East/West. This includes six different deeds. (Ex. 2, 3, 6, 7, 8, 11). Yet, the fence does not run East/West, and in fact turns twice, is lies in a fish hook pattern, which does not even remotely follow any of the boundaries described in the deeds for any of the properties in this area.

In fact, despite the District Court's finding that the parties treated the fence as the boundary line, the Court found that the Plaintiffs had failed to prove the elements of boundary by acquiescence by clear and convincing evidence, because "acquiescence for a long period of time does not necessarily tip the scales in favor of the encroaching party," particularly where there is evidence on the record as to the manner and circumstances as to the creation of the fence. (R., Vol. VII, Bates 1191-1196)(quoting *Huskinson v. Nelson*, 152 Idaho 547, 553, 272 P.3d 519, 525 (2012)). The use of the Disputed Property by Jean Coleman over the subsequent years since the conveyance may be relevant to the boundary by acquiescence claim, but it is not relevant to the determination of what the Clark's intended to convey when they drafted the 1970 Coleman Deed. The focus must be on what the Clarks could have known at the time, not what Jean Coleman has done in the forty years since she acquired the property.

While there was no evidence at trial indicating that the Clarks were involved with the creation of the driveway to the cabin, or the parking lot, Jean Coleman did testify that Harry Clark and a friend moved the cabin onto the Disputed Property. (Tr., Court Trial, p. 165, L. 2-15, p. 1024, L. 15).

The District Court gave considerable weight to its finding that Harry Clark assisted in the placement of the cabin on the Coleman property, and concluded that Harry Clark would not have intentionally placed the cabin on the property line. Even if this is true, it lends no weight to the finding that the Clarks intended to convey *up to the fence line*. There was no evidence admitted at trial that the cabin's placement on the land had anything to do with the then nonexistent fence line. At most, therefore, the cabin tends to prove that the Clarks intended to

convey at least some of the property that they later conveyed to the Johnsons, but not that they intended to convey up to a fence which was not in existence at the time of the conveyance.

These findings, therefore, do not support the Court's legal conclusion that Coleman is entitled to quiet title in all of the property to the North of the fence.

D. The Court's Reliance on Surveyor Robert Stratton's Opinion is Clearly Erroneous Where Stratton Admitted that he "Arbitrarily" Held the Southern Boundary of the Location of the Fence, and Rotated the Entire Legal Description by 23 Degrees.

In its findings of fact and law, the District Court also relied upon the testimony of Coleman's expert witness surveyor, Robert Stratton. Mr. Stratton testified at trial that he had created a number of different examples of how the legal descriptions in the Coleman and Johnson Deeds can be interpreted, and those opinions are set forth in various diagrams that were admitted at trial, and labeled by Mr. Stratton as Figures 1 through 8. (Ex.16). The Court found that "figure 6 seems most consistent with the intent of the Clarks." (Tr., Court Trial, p. 1043. This conclusion is clearly erroneous.

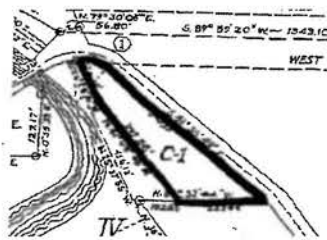
Mr. Stratton admitted at trial that he did not perform a formal survey of the boundaries of either the Coleman or Baker properties. Rather, he went to the property a single time on November 30, 2010 with his father, and spent four hours performing what he described as a "field survey," by which he documented the features that existed on the property in the winter of 2010, at a time when there was 12 inches of snow on the ground. (Ex. 16; Tr., Court Trial, pp.79 – 80, 85). Mr. Stratton then created various diagrams to match the existing features. (Ex.16). These features, according to Mr. Stratton's testimony, included the Pack River Road (a/k/a Highway No. 130), the fence, the cabin, the driveway and the parking lot. (Id.). Yet, with the exception of Pack River Road, *none of those features existed at the time that the Clarks conveyed*

the property to Jean Coleman. Thus, they could not have played any role in Harry Clark's determination as to where to locate the property line. Moreover, Pack River Road washed out on numerous occasions (Tr., Court Trial, pp. 112, 151, 258, 259, 312, 313, 741, 742, 800-801), and has been widened, paved and realigned (Tr., Court Trial, pp.800-801, 871, L. 11-15) in the years between 1970 when the Coleman deed was drafted, and 2010, when Stratton did his field survey. Consequently, the road could not have been in the identical location in 2010, as it was in 1970. In fact, Mr. Stratton admitted that the location of the road in 2010 was "definitely" different than where it was located at the time the Clarks conveyed the property to Coleman. (Tr., Court Trial, p. 97). Nevertheless, Stratton's Figure 6 is based upon his decision to "arbitrarily" locate the edge of the Pack River Road 30 feet from its current center line. (Tr., Court Trial, p. 55, L. 2-21). Stratton's reliance upon features that exist in 2010, but did not exist in 1970, is, therefore, clearly erroneous if the goal is to derive what was the intent of the grantor in 1970. That intent must be derived solely from what the grantor knew at the time, or the grantor's subsequent actions, not the actions of others, or improvements that were later constructed.

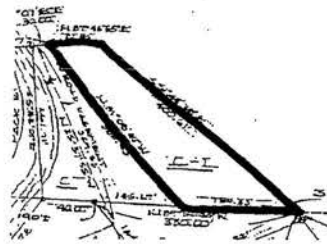
In fact, the best evidence of the Grantor's intent, and the only direct evidence admitted at trial, are the Coleman Deeds themselves, which were drafted by Harry Clark personally. (Tr., Court Trial, p. 80, L. 15-21). They contain his statements as to what the Clarks intended to gift to Jean Coleman. Because these are the only statements made directly by the Clarks that are in the record, any analysis of the intent of the Clarks must start with these deeds. While extrinsic evidence can be considered to resolve an ambiguity in the deeds, such evidence cannot completely supplant the deeds themselves. *City of Manhattan Beach v. Superior Court*, 13 Cal. 4th 232, 238, 914 P.2d 160, 164 (1996) ("**Extrinsic evidence is admissible to interpret the**

instrument, but not to give it a meaning to which it is not susceptible, and it is the instrument itself that must be given effect.”). Yet, Stratton’s opinion, as set forth in Figure 6 (Ex. 16), ignores numerous calls in these deeds, most strikingly the calls that define Coleman’s Southern boundary.

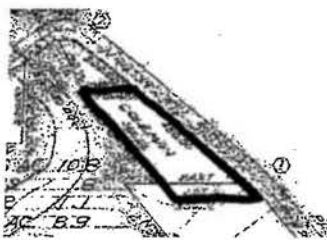
The 1970 Coleman Deed defines the Southern boundary line of the Coleman Property as “225 feet West” from the “Boundary of Highway 130,” which is known currently as Pack River Road. (Ex. F). Nothing in this deed calls to a fence line. This is logical, as the fence did not exist at the time that the deed was drafted. The call of “225 feet West” is maintained in all of the surveys performed by the Tucker Engineering surveyors which were performed in the late 1970’s and early 1980’s, as well as the survey performed by David Evans of Glahe & Associates, in 2007. (Ex. 13, 14, 15, & 23):



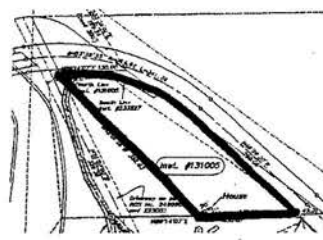
Tucker 1979 Survey



Tucker 1981 Survey



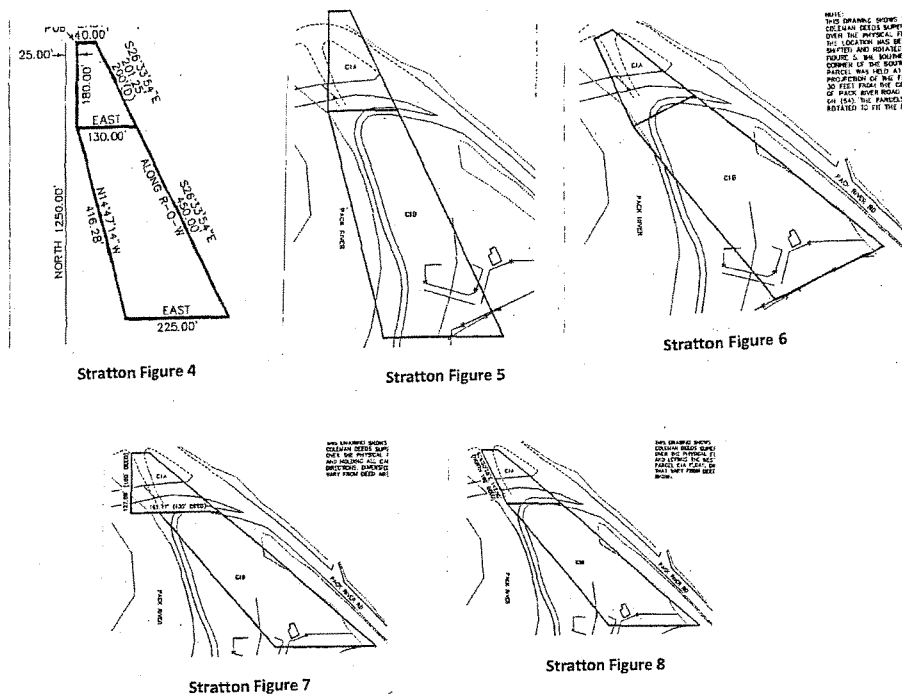
Tucker Unrecorded Survey - P's Ex. 23



Glahe 2007 Survey

(Ex. 13, 14, 15).

Even Coleman's expert, Mr. Stratton, maintained this bearing call for the Southern Boundary in all but one of his interpretations of the deeds:

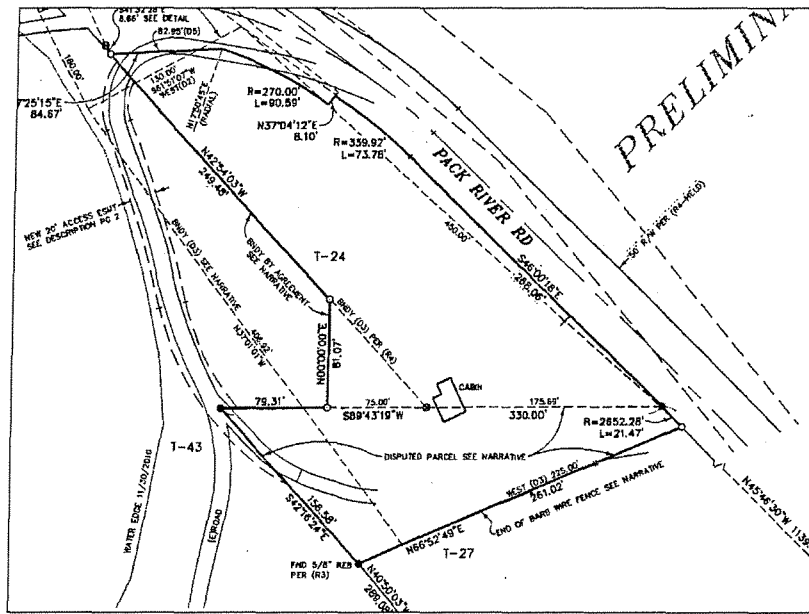


(Ex.16).

In Figure 6, however, Mr. Stratton did not depict the Southern Boundary as extending 225 feet West, as is stated in the Deed, but instead depicts the Southern boundary as bearing Southwest. (Ex.16). When asked at trial to explain this departure from the bearing call in the 1970 Coleman Deed, Mr. Stratton admitted that in order to reach Figure 6, he had to, in his words, “arbitrarily” rotate the entire legal description 23 degrees counterclockwise, so that the Southern Boundary would fall “roughly” along the fence line. (Tr., Trial Court, pp. 107-108). Nothing in the deed itself calls for such a rotation. Rather, the fence line itself is the only justification for such a drastic departure from the language of the deed itself. However, because we know that the fence did not exist at the time Harry Clark drafted the Coleman deed, Harry

Clark simply could not have intended that the entire legal description be rotated to match a non-existent fence. Stratton's conclusion assumes that Harry Clark could have known where the fence would be located, and is, therefore, clearly erroneous.

Moreover, when converted to an actual survey, rather than a theoretical diagram, Stratton's Figure 6 results in a legal description which abandons nearly every distance and bearing call in the deeds that were actually drafted by Harry Clark.



(R., Vol. VI, Bates 1115-1121, 1129-1132; R. Vol. VII., Bates 1200-1203).

The relevant language in the 1970 Coleman Deed reads:

[From] the true point of beginning; thence 450 feet Southeasterly along the West Boundary of Highway No. 130; thence 225 feet West; thence Northwesterly to a point 130 feet West of said Highway; thence 130 feet East to the true point of beginning.

(Ex. F).

A direct comparison of the deed itself with the Stratton survey and the legal description contained in the Partial Judgment reveals that Stratton's interpretation of Harry Clark's intent

ignores virtually every call in the deeds drafted by Harry Clark, in favor of arbitrarily rotating the legal description to fit the Plaintiff's desired outcome – ownership of the property up to the fence line:

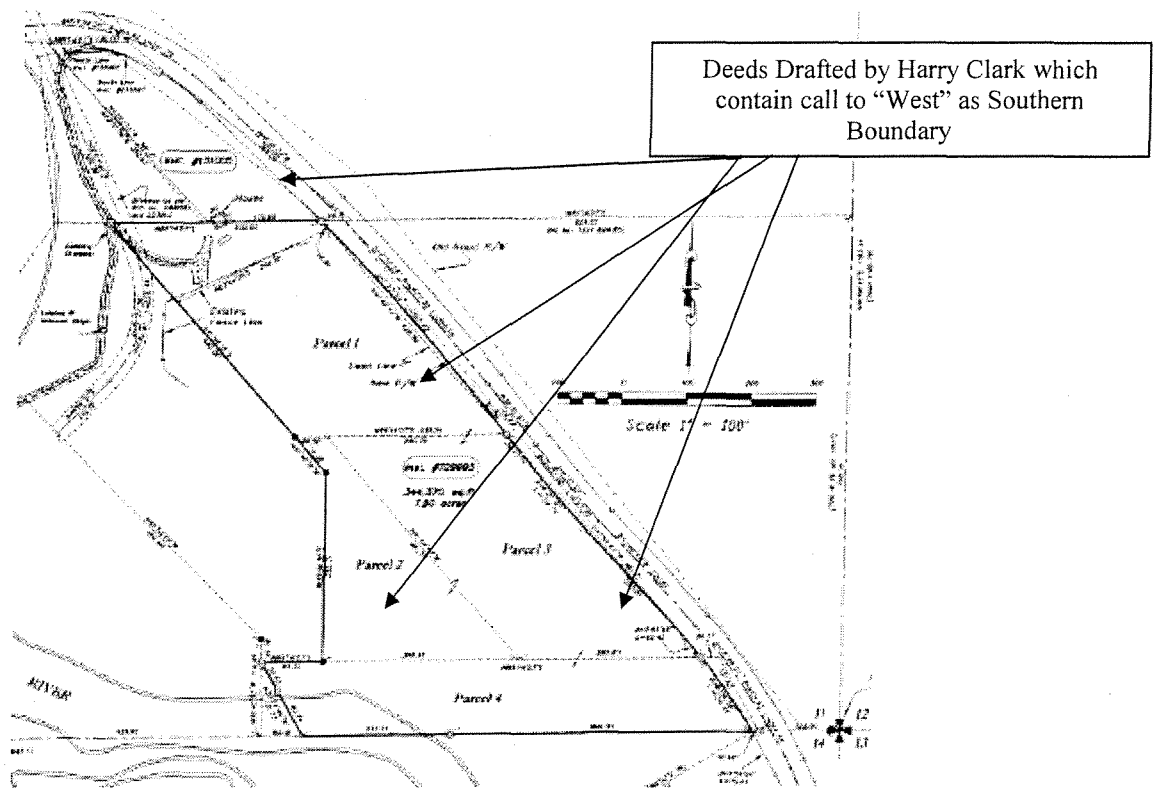
Language in 1970 Quitclaim Deed	Disputed Parcel per Partial Judgment
Thence 450 feet Southeasterly along West boundary of Highway No. 130,	Thence 471.47 feet Southeasterly along the West boundary of the new Pack River Road,
Thence 225 feet West	Thence 225 feet traveling Southwesterly at N66°52'49"E
	Thence and undisclosed distance Northwesterly traveling at N37°01'01"W
	Thence East approximately 95 feet
Thence Northwesterly to a point 130 feet West of said Highway	Thence approximately 350 feet Northwesterly traveling at N42°54'03"W
Thence 130 feet East to the true point of beginning	Thence East along a curve a distance of approximately 82.95 feet

(Ex. F; R., Vol. VI, Bates 1115-1121, 1129-1132; R. Vol. VII., Bates 1200-1203).

While the Coleman Deeds are admittedly ambiguous because the distance and bearing call to the point of true beginning conflicts with the call to the boundary of the highway, this does not justify the complete abandonment of nearly every call in the deed. Any interpretation of the deeds must give effect to as many of the calls in the deeds as is reasonably possible. *Sun Valley Shamrock Res., Inc.*, 118 Idaho at 120, 794 P.2d at 1393 (“When construing a deed description, effect must be given, if possible, to all of the language contained in the description.”). It is simply not reasonable to find that the deed contains an implied call to a fence line, when no such call is indicated, and the fence did not exist at the time of the conveyance. The District Court’s findings in this regard are therefore, clearly erroneous.

In fact, if Mr. Stratton is to be believed, then Harry Clark was unable to tell the difference between West and Southwest, to the effect that when he included “West” in the 1970 Coleman Deed, he meant 23 degrees to the Southwest. However, the 1970 Coleman Deed is not the only

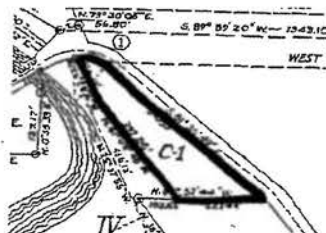
deed that was drafted by Harry Clark. Five other Deeds were also drafted by Clark. Four of these deeds define their respective Southern boundaries by a call to due West (Ex. 2, 6, 7, 8). The logical extent of Mr. Stratton's theory would require that all of parcels for which Harry Clark drafted the deeds would need to be rotated 23 degrees counterclockwise, down to the section line. (Tr., Court Trial, p. 123).



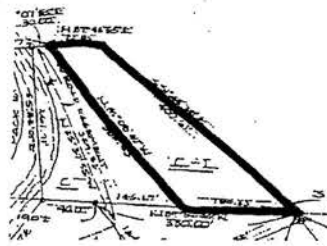
Yet, there is no evidence in the record to support a finding that Harry Clark was unable to read a compass to determine that West was not Southwest, and the resulting confusion that would result from rotating all of these parcels by 23 degrees is further evidence of the erroneous nature of Mr. Stratton's opinion.

E. The Partial Judgment Results in Such an Oddly Shaped Parcel as to Demonstrate that the District Court’s Decision is Clearly Erroneous.

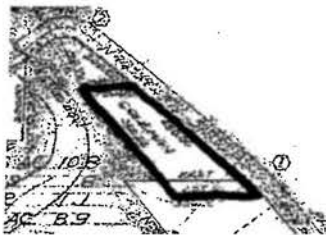
At trial, the District Court considered evidence from three surveyors: (1) Tucker Engineering, from which three historical surveys were admitted into evidence; (2) Robert Stratton, the Plaintiff’s expert witness; and (3) David Evans, the Defendant’s expert witness. Although the interpretations by the three surveyors conflict as to certain distance and bearing calls, they were generally consistent with regard to the *shape* of the 1970 Coleman parcel – in that the Coleman parcel is a quadrilateral, or a quadrilateral with a slight curve.



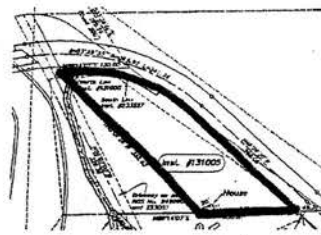
Tucker 1979 Survey



Tucker 1981 Survey



Tucker Unrecorded Survey - P's Ex. 23



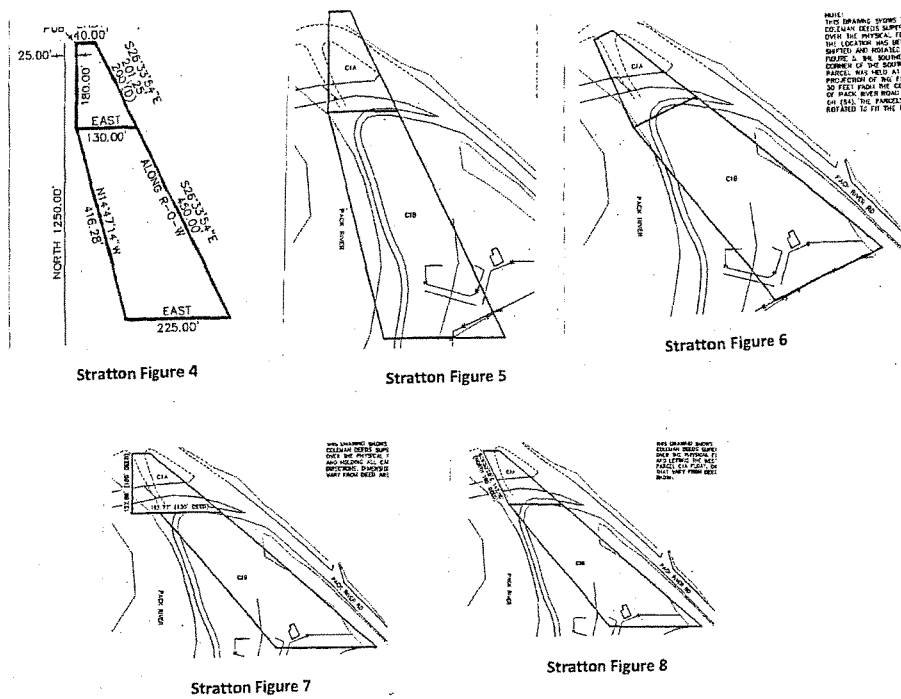
Glahe 2007 Survey

These interpretations as to the shape of the Coleman parcel comport with the legal description of the 1970 Coleman Deed, as drafted by Harry Clark, which states, in relevant part:

[From] the true point of beginning; thence 450 feet Southeasterly along the West Boundary of Highway No. 130; thence 225 feet West; thence Northwesterly to a point 130 feet West of said Highway; thence 130 feet East to the true point of beginning.

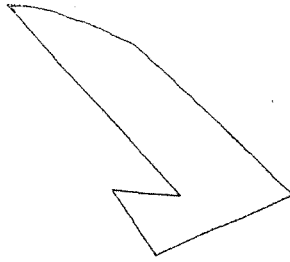
(Ex. F).

From this description, it is clear that Harry Clark intended the parcel be a simple quadrilateral, with four corners, with the Eastern boundary running along the highway. This has been confirmed by the Plaintiffs' expert, Robert Stratton (Ex. 16), who provided at trial many interpretations of the Coleman deeds, all of which demonstrate clearly that the legal description drafted by Harry Clark in the 1970 deed conveys a four cornered quadrangle:



Even in Stratton's Figure 6, in which Stratton rotates the legal description by more than 23 degrees in order to fit the fence line (Ex. 16), Stratton's interpretation of the shape of the Coleman parcels is a simple four cornered quadrilateral. The difference in this interpretation is that it is rotated counter-clockwise to match a fence line that did exist at the time the deed was drafted. It does not, however, drastically change the shape of the property so described.

The shape of the parcel that the District Court determined was gifted by the Clarks to Jean Coleman, however, is not a quadrilateral, but is the following bizarre shape:



The District Court's decision is based upon a finding that Harry Clark intended to convey this parcel of property to Jean Coleman. Yet, absolutely nothing in the language of the Coleman Deeds gives any indication that such an oddly shaped property was being conveyed, and no evidence at trial was admitted which supports a finding that Harry Clark intended to convey a property of this shape.

While it was undisputed that the Coleman Deeds contain ambiguous legal descriptions, **this finding does not allow the District Court to completely ignore the language of the deeds, and draw from whole cloth an entirely new and factually unsupported boundary line.** The best evidence as to what Harry Clark intended to convey to Jean Coleman continues to be the legal descriptions that he drafted. Although there are discrepancies, this does not justify the District Court ignoring virtually all of the distance and bearing calls in the deeds, and creating a parcel which is completely contrary to the parcel described in the deed. *Sun Valley Shamrock Res., Inc.*, 118 Idaho at 120, 794 P.2d at 1393 (“When construing a deed description, effect must be given, if possible, to all of the language contained in the description.”).

Stratton's opinion as reflected by his Figure 6 cannot reflect the intent of the Clark's. Rather, it reflects the desires of Coleman to own up to the fence line, and is based upon “features” that did not exist at the time that the Clark's conveyed their property to Coleman. The Court's reliance upon this particular opinion of Stratton, therefore, is clearly erroneous, and does

not support its conclusion of law – being that Coleman owns the Disputed Portion up to the fence line.

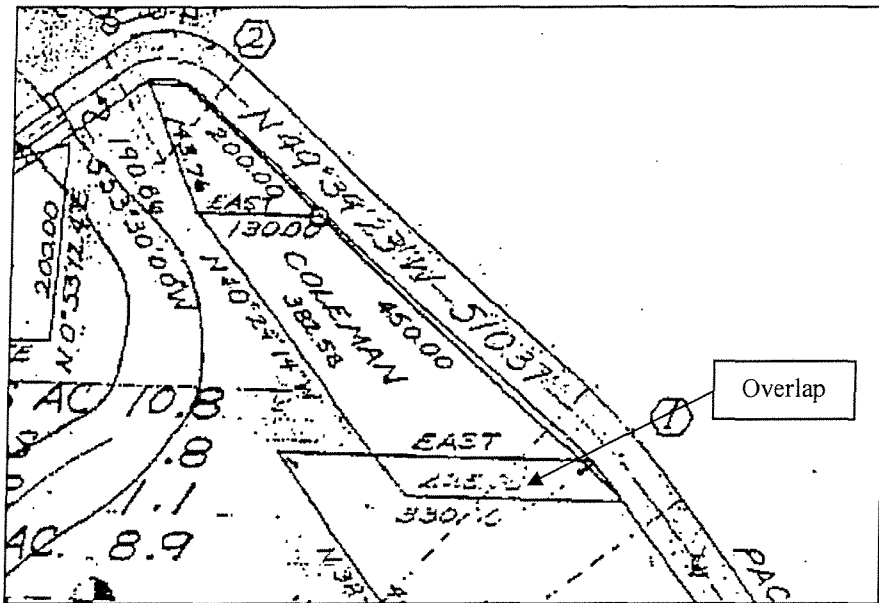
F. The Court’s “Alternative Decision” is Supported by Substantial Evidence.

In response to Appellant Baker’s motion for reconsiderations and objections to the proposed judgment, the District Court appears to have recognized the issues described above, and took the unorthodox approach of issuing an “Alternative Decision,” that “would be effective only if the earlier decision was reversed on appeal.” (R., Vol. VI, p. 1086). Unlike the District Court’s earlier decision, this Alternative Decision is not based upon a finding that the Clarks intended to convey up to a fence that did not exist, and is supported by substantial evidence.

In both its original decision and its Alternative Decision, the District Court correctly found that the call to the point of true beginning in the Coleman deeds conflicts with the call to the Western Boundary of Highway 130. This does not, however, require a finding that the Clark’s intended to convey to a fence line which did not exist. The proper resolution to this issue was set forth as far back as the late 1970’s, by the original surveyor, Tucker Engineering, in its undated Plat of Survey which was admitted at trial as Plaintiff’s Exhibit 23. (Ex. 23).

Recognizing that the call to the highway trumps the distance and bearing calls to the point of true beginning, the Tucker surveyors were required to shift the legal description South so that the Eastern boundary of the Coleman property runs along the edge of Highway 130, a/k/a Pack River Road. *Sun Valley Shamrock Res., Inc.*, 118 Idaho at 120, 794 P.2d at 1393 (“Monuments, natural or artificial, or lines marked on ground, control over calls for courses and distances.”). Doing this allows the Coleman Deed to fit to the road, while maintaining all of the remaining calls in the 1970 Coleman Deed. The result is an overlap of the legal descriptions in

the 1970 Coleman Deed (Ex. 3), and the Warranty Deed by which the Clarks conveyed Parcel 1 to the Johnsons in 1971 (Ex. 7). This overlap was depicted by Tucker Engineering on Plaintiff's Exhibit 23:



(Ex. 23).

Because the Southern Coleman Deed was executed and recorded in 1970 (Ex. 3), whereas the Johnson Deed was executed in 1971 (Ex. 7), the Coleman Deed is senior to the Johnson Deed. To the extent there is an overlap, therefore, the Coleman Deed prevails. *Sun Valley Land & Minerals, Inc. v. Burt*, 123 Idaho 862, 867, 853 P.2d 607, 612 (Ct. App. 1993) (The instrument first recorded takes precedence.) Because the Clarks had already conveyed the property to Coleman in 1970, inclusive of the area which is indicated above as the “overlap,” the subsequent conveyance of this same property to the Johnson’s was ineffective. As the District Court put it, “you can’t give away what you don’t have.” (Tr. Court Trial, p.1042). However, this is limited

to that portion of the Johnson Property which is also legally described in the 1970 Coleman Deed – i.e. the area of “overlap,” as depicted on Plaintiff’s Exhibit 23. (Ex. 23).

The District Court reasoned that when Harry Clark assisted in placing a cabin on the property in 1971, he would not have placed the cabin on what he believed to be the boundary line. (Tr., Court Trial, p. 1038). The point is well taken, but it does not necessarily follow that Harry Clark intended to convey all the way up to the fence line, which, as the District Court concluded, had not yet been built. Rather, the more logical explanation is that in drafting the Coleman and Johnson deeds, Harry Clark mistakenly included an overlap, which is depicted in Plaintiff’s Exhibit 23. (Ex. 23).

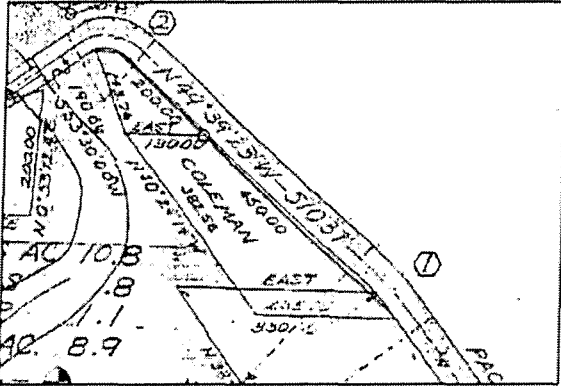
The strongest evidence to support this interpretation of the deeds is the language of the deeds themselves, which is the only true evidence on the record coming directly from Harry Clark regarding his intent. The 1970 Quitclaim Deed drafted by Harry Clark describes the Southern Coleman parcel as follows:

. . . [From] the true point of beginning; Thence **450 feet** Southeasterly along the West boundary of Highway No. 130; thence 225 feet **West**; thence Northwesterly to a point **130 feet** West of said Highway; thence **130 feet East** to the true point of beginning.

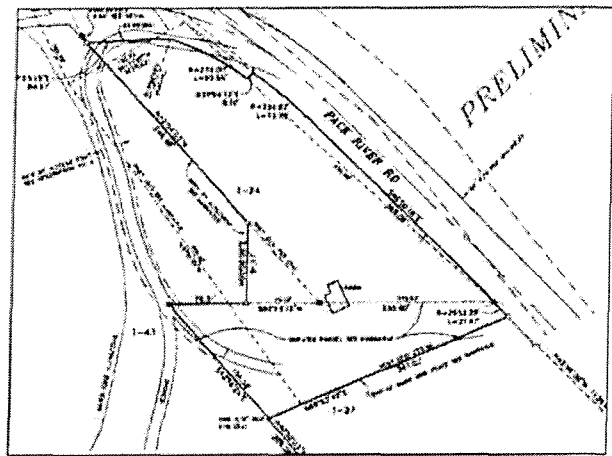
(Ex. F) (emphasis added).

Each of the calls in the 1970 Coleman Deed that are emphasized are maintained in the unrecorded Tucker survey (Ex. 23), and abandoned in the Court’s Partial Judgment. (R., Vol. VII, Bates 1200-1203).

Tucker Survey – P’s Exh. 23



Stratton Survey

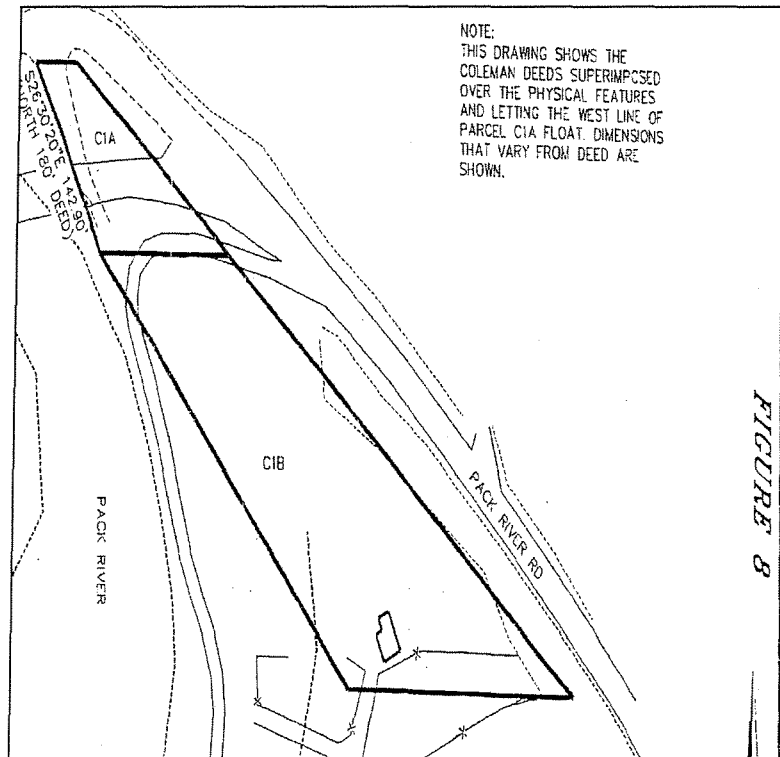


- **Call Along Pack River Road:** The distance of 450 feet along Pack River Road is accurately shown in the Tucker Survey Plaintiff’s Exhibit 23; whereas, the Stratton survey depicts this distance to be about 471.47. (Ex. 16; 23; R. Vol. VI, p. 1200-1203)
- **Southern Boundary:** The call of the Southern boundary as 225 West is also maintained in the unrecorded Tucker survey, while the Stratton survey rotates this line by 23 degrees counterclockwise, resulting in a parcel of far greater size than is described in the deed. (*Id.*).
- **Eastern Boundary:** The Clark deed then calls for the eastern line to extend “Northwesterly, to a point 130 feet West” of Pack River Road. Again, this matches what is depicted in the Tucker survey. Yet, in the Stratton Survey, the Eastern Boundary extends Northwesterly an undisclosed number of feet, to a point which is more than 268.48 feet from the Pack River road, then travels directly East approximately 92.79 feet, then travels Northwest more

approximately 350 feet. The Clark Deed contains no indication whatsoever that Clark was intending to convey property of these dimensions or distances. (*Id.*)

The Tucker Survey, Plaintiffs' Exhibit 23 provides the only reasonable means to reconcile the calls in the deed with the placement of the cabin by Harry Clark and his friend, as the cabin sits well within the overlap depicted in Plaintiff's Exhibit 23. (Ex. 23). If Exhibit 23 was Harry Clark's intent, this would explain the placement of the cabin, and results in the entire cabin being located within the Coleman Property.

Additionally, the Plaintiff's surveyor, Robert Stratton, submitted an interpretation of the deeds which matches the Tucker Survey admitted as Plaintiff's Exhibit 23 – his Figure 8, which is depicted as follows:



(Ex. 16).

While Stratton preferred his Figure 6, which by Stratton's own admission required that he arbitrarily hold the Southern boundary line along the not yet built fence line, he also indicated in his report that this Figure 8 was "a reasonable alternative based on the deeds." (Ex. 16). The Bakers respectfully submit that this is the only reasonable interpretation, as it holds nearly all of the calls in the deed, while reconciling Harry Clark's placement of the cabin. *Sun Valley Shamrock Res., Inc.*, 118 Idaho at 120, 794 P.2d at 1393 ("When construing a deed description, effect must be given, if possible, to all of the language contained in the description.").

Other than the placement of the Cabin, there is no other competent evidence that would support a finding that Clark intended to convey the property described in the Partial Judgment. The driveway to the cabin did not exist at the time of the conveyance, because the cabin had not yet been placed on the property. (Tr., Court Trial, pp.411, 412). The same is true for the parking area, and the fence had not yet been built by Clifford Johnson, who would not purchase his property until the year following the receipt of the property by Coleman. Consequently, the only reasonable interpretation of the evidence is depicted in the Plaintiff's Exhibit 23. (Ex. 23).

G. The Court's Partial Judgment Results in a Reformation of the Deed Without the Requisite Finding of Proof by Clear and Convincing Evidence.

Although the District Court framed its original decision on a finding of the intent of Harry and Edith Clark, the result was a complete reformation of the 1970 Coleman Deed to match the fence line that was constructed in 1971. Essentially, Coleman was asking the Court to find that the Clarks' intended to grant up to the fence line, but mistakenly left out the call to the fence in the Deed. By ruling that the Clarks intended to grant up to the fence line, the Court effectively reformed the 1970 Coleman Deed to include a call to the fence line.

Yet, the Court reached this decision by only a preponderance of the evidence.

Reformation of a deed, however, requires proof by clear and convincing evidence.

In interpreting a deed, the court's goal is to carry out the real intention of the parties. *C & G, Inc. v. Rule*, 135 Idaho 763, 766, 25 P.3d 76, 79 (2001). If an instrument does not reflect the true intent of the parties due to mutual mistake, then reformation of that instrument may be the proper remedy. *Bilbao v. Krettinger*, 91 Idaho 69, 72–73, 415 P.2d 712, 715–16 (1966). “A mutual mistake occurs when both parties, at the time of contracting, share a misconception regarding a basic assumption or vital fact upon which the bargain is based.” *Hines v. Hines*, 129 Idaho 847, 853, 934 P.2d 20, 26 (1997). The court acts properly in reforming the instrument to reflect the agreement the parties would have made but for the mistake. *Bailey v. Ewing*, 105 Idaho 636, 640–41, 671 P.2d 1099, 1103–04 (Ct.App.1983). What the parties actually intended is a question of fact. *Id.* at 641, 671 P.2d at 1104. **The party alleging the mutual mistake has the burden of proving it by clear and convincing evidence.** *Collins v. Parkinson*, 96 Idaho 294, 296, 527 P.2d 1252, 1254 (1974).

Hughes v. Fisher, 142 Idaho 474, 482, 129 P.3d 1223, 1231 (2006) (*emphasis added*).

In its original decision, the Court made no findings that the Plaintiff had proven by clear and convincing evidence that the Clark’s mistakenly left out the call to the fence line in the 1970 Coleman Deed. The Court’s ruling, therefore, is clearly erroneous, and must be overturned.

The Court’s Alternative Decision, however, does not require reformation of the deed. It only requires a finding that the 1970 Coleman Deed describes property which overlaps with the property conveyed to the Johnsons in 1971. It does not require the Court to reform the deed to include a call to a fence line which was not included in the language of the deed itself. Thus, the Court’s Alternative Decision applies the correct standard of proof.

H. The District Court Erroneously Failed to Consider the Baker's Defense of Laches.

Baker asserted an affirmative defense of laches in their Amended Answer, and argued this defense at trial. The Court, however, did not make any findings of fact or conclusions of law with respect to this affirmative defense. The Bakers requested that the Court consider the defense in reconsidering its opinion.

The evidence at trial demonstrated that Jean Coleman was aware of the issues with respect to the legal descriptions for her properties no later than 1981. Tucker Engineering provided such notification by letter dated October 12, 1979. (Ex. HH). A survey was completed for Jean Coleman, as evidenced by the 1981 Tucker Survey, which is labeled "for Jean Coleman." (Ex. B). Evidence was admitted at trial that Ms. Coleman was part of this process, and asked to be present during the Jean Coleman survey. (Ex. X; Tr. Court Trial, p. 701- 708). New legal descriptions were drafted in 1981 for Coleman by Tucker Engineering, which directly addressed the ambiguities in the deeds. (Ex. 21).

Yet, Coleman chose not to address these issues until almost 30 years later, when witnesses are no longer available, evidence is lost, and memories have faded. The loss of such evidence particularly the Court's finding that Cliff Johnson's memory is not reliable (Tr., Court Trial, pp.1029-1030)) has caused substantial prejudice to the Bakers.

Circumstances such as these are exactly why the doctrine of laches exists, and Baker requested that that the Court make particularized findings of fact and conclusions of law regarding this defense. (R., Vol. V, pp. 0856-0857). In ruling on Baker's Motion for Reconsideration, the District Court identified the elements of laches as follows:

To invoke the defense of laches, Idaho requires the following elements to be proven: (1) defendant's invasion of plaintiff's rights,

(2) delay in asserting plaintiff's rights, the plaintiff having had notice and an opportunity to institute a suit, (3) lack of knowledge by defendant that plaintiff would assert his rights, and (4) injury or prejudice to defendant in event relief is accorded to plaintiff or the suit is not held to be barred. Lapse of time, although an important element, is not alone controlling in determining the applicability of the defense of laches, unless the party claiming laches was injured or placed at a disadvantage by such delay.

Landis v. Hodgson, 109 Idaho 252, 259, 706 P.2d 1363, 1370 (Ct. App. 1985) (quoting *Huppert v. Wolford*, 91 Idaho 249, 257, 420 P.2d 11, 19 (1966)).

The District Court went on to rule:

The Bakers invaded Jean Coleman's rights when they tore down a portion of the fence. There was no material delay by the plaintiffs in asserting their rights. Accordingly, the Bakers did not prove the defense of laches.

(R., Vol. V., Bates 0886).

This analysis is clearly erroneous. Jean Coleman invaded the rights of the Johnsons (the Bakers' predecessor's-in-interest) by knowingly utilizing a portion of the Johnsons' property which she did not own. The evidence at trial demonstrated that Ms. Coleman knew about the problematic legal descriptions by 1981. By waiting almost 30 years to assert a claim to the property, she allowed the evidence to grow stale. The Court erred by failing to consider this defense from the standpoint of the Bakers, rather than the standpoint of Coleman, and by failing to make particularized findings of fact as to whether Ms. Coleman was, in fact, aware of these issues, and whether her delay in bringing the claim materially prejudiced the Appellants.

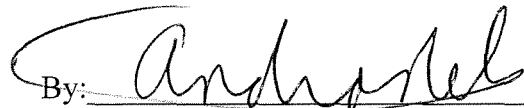
IV. CONCLUSION.

For the foregoing reasons, the Bakers respectfully submit that the decision of the District Court is clearly erroneous and not based upon substantial evidence. Consequently, the Bakers

request that the Supreme Court reverse that decision and either adopt the Court's Alternative Decision, or remand with instructions to the District Court to make a determination of the Grantor's intent based only upon evidence that the Clarks could have considered when drafting the deeds by which they conveyed the property to Coleman.

DATED this 25 day of November, 2013.

BERG & McLAUGHLIN, CHTD.

By: 
ANDRA NELSON
Attorneys for Appellants Baker

CERTIFICATE OF SERVICE

On November 25, 2013, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Terri Boyd-Davis 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Plaintiff</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other _____
Brian F. Davis 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Plaintiff</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other
Jean L. Coleman 2902 N. 5 th Ave., Coeur d'Alene, ID 83814 <i>Plaintiff</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other

Stephanie L. Allen