

9-14-2015

Thornton v. Pandrea Clerk's Record v. 3 Dckt. 42332

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IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

W
ERK

Supreme Court Docket #42332-2014
Bonner County CV2013-1334

JOHN F. THORNTON,
Plaintiff / Counter Defendant / Appellant
vs.

MARY E. PANDREA,
Defendant / Respondent

and

**KENNETH J. BARRETT and
DEANNA L. BARRETT,**
*Defendants / Counter Claimants /
Respondents*

and

SEE AUGMENTATION RECORD

VAL THORNTON,
Intervenor / Appellant

CLERK'S RECORD ON APPEAL

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

Val Thornton,
Attorney at Law
Attorney for Appellant

MICHAEL G. SCHMIDT
601 E. FRONT AVENUE
SUITE #502
COEUR D'ALENE, ID 83814

Attorney for Respondents (Barretts)

VOLUME III

42332

FILED - COPY
SEP 14 2015
Supreme Court _____ Court of Appeals _____
Entered on ATS by _____

IN THE SUPREME COURT OF THE
STATE OF IDAHO

JOHN F. THORNTON,)
Plaintiff, Counter defendant and)
Appellant,)
vs.)
Mary E. Pandrea,)
Defendant and Respondent)
and)
KENNETH J. BARRETT and)
DEANNA L. BARRETT,)
Defendants, Counterclaimants and)
Respondents)
and)
VAL THORNTON,)
Intervenor and Appellant.)
_____)

SUPREME COURT NO. 42332-2014
BONNER COUNTY CASE CV2013-1334

Appeal from the First Judicial District, Bonner County, Idaho

HONORABLE JOHN T. MITCHELL, presiding

Val Thornton, Attorney at Law, 4685 Upper Pack River Road, Sandpoint, ID 83864

MICHAEL G. SCHMIDT
601 E. FRONT AVENUE
SUITE #502
COEUR D'ALENE, ID 83814

TABLE OF CONTENTS

Cover Page Vol. I - p. 1

Clerk’s Record On Appeal Vol. I - p. 2

Table of Contents Vol. I - p. 3-8

Index Vol. I - p. 9-13

ROAs Vol. I - p. 14-30

Complaint to Quiet Title and for Damages filed Aug. 14, 2013 Vol. I - p. 31-42

Order Granting Disqualification Without Cause
filed Aug. 21, 2013 Vol. I - p. 43-44

Defendant Pandrea’s Answer to Complaint to Quiet Title and for
Damages filed September 3, 2013 Vol. I - p. 45-54

Order of Reassignment filed September 4, 2013..... Vol. I - p. 55

Order Permitting Service Out of State filed Sept. 20, 2013 Vol. I - p. 56-57

Order Compelling Discovery filed December 5, 2013 Vol. I - p. 58-59

Defendant Clark’s Answer, Affirmative Defenses, Counterclaim and
Demand for Jury Trial filed December 9, 2013 Vol. I - p. 60-74

Scheduling Order, Notice of Trial Setting and Initial Pretrial Order
filed January 14, 2014 Vol. I - p. 75-81

Memorandum Decision and Order Granting in Part and Denying in Part
Defendant Pandrea’s Motion to Dismiss (Motion for Summary
Judgment) filed January 14, 2014 Vol. I - p. 82-107

Order Denying Motion to Amend Scheduling Order
filed Jan. 27, 2014 Vol. I - p. 108-109

Defendant Clark’s Motion for Summary Judgment of Dismissal of Thornton’s
Complaint and Motion for Partial Summary Judgment on Clark’s
Counter Claims filed January 30, 2014 Vol. I - p. 110-112

TABLE OF CONTENTS

Memorandum in Support of Defendant Clark’s Motion for Summary Judgment of Dismissal of Thornton’s Complaint and Motion for Partial Summary Judgment of Clark’s Counter Claims filed January 30, 2014 Vol. I - p. 113-122

Affidavit of Joel P. Hazel in Support of Defendant Clark’s Motion for Summary Judgment of Dismissal of Thornton’s Complaint and Motion for Partial Summary Judgment of Clark’s Counter Claims filed January 30, 2014 Vol. I - p. 123-143

Affidavit of Terri Boyd-Davis in Support of Defendant Clark’s Motion for Summary Judgment of Dismissal of Thornton’s Complaint and Motion for Partial Summary Judgment of Clark’s Counter Claims filed Jan. 30, 2014 Vol. I - p. 144-162

Answer to Defendant Kari Clark’s Counterclaim filed Jan. 31, 2014 Vol. I - p. 163-165

Plaintiff’s Objection to Defendant Kari Clark’s Motion for Summary Judgment filed February 28, 2014 Vol. I - p. 166-167

Affidavit of John Thornton in Opposition to Summary Judgment filed February 28, 2014 Vol. I - p. 168-170

Plaintiff’s Memorandum of Law in Opposition to Defendant Kari Clark’s Motion for Summary Judgment filed Feb. 28, 2014 Vol. I - p. 171-178

Reply Memorandum in Support of Defendant Clark’s Motion for Summary Judgment of Dismissal of Thornton’s Complaint and Motion for Partial Summary Judgment of Clark’s Counterclaims filed Mar. 7, 2014 Vol. I - p. 179-185

Plaintiff’s Motion to Shorten Time for Hearing Motion for Sanctions to Dismiss or to Continue Hearing on Defendant’s Motion for Summary Judgment and to Vacate Trial Schedule filed March 11, 2014 Vol. I - p. 186-190

Clerk’s Certificate Vol. I - p. 191

Clerk’s Certificate of Exhibits Vol. I - p. 192

Clerk’s Certificate of Service Vol. I - p. 193

TABLE OF CONTENTS

VOLUME II

Cover PageVol. II - p. 194

Table of ContentsVol. II - p. 195-200

Index Vol. II - p. 201-206

ROAs Vol. II - p. 207-223

Affidavit of Counsel in Support of Motion for Sanctions to Shorten Time and to Continue filed March 11, 2014 Vol. II - p. 224-261

Withdrawal of Notice of Hearing filed March 13, 2014 Vol. II - p. 262

Defendant / Counterclaimant Clark’s Objection to Plaintiff’s Motion to Shorten Time for Hearing Motion for Sanctions to Dismiss or to Continue Hearing on Defendant’s Motion for Summary Judgment and to Vacate Trial Schedule and the Affidavit of Counsel in Support Thereof filed Mar. 13, 2014Vol. II - p. 263-265

Memorandum Decision and Order Granting Defendant Clark’s Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Defendant Clark’s Motion for Partial Summary Judgment on Clark’s Counter-Claims Against Thornton filed April 9, 2014Vol. II - p. 266-288

Motion in Limine Motion for Protective Order and for Sanctions filed April 9, 2014Vol. II - p. 289-293

Certification of Counsel in Support of Motion in Limine Motion for Protective Order and for Sanctions filed April 9, 2014Vol. II - p. 294-295

Defendant / Counterclaimant Clark’s Motion to Voluntarily Dismiss the Damage Claim for Interference with Easement and Notice of Hearing filed April 11, 2014Vol. II - p. 296-298

Notice of No Objection to Defendant Clark’s Motion to Dismiss Damage Claim filed April 15, 2014Vol. II - p. 299

Stipulation for Order of Dismissal of Defendant / Counterclaimant Clark’s Damage Claim for Interference with Easement filed Apr. 18, 2014Vol. II - p. 300-302

TABLE OF CONTENTS

Order of Dismissal of Defendant / Counterclaimant Clark's Damage Claim for Interference with Easement filed April 18, 2014Vol. II - p. 303-305

Judgment filed May 1, 2014Vol. II - p. 306-309

Affidavit of John Thornton in support of Motion to Reconsider filed May 6, 2014Vol. II - p. 310-334

Memorandum of Law in Support of Plaintiff's Motion to Reconsider Summary Judgment filed May 6, 2014Vol. II - p. 335-353

Affidavit of Defendant Mary Pandrea in Support of John Thornton's Motion to Reconsider filed May 6, 2014Vol. II - p. 354-357

Affidavit of Val Thornton in Support of Plaintiff's Motion to Reconsider Summary Judgment filed May 6, 2014Vol. II - p. 358-440

VOLUME III

Cover PageVol. III - p. 441

Table of Contents Vol. III - p. 442-447

Index Vol. III - p. 448-453

ROAs Vol. III - p. 454-470

Plaintiff's Motion to Reconsider Summary Judgment and Notice of Hearing filed May 6, 2014 Vol. III - p. 471-472

Defendant / Counterclaimant Clark's Motion for Award of Attorney's Fees and Costs filed May 12, 2014 Vol. III - p. 473-475

Brief in Support of Defendant / Counterclaimant Clark's Motion for Award of Attorney's Fees and Costs filed May 12, 2014 Vol. III - p. 476-484

Affidavit / Memorandum of Joel P. Hazel in Support of Motion for Award of Motion for Attorney's Fees and Costs filed May 12, 2014 Vol. III - p. 485-495

Plaintiff's Amended Notice of Hearing and Motion to Shorten Time filed May 13, 2014 Vol. III - p. 496-498

TABLE OF CONTENTS

Defendant / Counterclaimant Clark's Response to Thornton's Motion for Reconsideration and Objection to the Affidavits of Mary Pandrea and John Thornton filed in Support Thereof filed May 13, 2014 Vol. III - p. 499-504

Affidavit of Correction Affidavit of Val Thornton in Support of Plaintiff's Motion to Reconsider Summary Judgment filed May 14, 2014 Vol. III - p. 505-507

Plaintiff's Reply Brief in Support of His Motion to Reconsider Summary Judgment filed May 16, 2014 Vol. III - p. 508-511

Affidavit of Defendant Mary Pandrea in Support of John Thornton's Motion to Reconsider filed May 16, 2014 Vol. III - p. 512-513

Order of Dismissal of Plaintiff's Complaint to Quiet Title and for Damages Against Defendant Mary Pandrea filed May 21, 2014 Vol. III - p. 514-515

Plaintiff's Objection and Motion to Disallow Defendant Kari Clark's Motion for Attorney Fees and Costs filed May 27, 2014 Vol. III - p. 516-525

Memorandum Decision and Order Denying Plaintiff Thornton's Motion to Reconsider Summary Judgment, and Denying Defendant Pandrea's Motions filed June 2, 2014 Vol. III - p. 526-554

Response to Plaintiff's Objection and Motion to Disallow Defendant Kari Clark's Motion for Attorney Fees and Costs filed June 19, 2014 Vol. III - p. 555-561

Plaintiff's Notice of Easement Location filed June 26, 2014 Vol. III - p. 562-563

Affidavit of John Marquette Re Legal Description of Easement Contained in Proposed Amended Judgment filed June 26, 2014 Vol. III - p. 564-569

Supplemental Affidavit of Jason M. Gray in Support of Motion for Award of Attorney's Fees and Costs filed June 27, 2014 Vol. III - p. 570-578

Amended Judgment filed June 30, 2014 Vol. III - p. 579-583

Notice of Appeal filed June 30, 2014 Vol. III - p. 584-589

Notice of Appeal filed July 14, 2014 Vol. III - p. 590-598

Notice of Defect filed July 23, 2014 Vol. III - p. 599-600

TABLE OF CONTENTS

Notice of Substitution of Kenneth J. Barrett and Deanna L. Barrett in the Stead of Respondent Kari A. Clark filed July 28, 2014 Vol. III - p. 601-604

Motion to Temporarily Remand Case to the District Court to Rule on Respondent Kari A. Clark’s Motion to Substitute Parties filed August 4, 2014 Vol. III - p. 605-613

Order Substituting Kenneth J. Barrett and Deanna L. Barrett in the Stead of Defendant / Counter Claimant Kari A. Clark filed Aug. 4, 2014 Vol. III - p. 614-616

Amended Notice of Appeal filed August 6, 2014 Vol. III - p. 617-623

Order Approving Substitution filed August 22, 2014 Vol. III - p. 624-625

Respondents Kenneth J. and Deanna L. Barrett’s Opposition to Petition of Counsel Val Thornton for Leave to Intervene on Appeal filed August 27, 2014 Vol. III - p. 626-640

Declaration of Michael G. Schmidt in Support of Respondents Kenneth J. and Deanna L. Barrett’s Opposition to Petition of Counsel Val Thornton for Leave to Intervene on Appeal filed August 27, 2014 Vol. III - p. 641-718

Notice of Transcript Lodged filed September 9, 2014Vol. III - p. 719

Motion to Dismiss Appeal of Mary E. Pandrea filed Sept. 15, 2014 Vol. III - p. 720-728

Notice of Substitution of Counsel for Defendants Kenneth J. Barrett and Deanna L. Barrett Only as the Appeal of Pandrea filed Sept. 17, 2014 Vol. III - p. 729-731

Notice of Withdrawal of: 1) Motion to Dismiss Appeal of Mary E. Pandrea and 2) Notice of Errors to Clerk’s Certificate of Appeal filed Sept. 22, 2014 Vol. III - p. 732-733

Clerk’s CertificateVol. III - p. 734

Clerk’s Certificate of ExhibitsVol. III - p. 735

Clerk’s Certificate of ServiceVol. III - p. 736

INDEX

Affidavit / Memorandum of Joel P. Hazel in Support of Motion for Award of Motion for Attorney's Fees and Costs filed May 12, 2014	Vol. III - p. 485-495
Affidavit of Correction Affidavit of Val Thornton in Support of Plaintiff's Motion to Reconsider Summary Judgment filed May 14, 2014	Vol. III - p. 505-507
Affidavit of Counsel in Support of Motion for Sanctions to Shorten Time and to Continue filed March 11, 2014	Vol. II - p. 224-261
Affidavit of Defendant Mary Pandrea in Support of John Thornton's Motion to Reconsider filed May 6, 2014	Vol. II - p. 354-357
Affidavit of Defendant Mary Pandrea in Support of John Thornton's Motion to Reconsider filed May 16, 2014	Vol. III - p. 512-513
Affidavit of Joel P. Hazel in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counter Claims filed January 30, 2014	Vol. I - p. 123-143
Affidavit of John Marquette Re Legal Description of Easement Contained in Proposed Amended Judgment filed June 26, 2014	Vol. III - p. 564-569
Affidavit of John Thornton in Opposition to Summary Judgment filed February 28, 2014	Vol. I - p. 168-170
Affidavit of John Thornton in support of Motion to Reconsider filed May 6, 2014	Vol. II - p. 310-334
Affidavit of Terri Boyd-Davis in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counter Claims filed Jan. 30, 2014	Vol. I - p. 144-162
Affidavit of Val Thornton in Support of Plaintiff's Motion to Reconsider Summary Judgment filed May 6, 2014	Vol. II - p. 358-440
Amended Judgment filed June 30, 2014	Vol. III - p. 579-583
Amended Notice of Appeal filed August 6, 2014	Vol. III - p. 617-623
Answer to Defendant Kari Clark's Counterclaim filed Jan. 31, 2014	Vol. I - p. 163-165

INDEX

Brief in Support of Defendant / Counterclaimant Clark's Motion for Award of Attorney's Fees and Costs filed May 12, 2014	Vol. III - p. 476-484
Certification of Counsel in Support of Motion in Limine Motion for Protective Order and for Sanctions filed April 9, 2014	Vol. II - p. 294-295
Clerk's Certificate	Vol. I - p. 191 and Vol. III - p. 734
Clerk's Certificate of Exhibits	Vol. I - p. 192 and Vol. III - p. 735
Clerk's Certificate of Service	Vol. I - p. 193 and Vol. III - p. 736
Clerk's Record On Appeal	Vol. I - p. 2
Complaint to Quiet Title and for Damages filed Aug. 14, 2013	Vol. I - p. 31-42
Cover Page	Vol. I - p. 1, Vol. II - p. 194 and Vol. III - p. 441
Declaration of Michael G. Schmidt in Support of Respondents Kenneth J. and Deanna L. Barrett's Opposition to Petition of Counsel Val Thornton for Leave to Intervene on Appeal filed August 27, 2014	Vol. III - p. 641-718
Defendant / Counterclaimant Clark's Motion for Award of Attorney's Fees and Costs filed May 12, 2014	Vol. III - p. 473-475
Defendant / Counterclaimant Clark's Motion to Voluntarily Dismiss the Damage Claim for Interference with Easement and Notice of Hearing filed April 11, 2014	Vol. II - p. 296-298
Defendant / Counterclaimant Clark's Objection to Plaintiff's Motion to Shorten Time for Hearing Motion for Sanctions to Dismiss or to Continue Hearing on Defendant's Motion for Summary Judgment and to Vacate Trial Schedule and the Affidavit of Counsel in Support Thereof filed Mar. 13, 2014	Vol. II - p. 263-265
Defendant / Counterclaimant Clark's Response to Thornton's Motion for Reconsideration and Objection to the Affidavits of Mary Pandrea and John Thornton filed in Support Thereof filed May 13, 2014	Vol. III - p. 499-504
Defendant Clark's Answer, Affirmative Defenses, Counterclaim and Demand for Jury Trial filed December 9, 2013	Vol. I - p. 60-74

INDEX

Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counter Claims filed January 30, 2014	Vol. I - p. 110-112
Defendant Pandrea's Answer to Complaint to Quiet Title and for Damages filed September 3, 2013	Vol. I - p. 45-54
Index	Vol. II - p. 201-206, Vol. III - p. 448-453 and Vol. I - p. 9-13
Judgment filed May 1, 2014	Vol. II - p. 306-309
Memorandum Decision and Order Denying Plaintiff Thornton's Motion to Reconsider Summary Judgment, and Denying Defendant Pandrea's Motions filed June 2, 2014	Vol. III - p. 526-554
Memorandum Decision and Order Granting Defendant Clark's Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Defendant Clark's Motion for Partial Summary Judgment on Clark's Counter-Claims Against Thornton filed April 9, 2014	Vol. II - p. 266-288
Memorandum Decision and Order Granting in Part and Denying in Part Defendant Pandrea's Motion to Dismiss (Motion for Summary Judgment) filed January 14, 2014	Vol. I - p. 82-107
Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counter Claims filed January 30, 2014	Vol. I - p. 113-122
Memorandum of Law in Support of Plaintiff's Motion to Reconsider Summary Judgment filed May 6, 2014	Vol. II - p. 335-353
Motion in Limine Motion for Protective Order and for Sanctions filed April 9, 2014	Vol. II - p. 289-293
Motion to Dismiss Appeal of Mary E. Pandrea filed Sept. 15, 2014	Vol. III - p. 720-728
Motion to Temporarily Remand Case to the District Court to Rule on Respondent Kari A. Clark's Motion to Substitute Parties filed August 4, 2014	Vol. III - p. 605-613
Notice of Appeal filed July 14, 2014	Vol. III - p. 590-598

INDEX

Notice of Appeal filed June 30, 2014	Vol. III - p. 584-589
Notice of Defect filed July 23, 2014	Vol. III - p. 599-600
Notice of No Objection to Defendant Clark's Motion to Dismiss Damage Claim filed April 15, 2014	Vol. II - p. 299
Notice of Substitution of Counsel for Defendants Kenneth J. Barrett and Deanna L. Barrett Only as the Appeal of Pandrea filed Sept. 17, 2014	Vol. III - p. 729-731
Notice of Substitution of Kenneth J. Barrett and Deanna L. Barrett in the Stead of Respondent Kari A. Clark filed July 28, 2014	Vol. III - p. 601-604
Notice of Transcript Lodged filed September 9, 2014	Vol. III - p. 719
Notice of Withdrawal of: 1) Motion to Dismiss Appeal of Mary E. Pandrea and 2) Notice of Errors to Clerk's Certificate of Appeal filed Sept. 22, 2014	Vol. III - p. 732-733
Order Approving Substitution filed August 22, 2014	Vol. III - p. 624-625
Order Compelling Discovery filed December 5, 2013	Vol. I - p. 58-59
Order Denying Motion to Amend Scheduling Order filed Jan. 27, 2014	Vol. I - p. 108-109
Order Granting Disqualification Without Cause filed Aug. 21, 2013	Vol. I - p. 43-44
Order of Dismissal of Defendant / Counterclaimant Clark's Damage Claim for Interference with Easement filed April 18, 2014	Vol. II - p. 303-305
Order of Dismissal of Plaintiff's Complaint to Quiet Title and for Damages Against Defendant Mary Pandrea filed May 21, 2014	Vol. III - p. 514-515
Order of Reassignment filed September 4, 2013.....	Vol. I - p. 55
Order Permitting Service Out of State filed Sept. 20, 2013	Vol. I - p. 56-57
Order Substituting Kenneth J. Barrett and Deanna L. Barrett in the Stead of Defendant / Counter Claimant Kari A. Clark filed Aug. 4, 2014	Vol. III - p. 614-616

INDEX

Plaintiff's Amended Notice of Hearing and Motion to Shorten Time filed May 13, 2014	Vol. III - p. 496-498
Plaintiff's Memorandum of Law in Opposition to Defendant Kari Clark's Motion for Summary Judgment filed Feb. 28, 2014	Vol. I - p. 171-178
Plaintiff's Motion to Reconsider Summary Judgment and Notice of Hearing filed May 6, 2014	Vol. III - p. 471-472
Plaintiff's Motion to Shorten Time for Hearing Motion for Sanctions to Dismiss or to Continue Hearing on Defendant's Motion for Summary Judgment and to Vacate Trial Schedule filed March 11, 2014	Vol. I - p. 186-190
Plaintiff's Notice of Easement Location filed June 26, 2014	Vol. III - p. 562-563
Plaintiff's Objection and Motion to Disallow Defendant Kari Clark's Motion for Attorney Fees and Costs filed May 27, 2014	Vol. III - p. 516-525
Plaintiff's Objection to Defendant Kari Clark's Motion for Summary Judgment filed February 28, 2014	Vol. I - p. 166-167
Plaintiff's Reply Brief in Support of His Motion to Reconsider Summary Judgment filed May 16, 2014	Vol. III - p. 508-511
Reply Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counterclaims filed Mar. 7, 2014	Vol. I - p. 179-185
Respondents Kenneth J. and Deanna L. Barrett's Opposition to Petition of Counsel Val Thornton for Leave to Intervene on Appeal filed August 27, 2014	Vol. III - p. 626-640
Response to Plaintiff's Objection and Motion to Disallow Defendant Kari Clark's Motion for Attorney Fees and Costs filed June 19, 2014	Vol. III - p. 555-561
ROAs	Vol. II - p. 207-223, Vol. III - p. 454-470 and Vol. I - p. 14-30
Scheduling Order, Notice of Trial Setting and Initial Pretrial Order filed January 14, 2014	Vol. I - p. 75-81

INDEX

Stipulation for Order of Dismissal of Defendant / Counterclaimant Clark's Damage Claim for Interference with Easement filed Apr. 18, 2014	Vol. II - p. 300-302
Supplemental Affidavit of Jason M. Gray in Support of Motion for Award of Attorney's Fees and Costs filed June 27, 2014	Vol. III - p. 570-578
Table of Contents	Vol. I - p. 3-8, Vol. II - p. 195-200 and Vol. III - p. 442-447
Withdrawal of Notice of Hearing filed March 13, 2014	Vol. II - p. 262

John F. Thornton vs. Mary E. Pandrea, Kari A. Clark, Kenneth J Barrett, Deanna L Barrett

Date	Code	User	Judge
8/14/2013	NCOO	KRAMES	New Case Filed - Other Claims
	APER	KRAMES	Plaintiff: Thornton, John F. Appearance Valerie Thornton
		KRAMES	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Thornton, John F. (plaintiff) Receipt number: 0495295 Dated: 8/14/2013 Amount: \$96.00 (Check) For: Thornton, John F. (plaintiff)
	COMP	HENDRICKSO	Complaint to Quiet Title and for Damages
	SMIS	HENDRICKSO	Summons Issued - Mary E. Pandrea (original to file)
	SMIS	HENDRICKSO	Summons Issued - Kari A. Clark (original to file)
8/15/2013		HENDRICKSO	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Tom Receipt number: 0495355 Dated: 8/15/2013 Amount: \$14.00 (Cash)
8/16/2013	MODQ	CMOORE	Motion for Disqualification Without Cause (Judge Buchanan)
8/21/2013	CHJG	HENDRICKSO	Change Assigned Judge
	ORDQ	HENDRICKSO	Order Granting Disqualification Without Cause (Judge Buchanan)
	DISA	OPPELT	Disqualification Of Judge - Automatic - Judge Buchanan
9/3/2013		BOWERS	Filing: 11 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Pandrea, Mary E. (defendant) Receipt number: 0496149 Dated: 9/3/2013 Amount: \$66.00 (Check) For: Pandrea, Mary E. (defendant)
	ANSW	OPPELT	Defendant Pandrea's Answer to Complaint to Quiet Title and For Damages
	APER	OPPELT	Defendant: Pandrea, Mary E. Appearance Pro Se
9/4/2013	ORDR	OPPELT	Order of Reassignment
	CHJG	OPPELT	Change Assigned Judge
9/11/2013		KRAMES	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Terri Boyd-Davis Receipt number: 0496661 Dated: 9/11/2013 Amount: \$9.00 (Cash)
9/19/2013	MOTN	HENDRICKSO	Motion for Service Out of State
	AFFD	HENDRICKSO	Affidavit of Counsel in Support of Plaintiff's Motion for Service Out os State
9/20/2013	CINF	HENDRICKSO	Documents sent to Judge for Review paperwork in jo's pending w/ conforming copies and sase

John F. Thornton vs. Mary E. Pandrea, Kari A. Clark, Kenneth J Barrett, Deanna L Barrett

Date	Code	User		Judge
9/20/2013	ORDR	HENDRICKSO	Order Permitting Service Out of State - Granted	John T. Mitchell
10/23/2013	NOSV	HENDRICKSO	Notice of Service of Plaintiff's First Set of Interrogatories and Requests for Production of Documents to Mary Pandrea	John T. Mitchell
11/7/2013	MOTN	HENDRICKSO	Defendant Pandrea's Motion to Dismiss Complaint for Quiet Title and for Damages	John T. Mitchell
	HRSC	HENDRICKSO	Hearing Scheduled (Motion to Dismiss 01/06/2014 04:00 PM) Kootenai County Pandrea's Motion to Dismiss Complaint For Quiet Title and for Damages	John T. Mitchell
	AFFD	HENDRICKSO	Affidavit in Support of Defendant Pandrea's Motion to Dismiss Complaint for Quiet Title and For Damages	John T. Mitchell
	MEMO	HENDRICKSO	Defendant Pandrea's Memorandum in Support of Motion to Dismiss Complaint to Quiet Title and for Damages	John T. Mitchell
	MOTN	HENDRICKSO	Defendant Pandrea's Motion to Dismiss Complaint to Quiet title and for Damages Under IRCP 12(b)	John T. Mitchell
	NOFG	HENDRICKSO	Notice of Filing of Response to Plaintiff's Request for Interogatorries and Production	John T. Mitchell
11/14/2013		HENDRICKSO	Filing: 11 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Witherspoon Kelley Davenport & Tool Receipt number: 0500228 Dated: 11/20/2013 Amount: \$66.00 (Check) For: Clark, Kari A. (defendant)	John T. Mitchell
	NOAP	HENDRICKSO	Notice of Appearance of Defendant Kari A. Clark	John T. Mitchell
	APER	HENDRICKSO	Defendant: Clark, Kari A. Appearance Joel P Hazel	John T. Mitchell
11/19/2013	MOTN	HENDRICKSO	Motion to Compel Discovery and Notice of Hearing	John T. Mitchell
	HRSC	HENDRICKSO	Hearing Scheduled (Motion to Compel 12/05/2013 01:30 PM) Kootenai County Plaintiffs	John T. Mitchell
	CERT	HENDRICKSO	Certification of Counsel in Support of Motion to Compel Discovery	John T. Mitchell
	MISC	HENDRICKSO	Plaintiff's First Set of Interrogatories and Requests for Production of Documents to Mary Pandrea	John T. Mitchell
11/21/2013	FIOC	OPPELT	File Out Of County - Judge Mitchell	John T. Mitchell
11/27/2013	MISC	BOWERS	Opposition to Plaintiff's Motion to Compel and Defendant Pandrea's Request for Protective Order or Stay Pending Dismissal and Request to Assign Case to Proper Jurisdiction	John T. Mitchell
12/3/2013	NOTC	HENDRICKSO	Notice of Unavailability - Attorney Thornton	John T. Mitchell

John F. Thornton vs. Mary E. Pandrea, Kari A. Clark, Kenneth J Barrett, Deanna L Barrett

Date	Code	User		Judge
12/3/2013	NOSV	HENDRICKSO	Notice of Service of Plaintiff's First Set of Interrogatories and Request for Production of Documents to Defendant Kari Clark	John T. Mitchell
12/5/2013	ORDR	OPPELT	Order Compelling Discovery	John T. Mitchell
	DCHH	HENDRICKSO	Hearing result for Motion to Compel scheduled on 12/05/2013 01:30 PM: District Court Hearing Held Court Reporter: Julie Foland Number of Transcript Pages for this hearing estimated: Kootenai County Plaintiff's	John T. Mitchell
	GRNT	HENDRICKSO	Hearing result for Motion to Compel scheduled on 12/05/2013 01:30 PM: Motion Granted Kootenai County Plaintiff's	John T. Mitchell
12/9/2013	MEMO	HENDRICKSO	Memorandum Decision and Order Granting Plaintiff's Motion to Compel	John T. Mitchell
	ANSW	HENDRICKSO	Defendant Clark's Answer, Affirmative Defenses, Counterclaim and Demand for Jury Trial	John T. Mitchell
12/12/2013	MEMO	HENDRICKSO	Supplemental Memorandum in Support of Pandrea's Motion to Dismiss	John T. Mitchell
12/16/2013	NOSV	HENDRICKSO	Notice of Service of Defendant Kari A. Clark's Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents	John T. Mitchell
12/23/2013	NOFG	HENDRICKSO	Notice of Filing of Pandrea's Second Answers to Plaintiff's Request for Interrogatories and Production of Documents	John T. Mitchell
12/24/2013	OBJC	HENDRICKSO	Plaintiff's Objection and Memorandum of Law in Opposition to Summary Judgment	John T. Mitchell
	AFFD	HENDRICKSO	Affidavit of John Thornton in Opposition to Summary Judgment	John T. Mitchell
	MEMO	HENDRICKSO	Memorandum of Costs and Fees and Affidavit of Counsel	John T. Mitchell
12/30/2013	REPL	HENDRICKSO	Reply to Plaintiff's Objection in Opposition to Summary Judgment on Defendant's Motion to Dismiss Complaint	John T. Mitchell
12/31/2013		HENDRICKSO	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Witherspoon Kelley Davenport & Toole Receipt number: 0501909 Dated: 12/31/2013 Amount: \$10.00 (Check)	John T. Mitchell

John F. Thornton vs. Mary E. Pandrea, Kari A. Clark, Kenneth J Barrett, Deanna L Barrett

Date	Code	User	Judge
1/6/2014	DCHH	HENDRICKSO	Hearing result for Motion to Dismiss scheduled on 01/06/2014 04:00 PM: District Court Hearing Held Court Reporter: Julie Foland Number of Transcript Pages for this hearing estimated: Kootenai County Pandrea's Motion to Dismiss Complaint For Quiet Title and for Damages
	CINF	HENDRICKSO	per ctlg dated 01-06-2014 - Motion to Dismiss / under advisement
1/14/2014	NOTL	OPPELT	Scheduling Order, Notice of Trial Setting and Initial Pretrial Order
	MEMO	OPPELT	Memorandum Decision and Order Granting in Part and Denying in Part Defendant Pandrea's Motion to Dismiss (Motion for Summary Judgment)
	HRSC	OPPELT	Hearing Scheduled (Jury Trial - 3 Days 06/24/2014 09:00 AM) in Bonner County
1/27/2014	ORDR	OPPELT	Order Denying Motion to Amend Scheduling Order
	STIP	HENDRICKSO	Stipulation to Amend Scheduling Order
	CERT	HENDRICKSO	Certification of Counsel in Support of Stipulated Motion to Amend Scheduling Order
1/28/2014	WITN	HENDRICKSO	Defendant Clark's Expert Witness Disclosure
	MISC	HENDRICKSO	****END OF FILE #1*****BEGIN FILE #2
1/30/2014	NOTC	HENDRICKSO	Three-Day Notice of Intent to Take Default on Counterclaims
	MOTN	HENDRICKSO	Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counter Claims
	MEMO	HENDRICKSO	Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counter Claims
	AFFD	HENDRICKSO	Affidavit of Joel P. Hazel in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counter Claims
	AFFD	HENDRICKSO	Affidavit of Terri Boyd-Davis in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counter Claims

John F. Thornton vs. Mary E. Pandrea, Kari A. Clark, Kenneth J Barrett, Deanna L Barrett

Date	Code	User	Judge
1/30/2014	NOHG	HENDRICKSO	Notice of Hearing re: Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counter Claims
	HRSC	HENDRICKSO	Hearing Scheduled (Motion for Summary Judgment 03/14/2014 09:00 AM) Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint. Motion for Partial Summary Judgment of Clar's Counter Claims
1/31/2014	ANSW	HENDRICKSO	Answer to Defendant Kari Clark's Counterclaim
2/27/2014	MEMO	KRAMES	Pandrea's Memorandum In Support Of Plaintiff's Response To Defendant's Motion For Summary Judgment
	AFFD	KRAMES	Affidavit Of Mary Pandrea In Support Of Defendant Pandrea's Memorandum In Support Of Thornton's Response To Clerk's Motion For Summary Judgment
	AFFD	KRAMES	Affidavit Of James Gillette In Support Of Defendant Pandrea's Memorandum In Support Of Thornton's Response To Clark's Motion For Summary Judgment
	AFFD	KRAMES	Affidavit Of Debbie Gadbaw In Support Of Defendant Pandrea's Memorandum In Support Of Thornton's Response To Clark's Motion For Summary Judgment
	AFFD	KRAMES	Affidavit Of John Pandrea In Support Of Defendant Pandrea's Memorandum In Support Of Thornton's Response To Clark's Motion For Summary Judgment
	AFFD	KRAMES	Affidavit Of Nellie Gilbertson In Support Of Defendant Pandrea's Memorandum In Support Of Thornton's Response To Clark's Motion For Summary Judgment
2/28/2014	OBJC	KRAMES	Plaintiff's Objection to Defendant Kari Clark's Motion For Summary Judgment
	AFFD	KRAMES	Affidavit Of John Thornton In Opposition To Summary Judgment
	MEMO	KRAMES	Plaintiff's Memorandum Of Law In Opposition to Defendant Kari Clark's Motion For Summary Judgment
3/6/2014	FIOC	OPPELT	File Out Of County - Judge Mitchell
3/7/2014	MEMO	KRAMES	Reply Memorandum In Support of Defendant Clark's Motion For Summary Judgment Of Dismissal Of Thornton's Complaint And Motion For Partial Summary Judgment Of Clark's Counterclaims

John F. Thornton vs. Mary E. Pandrea, Kari A. Clark, Kenneth J Barrett, Deanna L Barrett

Date	Code	User	Judge
3/7/2014	MOTN	KRAMES	Defendant/Counterclaimant Clark's Motion To Shorten Time On Clark's Motion To Strike Pandrea's Memorandum In Support Of Plaintiff's Response To Defendant's Motion For Summary Judgment And The Affidavits Filed In Support Thereof
	MOTN	KRAMES	Defendant/Counterclaimant Clark's Motion To Strike Pandrea's Memorandum In Support Of Plaintiff's Response To Defendant's Motion For Summary Judgment And The Affidavits Filed In Support Thereof and Notice Of Hearing
	HRSC	KRAMES	Hearing Scheduled (Motion 03/14/2014 09:00 AM) Defendant/Counterclaimant Clark's Motion To Strike Pandrea's Memorandum In Support Of Plaintiff's Response To Defendant's Motion For Summary Judgment And The Affidavits Filed In Support Thereof
3/11/2014	MOTN	HENDRICKSO	Plaintiff's Motion to Shorten Time for Hearing Motion for Sanctions to Dismiss or to Continue Hearing on Defendant's Motion for Summary Judgment and to Vacate Trial Schedule
	AFFD	HENDRICKSO	Affidavit of Counsel in Support of Motion for Sanctions to Shorten Time and to Continue
	CINF	HENDRICKSO	No Notice of Hearing filed at the time of the above Motion to Shorten Time for Hearing
3/12/2014		HENDRICKSO	Miscellaneous Payment: Fax Fee Paid by: Whitterspoon & Kelly / Jason Gray Receipt number: 0004069 Dated: 3/12/2014 Amount: \$44.00 (Credit card)
		HENDRICKSO	Miscellaneous Payment: Technology Cost - CC Paid by: Whitterspoon & Kelly / Jason Gray Receipt number: 0004069 Dated: 3/12/2014 Amount: \$3.00 (Credit card)
3/13/2014	MOTN	HENDRICKSO	Pandrea's Response to Clark's Motion to Strike Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion For Summary Judgment and the Affidavits Filed in Support Thereof
	MISC	HENDRICKSO	Withdrawal of Notice of Hearing
	OBJC	HENDRICKSO	Defendant/Counterclaimant Clark's Objection to Plaintiff's Motion to Shorten Time for Hearing Motion for Sanctions to Dismiss or to Continue Hearing on Defendant's Motion for Summary Judgment and to Vacate Trial Schedule and the Affidavit of Counsel in Support Thereof
3/14/2014	CTLG	OPPELT	Court Log- From Kootenai County

John F. Thornton vs. Mary E. Pandrea, Kari A. Clark, Kenneth J Barrett, Deanna L Barrett

Date	Code	User	Judge
3/14/2014	DCHH	OPPELT	Hearing result for Motion scheduled on 03/14/2014 09:00 AM: District Court Hearing Held Court Reporter: Charlotte Crouch Number of Transcript Pages for this hearing estimated: Defendant/Counterclaimant Clark's Motion To Strike Pandrea's Memorandum In Support Of Plaintiff's Response To Defendant's Motion For Summary Judgment And The Affidavits Filed In Support Thereof - More Than 100 Pages
	GRNT	OPPELT	Hearing result for Motion scheduled on 03/14/2014 09:00 AM: Motion Granted Defendant/Counterclaimant Clark's Motion To Strike Pandrea's Memorandum In Support Of Plaintiff's Response To Defendant's Motion For Summary Judgment And The Affidavits Filed In Support Thereof
	GRNT	OPPELT	Hearing result for Motion for Summary Judgment scheduled on 03/14/2014 09:00 AM: Motion Granted Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint. Motion for Partial Summary Judgment of Clark's Counter Claims
3/18/2014	NOTC	HENDRICKSO	Notice of Unavailability - Attorney V. Thornton
3/25/2014	NOTC	HENDRICKSO	Notice of Unavailability - Attorney V. Thornton
	MISC	HENDRICKSO	*****END OF FILE #2*****BEGIN FILE #3*****
4/9/2014	MEMO	OPPELT	Memorandum Decision and Order Granting Defendant Clark's Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Defendant Clark's Motion for Partial Summary Judgment on Clark's Counter-Claims Against Thornton
	MOTN	HENDRICKSO	Motion in Limine Motion for Protective Order and for Sanctions
	CERT	HENDRICKSO	Certification of Counsel in Support of Motion in Limine Motion for Protective Order and for Sanctions
	CINF	HENDRICKSO	No Notice of Hearing filed at the time of the above Motion in Limine
4/11/2014	MOTN	HENDRICKSO	Defendant/Counterclaimant Clark's Motion to Voluntarily Dismiss the Damage Claim for Interference with Easement and Notice of Hearing
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 05/01/2014 01:30 PM) Defendant/Counterclaimant Clark's Motion to Voluntarily Dismiss the Damage Claim of Interference with Easement
1/15/2014	NOTC	HENDRICKSO	Notice of No Objection to Defendant Clark's Motion to Dismiss Damage Claim

John F. Thornton vs. Mary E. Pandrea, Kari A. Clark, Kenneth J Barrett, Deanna L Barrett

Date	Code	User		Judge
4/18/2014	STIP	HENDRICKSO	Stipulation for Order of Dismiss of Defendant/Counterclaimant Clark's Damage Claim for Interference with Easement	John T. Mitchell
	CINF	HENDRICKSO	Stipulation and Order sent by email to Judge Mitchell	John T. Mitchell
	ORDR	HENDRICKSO	Order of Dismissal of Defendant/Counterclaimant Clark's Damage Claim for Interference with Easement	John T. Mitchell
4/23/2014	MOTN	HENDRICKSO	Defendant Pandrea's Motion to Amend Findings of Facts and to Alter or Amend Judgment; Motion to Reconsider the ORder Granting Clark's Motion to Strike; Denying Pandrea a Hearing; and Granting Partial SUMmary Judgment in Favor of Clark	John T. Mitchell
	MEMO	HENDRICKSO	Memorandum in Support of Pandrea's Motion to Amend Findings of Facts and to Alter or Amend Judgment; Motion to Reconsider to Order Granitng Clark's Motion to Strike; Denying Pandrea a Hearing; and Granitng Partial Summary Judgment in Favor of Clark	John T. Mitchell
	AFFD	HENDRICKSO	Affidavit of Mary E. Pandrea	John T. Mitchell
4/24/2014	MISC	HENDRICKSO	Supplemental (page 12) to the Memorandum in Support of Pandrea's Motion to Amend Findings of Facts and to Alter or Amend Judgment; Motion to Reconsider the Order Granitng Clark's Motion to Strike; Denying Pandrea A Hearing; and Granitng Partial Summary Judgment in Favor of Clark	John T. Mitchell
4/28/2014	NOHG	HENDRICKSO	Notice of Hearing for: Memorandum in Support of Pandrea's Motion to Amend Findings of Facts and to Alter or Amend Judgment; Motion to Reconsider the Order Granting Clark's Motion to Strike; Denying Pandrea A. Hearing; and Granting Partial Summary Judgment in Favor of Clark	John T. Mitchell
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 05/22/2014 04:00 PM) Kootenai County Courthouse Defendant Pandrea's Motion(s)	John T. Mitchell
4/30/2014	JDMT	HENDRICKSO	Judgment	John T. Mitchell
	CDIS	HENDRICKSO	Civil Disposition entered for: Clark, Kari A., Defendant; Pandrea, Mary E., Defendant; Thornton, John F., Plaintiff. Filing date: 4/30/2014	John T. Mitchell
5/6/2014	AFFD	HENDRICKSO	Affidavit of John Thornton in Support of Motion to Reconsider	John T. Mitchell
	MEMO	HENDRICKSO	Memorandum of Law in Support of Plaintiff's Motion to Reconsider Summary Judgment	John T. Mitchell
	AFFD	HENDRICKSO	Affidavit of Defendant Mary Pandrea in Support of John Thornton's Motion to Reconsider	John T. Mitchell

John F. Thornton vs. Mary E. Pandrea, Kari A. Clark, Kenneth J Barrett, Deanna L Barrett

Date	Code	User	Judge
5/6/2014	AFFD	HENDRICKSO	Affidavit of Val Thornton In Support of Plaintiff's Motion to Reconsider Summary Judgment (attorney to file Amended Notice with correct hearing date)
	MOTN	HENDRICKSO	Plaintiff's Motion to Reconsider Summary Judgment and Notice of Hearing
	MISC	HENDRICKSO	*****END OF FILE #3*****BEGIN FILE #4*****
5/8/2014	MOTN	HENDRICKSO	Pandrea's Motion to Void Judgment
	AFFD	HENDRICKSO	Affidavit of Mary E. Pandrea in Support of Her Motion to Void the Clark Judgment
	MEMO	HENDRICKSO	Pandrea's Memorandum in Support of Motion to Void Judgment
	CINF	HENDRICKSO	No Notice of Hearing filed for the above Motion to Void Judgment
5/12/2014	MOTN	HENDRICKSO	Defendant/Counterclaimant Clark's Motion for Award of Attorney's Fees and Costs
	BREF	HENDRICKSO	Brief in Support of Defendant/Counterclaimant Clark's Motion for Award of Attorney's Fees and Costs
	AFFD	HENDRICKSO	Affidavit/Memorandum of Joel P. Hazel in Support of Motion for Award of Motion for Attorney's Fees and Costs
	OBJC	HENDRICKSO	Defendant/Counterclaimant Clark's Objection Pandrea's Motion to Amend and Motion to Reconsider
	AFFD	HENDRICKSO	Affidavit of Annette Moorman of Attempt to Serve Document Via Fax
	NOHG	HENDRICKSO	Notice of Hearing for Pandrea's Motion to Void Judgment
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 05/22/2014 04:00 PM) Kootenai County Defendant Pandrea's Motion to Void Judgment
5/13/2014	NOHG	HENDRICKSO	Plaintiff's Amended Notice of Hearing and Motion to Shorten Time
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 05/20/2014 04:00 PM) Plaintiff's Motion to Reconsider Summary Judgment
		HENDRICKSO	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Witherspoon Kelley Davenport Receipt number: 0007784 Dated: 5/13/2014 Amount: \$4.00 (Check)
		HENDRICKSO	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Witherspoon Kelley Davenport Receipt number: 0007784 Dated: 5/13/2014 Amount: \$1.00 (Check)

John F. Thornton vs. Mary E. Pandrea, Kari A. Clark, Kenneth J Barrett, Deanna L Barrett

Date	Code	User	Judge
5/13/2014	OBJC	HENDRICKSO	Defendant/Countclaimant CLark's Objction to Pandrea's Motion to Void Judgment
	RSPN	HENDRICKSO	Defendant/Counterclaimant Clark's Response to Thornton's Motion for Reconsideration and Objection to the Affidavit of Mary Pandrea and John Thornton Filed in Support Thereof
5/14/2014	AFFD	HENDRICKSO	Affidavit of Correction Affidavit of Val Thornton In Support of Plaintiff's Motion to Reconsider Summary Judgment
	STIP	HENDRICKSO	Stipulation for Order of Dismissal of Plaintiff's Complaint to Quiet Title and For Damages Against Defendant Mary Pandrea
5/15/2014	CINF	HENDRICKSO	Documents Affidavie of Correction, Stipulation for Order of Dismissal and Order - emailed to Judge 5-15-2014 conforming copies in Jo's pending
	AFSV	BOWERS	Affidavit Of Service. Personal service to V. Thornton on 5/12/14
5/16/2014		BOWERS	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Mary Pandrea Receipt number: 0008036 Dated: 5/16/2014 Amount: \$5.00 (Check)
	BREF	BOWERS	Plaintiff's Reply Brief in Support of His Motion To Reconsider Summary Judgment
	AFFD	HENDRICKSO	Affidavit of Defendant Mary Pandrea in Support of John Thornton's Motion to Reconsider
5/19/2014		BOWERS	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Mary Pandrea Receipt number: 0008104 Dated: 5/19/2014 Amount: \$6.00 (Check)
5/20/2014	REPL	HENDRICKSO	Pandrea's Reply Memorandum in Support of Moton to Void Judgment
	REPL	HENDRICKSO	Pandrea's REPLY to Clark's Objection to Pandrea's Motion to Amend Findings of Facts and to Alter or Amend Judgment; Motion to Reconsider the Order Granting Clark's Motion to Strike; Denying Pandrea a Hearing; and Granting Partial Summary Judgment in Favor of Clark
	DCHH	HENDRICKSO	Hearing result for Motion scheduled on 05/20/2014 04:00 PM: District Court Hearing Held Court Reporter: Julie Foland Number of Transcript Pages for this hearing estimated: Plaintiff's Motion to Reconsider Summary Judgment
5/21/2014	ORDR	HENDRICKSO	Order of Dismissal of Plaintiff's Complaint to Quiet Title and for Damages Against Defendant Mary Pandrea

John F. Thornton vs. Mary E. Pandrea, Kari A. Clark, Kenneth J Barrett, Deanna L Barrett

Date	Code	User	Judge
5/21/2014	CINF	HENDRICKSO	John T. Mitchell
			waiting for file to be returned - will complete classing and close
5/22/2014	CMIN	OPPELT	John T. Mitchell
			Court Minutes - From Kootenai County Hearing type: Motions Hearing date: 5/22/2014 Time: 4:07 pm Courtroom: Court reporter: Julie Foland Minutes Clerk: Lindsay Morgan Tape Number: in Kootenai Jason Gray on behalf of Ms. Clark Mary Pandrea
	DCHH	OPPELT	John T. Mitchell
			Hearing result for Motion scheduled on 05/22/2014 04:00 PM: District Court Hearing Held Court Reporter: Julie Foland Number of Transcript Pages for this hearing estimated: Kootenai County - Less Than 100 Pages Defendant Pandrea's Motion to Void Judgment
	DENY	OPPELT	John T. Mitchell
			Hearing result for Motion scheduled on 05/22/2014 04:00 PM: Motion Denied Kootenai County Defendant Pandrea's Motion to Void Judgment
	DENY	OPPELT	John T. Mitchell
			Hearing result for Motion scheduled on 05/22/2014 04:00 PM: Motion Denied Kootenai County Courthouse Defendant Pandrea's Motion(s)
	HRVC	OPPELT	John T. Mitchell
			Hearing result for Jury Trial - 3 Days scheduled on 06/24/2014 09:00 AM: Hearing Vacated In Bonner County
5/27/2014	OBJC	KRAMES	John T. Mitchell
			Plaintiff's Objection And Motion To Disallow Defendant kari Clark's Motion For Attorney Fees And Costs
5/2/2014	MEMO	OPPELT	John T. Mitchell
			Memorandum Decision and Order Denying Plaintiff Thornton's Motion to Reconsider Summary Judgment, and Denying Defendant Pandrea's Motions
5/5/2014	NOHG	HENDRICKSO	John T. Mitchell
			Notice of Hearing on Defendant/Counterclaimant Clark's Motion for Award of Attorney's Fees and Costs
	HRSC	HENDRICKSO	John T. Mitchell
			Hearing Scheduled (Motion for Attorney fees and Costs 07/15/2014 10:00 AM) Kootenai County
5/6/2014	NOHG	HENDRICKSO	John T. Mitchell
			Amended Notice of Hearing re: Defendant/Counterclaimant Clark's Motion for Award of Attorney's Fees
	HRSC	HENDRICKSO	John T. Mitchell
			Hearing Scheduled (Motion for Attorney fees and Costs 06/30/2014 09:00 AM) Kootenai County Defendant/Counterclaimant Clark's Motion for Award of Attorney's Fees

John F. Thornton vs. Mary E. Pandrea, Kari A. Clark, Kenneth J Barrett, Deanna L Barrett

Date	Code	User	Judge
6/6/2014	CONT	HENDRICKSO	Hearing result for Motion for Attorney fees and Costs scheduled on 07/15/2014 10:00 AM: Continued Kootenai County / Amended Notice of Hearing - reset Motion for 6-30-2014
6/19/2014	RSPN	HENDRICKSO	Response to Plaintiff's Objection and Motion to Disallow Defendant Kari Clark's Motion for Attorney Fees and Costs
6/24/2014	ORDR	OPPELT	Order Permitting Counsel to Appear Telephonically
6/26/2014	NOTC	BOWERS	Plaintiff's Notice of Easement Location
	AFFD	BOWERS	Affidavit of John Marquette Re Legal Description of Easement Contained in Proposed Amended Judgment
6/27/2014	AFFD	KRAMES	Supplemental Affidavit Of Jason M. Gray in Support Of Motion For Award Of Attorney's Fees And Costs
6/30/2014	CINF	HUMRICH	Received Notice of Appeal via fax, called Val Thornton and left voice message - unable to clock in untill filing fee has been paid (need filing fee and bonds for clerk's records and transcripts)
		HUMRICH	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Thornton, Valerie (attorney for Thornton, John F.) Receipt number: 0010756 Dated: 6/30/2014 Amount: \$109.00 (Credit card) For: Thornton, John F. (plaintiff)
		HUMRICH	Filing: Technology Cost - CC Paid by: Thornton, Valerie (attorney for Thornton, John F.) Receipt number: 0010756 Dated: 6/30/2014 Amount: \$3.00 (Credit card) For: Thornton, John F. (plaintiff)
	JDMT	BOWERS	Amended Judgment
	BNDC	HUMRICH	Bond Posted - Cash (Receipt 10757 Dated 6/30/2014 for 100.00)
	BNDC	HUMRICH	Bond Posted - Cash (Receipt 10759 Dated 6/30/2014 for 200.00)
	APSC	HUMRICH	Appealed To The Supreme Court
	NOTA	HUMRICH	NOTICE OF APPEAL (John Thornton)
	DCHH	HENDRICKSO	Hearing result for Motion for Attorney fees and Costs scheduled on 06/30/2014 09:00 AM: District Court Hearing Held Court Reporter: Julie Foland Number of Transcript Pages for this hearing estimated: Kootenai County Defendant/Counterclaimant Clark's Motion for Award of Attorney's Fees Val Thornton by phone

John F. Thornton vs. Mary E. Pandrea, Kari A. Clark, Kenneth J Barrett, Deanna L Barrett

Date	Code	User	Judge
6/30/2014	GRNT	HENDRICKSO	Hearing result for Motion for Attorney fees and Costs scheduled on 06/30/2014 09:00 AM: Motion Granted Kootenai County Defendant/Counterclaimant Clark's Motion for Award of Attorney's Fees Val Thornton by phone
	JDMT	HENDRICKSO	Amended Judgment
	CDIS	HENDRICKSO	Civil Disposition entered for: Clark, Kari A., Defendant; Pandrea, Mary E., Defendant; Thornton, John F., Plaintiff. Filing date: 6/30/2014
7/1/2014		HUMRICH	Miscellaneous Payment: Fax Fee Paid by: Witherspoon Kelley Receipt number: 0010818 Dated: 7/1/2014 Amount: \$8.00 (Credit card)
		HUMRICH	Miscellaneous Payment: Technology Cost - CC Paid by: Witherspoon Kelsey Receipt number: 0010818 Dated: 7/1/2014 Amount: \$3.00 (Credit card)
	CINF	HUMRICH	Notice of Appeal faxed to Witherspoon Kelley's CDA office
	CINF	HUMRICH	Notice of Appeal faxed to Judge Mitchell
7/7/2014	REQU	HUMRICH	Request for Additional Transcript / Record (faxed to Judge Mitchell)
7/8/2014	MOTN	HUMRICH	Motion and Affidavit for Fee Waiver
7/10/2014	OBJC	HENDRICKSO	Plaintiff's Objection and Motion to Strike and Disallow Supplemental Affidavit for Attorney Fees and Costs
7/14/2014		HUMRICH	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Pandrea, Mary E. (defendant) Receipt number: 0011513 Dated: 7/14/2014 Amount: \$129.00 (Check) For: Pandrea, Mary E. (defendant)
	BNDC	HUMRICH	Bond Posted - Cash (Receipt 11516 Dated 7/14/2014 for 100.00)
	BNDC	HUMRICH	Bond Posted - Cash (Receipt 11518 Dated 7/14/2014 for 200.00)
	APSC	HUMRICH	Appealed To The Supreme Court
	NOTA	HUMRICH	NOTICE OF APPEAL (Mary E. Pandrea)
	CHJG	HUMRICH	Change Assigned Judge
	MOTN	HENDRICKSO	Motion / Notification of Substitution of Party
	AFFD	HENDRICKSO	Affidavit of Joel P. Hazel in Support of Motion/Notification of Substitution of Party
7/23/2014	OBJC	HENDRICKSO	Plaintiff's Objection and Motion to Strike and Disallow Substitution of Party for Defendant Kari Clark

John F. Thornton vs. Mary E. Pandrea, Kari A. Clark, Kenneth J Barrett, Deanna L Barrett

Date	Code	User	Judge
7/23/2014	SCDF	HUMRICH	Supreme Court Document Filed- "NOTICE OF DEFECT"
7/28/2014	SCDF	HUMRICH	Supreme Court Document Filed- "NOTICE OF SUBSTITUTION OF KENNETH J. BARRETT AND DEANNA L. BARRETT IN THE STEAD OF RESPONDENT KARI A. CLARK"
	MISC	HENDRICKSO	*****END OF FILE #4*****BEGIN FILE #5*****
8/4/2014	SCDF	HUMRICH	Supreme Court Document Filed- "Motion to Temporarily Remand Case to the District Court to Rule on Respondent Kari A. Clark's Motion to substitute Parties"
	ORDR	HENDRICKSO	Order Substitution Kenneth J. Barrett and Deanna L. Barrett in the Stead of Defendant/Counterclaimant Kari A. Clark
	APER	HENDRICKSO	Defendant: Barrett, Deanna L Appearance Joel P Hazel
	APER	HENDRICKSO	Defendant: Barrett, Kenneth J Appearance Joel P Hazel
	OBJC	HENDRICKSO	Supplement to Plaintiff's Objection and Motion to Strike and Disallow Substitution of Party for Defendant Kari Clark and Certification of Counsel
8/6/2014	NOTA	HUMRICH	AMENDED NOTICE OF APPEAL
8/11/2014		HENDRICKSO	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Val Thornton Receipt number: 0013022 Dated: 8/11/2014 Amount: \$5.00 (Cash)
		HENDRICKSO	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Val Thornton Receipt number: 0013022 Dated: 8/11/2014 Amount: \$1.00 (Cash)
3/12/2014	NSSC	HENDRICKSO	Notice Of Substitution Of Counsel - Attorney M. Schmidt for Defendant's Kenneth J. and Deanna L Barrett
3/13/2014	CCOA	HUMRICH	Clerk's Certificate Of Appeal
3/15/2014	APPL	HENDRICKSO	Application and Affidavit for Issuance of Writ of Execution Against Plaintiff/CounterDefendant John F. Thornton and Against His Attorney Valerie Thornton
	AFFD	HENDRICKSO	Affidavit of Computation in Support of Affidavit and Application for Writ of Execution Against Plaintiff/CounterDefendant John F. Thornton and Against His Attorney Valerie Thornton
3/18/2014	MISC	HUMRICH	Clerk's Records due 10/22/2014, docket #42332-2014

John F. Thornton vs. Mary E. Pandrea, Kari A. Clark, Kenneth J Barrett, Deanna L Barrett

Date	Code	User	Judge
8/22/2014		KRAMES	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Mary Pandrea Receipt number: 0013718 Dated: 8/22/2014 Amount: \$2.00 (Cash)
	SCDF	HUMRICH	Supreme Court Document Filed- "ORDER APPROVING SUBSTITUTION"
8/27/2014	SCDF	HUMRICH	Supreme Court Document Filed BY DEF - "VERIFIED PETITION FOR WRIT OF PROHIBITION/MANDAMUS"; rec'd via email from ISC
	SCDF	HUMRICH	Supreme Court Document Filed - "RESPONDENTS KENNETH J. AND DEANNA L. BARRETT'S OPPOSITION TO PETITION OF COUNSEL VAL THORNTON FOR LEAVE TO INTERVENE ON APPEAL; rec'd via email from ISC
	SCDF	HUMRICH	Supreme Court Document Filed- "DECLARATION OF MICHAEL G. SCHMIDT IN SUPPORT OF RESPONDENTS KENNETH J. AND DEANNA L. BARRETT'S OPPOSITION TO PETITION OF COUNSEL VAL THORNTON FOR LEAVE TO INTERVENE ON APPEAL; rec'd via email from ISC
8/28/2014		HENDRICKSO	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Val Thornton Receipt number: 0014026 Dated: 8/28/2014 Amount: \$12.00 (Cash)
		HENDRICKSO	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Val Thornton Receipt number: 0014026 Dated: 8/28/2014 Amount: \$1.00 (Cash)
9/3/2014		HENDRICKSO	Miscellaneous Payment: Writs Of Execution Paid by: Lukins & Annis, P.S. Receipt number: 0014271 Dated: 9/3/2014 Amount: \$2.00 (Check)
	WRIT	HENDRICKSO	Writ of Execution Against Plaintiff/CounterDefendant John F. Thornton and Against his Attorney Valerie Thornton - copy to file
	SCDF	HUMRICH	Supreme Court Document Filed- "ORDER DENYING VERIFIED PETITION FOR WRIT OF PROHIBITION/MANDAMUS"
		BOWERS	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Val Thornton Receipt number: 0014328 Dated: 9/3/2014 Amount: \$15.00 (Cash)
		BOWERS	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Val Thornton Receipt number: 0014328 Dated: 9/3/2014 Amount: \$1.00 (Cash)

John F. Thornton vs. Mary E. Pandrea, Kari A. Clark, Kenneth J Barrett, Deanna L Barrett

Date	Code	User	Judge
9/4/2014	CCOA	HUMRICH	Amended Clerk's Certificate Of Appeal
	MISC	HUMRICH	Reset Due Dates for Clerks Records - Due 11/7/2014
9/5/2014		HUMRICH	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Pandrea, Mary E. Receipt number: 0014556 Dated: 9/5/2014 Amount: \$1.00 (Cash)
		HUMRICH	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Pandrea, Mary E. Receipt number: 0014559 Dated: 9/5/2014 Amount: \$2.00 (Cash)
9/9/2014	NLT	HUMRICH	Notice Of Lodging Transcript On Appeal by Julie K. Foland - Motion for Summary Judgment on 3/14/2014, Motion for Reconsideration on 5/20/2014, Motion to void Judgment on 5/22/2014 and Motion for Attorney's Fees and Costs on 6/30/2014
	MISC	HUMRICH	Statement for transcript from Julie K. Foland - Motion for Summary Judgment on 3/14/2014, Motion for Reconsideration on 5/20/2014, Motion to void Judgment on 5/22/2014 and Motion for Attorney's Fees and Costs on 6/30/2014 \$250.25
9/15/2014	SCDF	HUMRICH	Supreme Court Document Filed- "MOTION TO DISMISS APPEAL OF MARY E. PANDREA" (filed by Respondents, Barrett); rec'd via email by ISC
9/17/2014	SCDF	HUMRICH	Supreme Court Document Filed- "NOTICE OF SUBSTITUTION OF COUNSEL FOR DEFENDANTS KENNETH J. BARRETT AND DEANNA L. BARRETT ONLY AS TO THE APPEAL OF PANDREA"; rec'd via email from ISC
9/22/2014	SCDF	HUMRICH	Supreme Court Document Filed- "NTICE OF WITHDRAWAL OF: 1)MOTION TO DISMISS APPEAL OF MARY E. PANDREA and 2)NOTICE OF ERRORS TO CLERK'S CERTIFICATE OF APPEAL"
9/23/2014	BNDV	HUMRICH	Bond Converted (Transaction number 1377 dated 9/23/2014 amount 200.00)
	CINF	HUMRICH	Clerk Information - Payment to Julie K. Foland for transcript \$200. She will bill plf for balance \$50.25
9/24/2014	NOTC	HUMRICH	Notice of Hearing on Plaintiff's Motion for Stay Pending Appeal and Waiver of Supersedeas Bond
	MOTN	HUMRICH	Plaintiff's Motion for Stay Pending Appeal and Waiver of Supersedeas
	OBJC	HUMRICH	Plaintiff's Objection and Motion to Quash Writ of Execution

John F. Thornton vs. Mary E. Pandrea, Kari A. Clark, Kenneth J Barrett, Deanna L Barrett

Date	Code	User		Judge
9/26/2014	HRSC	HUMRICH	Hearing Scheduled (Motion 10/30/2014 04:00 PM) Kootenai County Plf's Motion for Stay Pending Appeal & Waiver of Supersedeas Bond	John T. Mitchell
10/3/2014	SHRT	BOWERS	Sheriff's Return on Writ, Served, returned unsatisfied	Idaho Supreme Court
	WRRT	BOWERS	Writ Returned	Idaho Supreme Court
10/14/2014	SCDF	HUMRICH	Supreme Court Document Filed- "ORDER TO REINSTATE APPELLATE PROCEEDINGS"	Idaho Supreme Court
	CINF	HUMRICH	Appeal due dates reinstated; respondents' motion to dismiss appeal of Mary E. Pandrea and Notice of errors to Clerk's Certificate of Appeal is Withdrawn	Idaho Supreme Court

VAL THORNTON
 Attorney for Plaintiff
 4685 Upper Pack River Rd.
 Sandpoint, ID 83864
 (208) 263-5017 phone
 (208) 255-2327 fax
 ISB #6517

STATE OF IDAHO
 COUNTY OF BONNER
 JUDICIAL DIST.

2014 MAY -6 P 3:05

CLERK DISTRICT COURT

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

JOHN F. THORNTON,)	
	)	Case No. CV-2013-1334
Plaintiff,)	
v.	)	PLAINTIFF'S
	)	MOTION TO RECONSIDER
MARY E. PANDREA, et al,	)	SUMMARY JUDGMENT
	)	AND
Defendants.	)	NOTICE OF HEARING

TO: Mary Pandrea, Defendant pro se, to Kari Clark, her attorney Joel P. Hazel, and to the clerk of the above-entitled court:

PLEASE TAKE NOTICE that Plaintiff's above entitled motion is scheduled to be heard **Tuesday, the 20th day of May, 2014**, Honorable John T. Mitchell, **Kootenai County Courthouse, 324 West Garden Avenue, Coeur d'Alene, Idaho, the 9th day of April, 2014, at the hour of 9:00 o'clock a.m.**, or as soon thereafter as the matter may be heard.

MOTION

PLAINTIFF John Thornton, by and through his undersigned counsel, pursuant to Rule 11(a)(2)(B) of the Idaho Rules of Civil Procedure, hereby moves the court to reconsider its decision granting summary judgment in favor of Defendant Kari Clark, as follows:

1. There is conflicting evidence establishing the existance of material facts in dispute, precluding the court from granting summary judgment, pursuant to Rule 56(c) of the Idaho Rules of Civil Procedure.
2. Kari Clark does not own the dominant estate, therefore she is without standing to claim, and the court without authority to award, an express easement appurtenant to her presently owned real property. Tungsten Holdings, Inc. v. Drake, 143 Idaho 69, 72, 137 P.3d 456, 459 (2006).

3. The court's judgment does not include the surveyed metes and bounds description of the easement, and instead has granted an undescribed easement not only through the conveyed shoreline portion of Plaintiff's property, but also through property over which this court does not have jurisdiction. Argosy Trust v. Wininger, 141 Idaho 570, 572, 114 P.3d. 128, 130 (2005).

This motion is further based upon the Memorandum of Law, and upon the Affidavits and the Exhibits attached thereto, filed concurrently with this motion.

WHEREFORE, IT IS PRAYED,

THAT the Court reconsider its decision and deny summary judgment in favor of Kari Clark in this matter;

FOR an Order awarding Plaintiff reasonable costs and attorney fees, pursuant to I.C. § 12-121 and Rule 54(d) and (e) of the Idaho Rules of Civil Procedure, and,

FOR all such other and further relief as the court may deem just and proper.

DATED this 6th day of May, 2014.

Val Thornton

VAL THORNTON, Attorney at Law

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 6th day of May, 2014, to:

JOEL P. HAZEL

WITHERSPOON KELLEY
608 Northwest Blvd., Ste. 300
Coeur d'Alene, ID 83864

mailed, postage prepaid
 faxed to (208) 667-8470
 hand-delivered

MARY PANDREA

4687 Upper Pack River Rd.
Sandpoint, ID 83864

mailed, postage prepaid
 faxed to (208) _____
 hand-delivered

HON. JOHN T. MITCHELL

P. O. Box 9000
Coeur d'Alene, ID 83864

mailed, postage prepaid
 faxed to (208) 446-1132
 hand-delivered

Val Thornton

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2014 MAY 12 AM 10 38

CLERK DISTRICT COURT

DEPUTY

1
2 JOEL P. HAZEL, ISB # 4980
3 JASON M. GRAY, ISB # 8539
4 WITHERSPOON KELLEY
5 The Spokesman-Review Building
6 608 Northwest Blvd., Suite 300
7 Coeur d'Alene, Idaho 83814-2146
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10 Email: jph@witherspoonkelley.com
11 Email: jmg@witherspoonkelley.com

12 *Attorneys for Defendant/Counterclaimant Kari A. Clark*

13
14 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF
15 IDAHO, IN AND FOR THE COUNTY OF BONNER

16 JOHN F. THORNTON,
17
18 Plaintiff/Counterdefendant,
19 vs.

Case No. CV 2013-1334

20 MARY E. PANDREA, a single woman
21 individually and as Trustee of the Kari A.
22 Clark and Mary E. Pandrea Revocable Trust,
23 u/a April 9, 2002; and

DEFENDANT/COUNTERCLAIMANT
CLARK'S MOTION FOR AWARD OF
ATTORNEY'S FEES AND COSTS

24 Defendant,

25 KARI A. CLARK, a single woman
26 individually and as Trustee of the Kari A.
27 Clark and Mary E. Pandrea Revocable Trust,
28 u/a April 9, 2002 and as Trustee of the Kari
A. Clark Trust u/a June 21, 2010,

Defendant/Counterclaimant.

COMES NOW Defendant/Counterclaimant Kari A. Clark ("Clark"), by and through her attorneys of record, Joel P. Hazel and Jason M. Gray of the firm of Witherspoon Kelley, and

DEFENDANT/COUNTERCLAIMANT CLARK'S MOTION
FOR AWARD OF ATTORNEY'S FEES AND COSTS - 1

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1 pursuant to I.R.C.P. 11, I.R.C.P. 54 and I.C. § 12-121, respectfully moves this Court for an
2 Order awarding attorney's fees and costs to Clark.

3 This Motion is supported by the *Affidavit/Memorandum of Joel P. Hazel In Support of*
4 *Motion for Award of Attorney's Fees and Costs* and by *Brief in Support of*
5 *Defendant/Counterclaimant Clark's Motion for Award of Attorney's Fees and Costs* filed
6 concurrently herewith.

7 Clark is entitled to an award of attorney's fees and costs on the basis that she is the
8 prevailing party against Plaintiff/Counterdefendant John F. Thornton ("Thornton") and this case
9 was brought, pursued and defended frivolously, unreasonably or without foundation by
10 Thornton. The award of attorney's fees and costs should also be entered against Thornton's
11 attorney, Valerie Thornton, as a sanction pursuant to I.R.C.P. 11.

12 DATED this 12th day of May, 2014.

13
14 WITHERSPOON KELLEY

15
16 
17 _____
18 JOEL P. HAZEL
19 JASON M. GRAY
20 *Attorneys for Defendant/Counterclaimant Clark*

CERTIFICATE OF SERVICE

I certify that on this the 12th day of May, 2014, I caused a true and correct copy of the within *DEFENDANT/COUNTERCLAIMANT CLARK'S MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS* to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Val Thornton	<input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid
4685 Upper Pack River Rd.	<input type="checkbox"/>	Hand Delivered
Sandpoint, ID 83864	<input type="checkbox"/>	Overnight Mail
	<input checked="" type="checkbox"/>	Facsimile: 208-255-2327
Mary E. Pandrea	<input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid
4672 Upper Pack River Rd.	<input type="checkbox"/>	Hand Delivered
Sandpoint, ID 83864	<input type="checkbox"/>	Overnight Mail
	<input type="checkbox"/>	Facsimile:

Annette Moormann
Annette Moormann

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2014 MAY 12 AM 10 53

CLERK DISTRICT COURT

DEPUTY

1
2 JOEL P. HAZEL, ISB # 4980
3 JASON M. GRAY, ISB # 8539
4 WITHERSPOON KELLEY
5 The Spokesman-Review Building
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8 Telephone: (208) 667-4000
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10 Email: jph@witherspoonkelley.com
11 Email: jmg@witherspoonkelley.com

12 *Attorneys for Defendant/Counterclaimant Kari A. Clark*

13
14 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF
15 IDAHO, IN AND FOR THE COUNTY OF BONNER

16 JOHN F. THORNTON,
17
18 Plaintiff/Counterdefendant,
19 vs.

Case No. CV 2013-1334

20 MARY E. PANDREA, a single woman
21 individually and as Trustee of the Kari A.
22 Clark and Mary E. Pandrea Revocable Trust,
23 u/a April 9, 2002; and
24 Defendant,

BRIEF IN SUPPORT OF
DEFENDANT/COUNTERCLAIMANT
CLARK'S MOTION FOR AWARD OF
ATTORNEY'S FEES AND COSTS

25 KARI A. CLARK, a single woman
26 individually and as Trustee of the Kari A.
27 Clark and Mary E. Pandrea Revocable Trust,
28 u/a April 9, 2002 and as Trustee of the Kari
A. Clark Trust u/a June 21, 2010,
Defendant/Counterclaimant.

Defendant/Counterclaimant Kari A. Clark ("Clark") is entitled to an award of attorney's fees and costs against Plaintiff/Counterdefendant John F. Thornton ("Thornton") and Thornton's attorney, Valerie Thornton, because Clark is the prevailing party in this action and

BRIEF IN SUPPORT OF DEFENDANT/COUNTERCLAIMANT
CLARK'S MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS - 1

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1 the Court has already found that this case was brought, pursued and defended frivolously,
2 unreasonably or without foundation by Thornton and his attorney.

3 **I. CLARK IS THE PREVAILING PARTY AGAINST THORNTON AND CLARK IS ENTITLED**
4 **TO ATTORNEY'S FEES AND COSTS.**

5 As this Court knows, in order to determine if a party is entitled to costs and attorney's
6 fees under I.R.C.P. 54(d)(1) and I.R.C.P. 54(e)(1), the Court must first determine which party is
7 the "prevailing party." I.R.C.P. 54(d)(1)(B) provides that:

8 **Prevailing Party.** In determining which party to an action is a prevailing party
9 and entitled to costs, the trial court shall in its sound discretion consider the final
10 judgment or result of the action in relation to the relief sought by the respective
11 parties.

12 This case was initiated by Thornton as an action to quiet title in real property against
13 Clark and Mary E. Pandrea ("Pandrea"). Thornton claimed that Clark did not have the right
14 cross a two acre parcel that Thornton now owns, despite the fact that the Warranty Deed
15 conveying the property to Thornton specifically stated that the conveyance was subject to "A
16 30.0 FOOT EASMENT FOR A ROAD RIGHT OF WAY AND UTILITIES" in favor of
17 "MARY E. PANDREA WILTSE" and "KARI A. CLARK" as set forth in "INSTRUMENT
18 NO. 416381." Thornton also claimed that he was entitled to sole ownership of what has been
19 referred to as the "Well Piece." Clark filed an Answer and counterclaims against Thornton for
20 interference with her easement rights, injunctive relief and to quiet title.

21 Clark moved for summary judgment on Thornton's claims and on Clark's counterclaims
22 regarding the easement because there were no genuine issues of material fact regarding the
23 existence of Clark's easement appurtenant to Thornton's property. Clark's Motion for Summary
24 Judgment was granted, Thornton's Complaint against Clark was dismissed with prejudice, and
25 Clark was successful on her counterclaims to quiet title regarding her appurtenant easement
26 rights, for injunctive relief and establishing that Thornton wrongfully interfered with Clark's
27 easement rights. Clark voluntarily dismissed her claim for damages against Thornton in an
28

1 effort to avoid further wasteful litigation costs, but reserved the right to seek any attorney's fees
2 and costs she is entitled to.

3 Based on this Court's Memorandum Decision and Order Granting Defendant Clark's
4 Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Defendant
5 Clark's Motion for Partial Summary Judgment on Clark's Counterclaims Against Thornton
6 ("Memorandum Decision"), there is no question in this case that Clark is the prevailing party
7 against Thornton.

8 **II. CLARK IS ENTITLED TO ATTORNEY'S FEES AND COSTS UNDER I.R.C.P. 54 AND I.C. §**
9 **12-121.**

10 The district court's decision to award attorney fees is a discretionary decision, subject to
11 the abuse of discretion standard of review. *Bailey v. Sanford*, 139 Idaho 744, 753, 86 P.3d 458,
12 467 (2004). Idaho Code § 12-121 provides in pertinent part:

13 In any civil action, the judge may award reasonable attorney's fees to the
14 prevailing party or parties, provided that this section shall not alter, repeal or
15 amend any statute which otherwise provides for an award of attorney's fees.

16 Idaho Courts have held that I.C. § 12-121, read together with I.R.C.P. 54(e)(1), limits
17 attorney's fees to those situations in which the Court finds that the action was "brought,
18 pursued or defended frivolously, unreasonably or without foundation." *Ortiz v. Reamy*, 115
19 Idaho 1099, 1101, 772 P.2d 737, 739 (Ct. App. 1989).

20 In this case, the frivolity and unreasonableness of Thornton's positions throughout this
21 litigation is unquestionable. Thornton's initial position in this litigation was that Pandrea had
22 an easement in gross across Thornton's property, but Clark had no easement rights. Thornton
23 made this frivolous assertion despite the fact that the Warranty Deed conveying the property to
24 Thornton specifically stated that the conveyance was subject to "A 30.0 FOOT EASMENT
25 FOR A ROAD RIGHT OF WAY AND UTILITIES" in favor of "MARY E. PANDREA
26 WILTSE" and "KARI A. CLARK."

27 After this Court indicated in its ruling on Pandrea's Motion to Dismiss that both Clark
28 and Pandrea had an appurtenant easement across the Thornton Property based on the clear
language of the deeds at issue, Thornton then changed his position and argued that any

1 easement across his property only served "Tax Lot 40." However, like Thornton's other claims
2 in this litigation, there was absolutely no basis to support such an argument and his assertions
3 can only be viewed as an attempt to harass Clark and to increase Clark's costs in this case. As
4 this Court stated previously:

5 Both Thornton and Pandrea are very mistaken in their argument linking the
6 easement in favor of Pandrea and Clark to Tax Lot 40. The link simply does not
7 exist. As a result, the partition lawsuit between Pandrea and Clark before Judge
8 Luster has absolutely nothing to do with Pandrea's and Clark's easement rights
9 across Thornton's land. Thornton is grievously mistaken to argue otherwise.

9 Memorandum Decision, p. 15.

10 In addition, Thornton made the frivolous claim that an appurtenant easement must be
11 adjacent to the property burdened. More specifically, Thornton's attorney stated, "the
12 easement, if any, appertaining to the adjacent parcel only appertains to the adjacent parcel."

13 Memorandum Decision, p.16. However, as this Court noted:

14 No legal authority supporting such a circular argument has ever been submitted
15 by Thornton. No legal authority for Thornton's argument exists. Clark is named
16 in the easement. The easement exists and is recorded, so for Thornton's attorney
17 to state on March 14, 2014, that "The easement, if any . . . ", ignores the
18 uncontroverted evidence. For Thornton's counsel to make the claim that an
19 easement appurtenant depends on "adjacency" to the burdened land, without any
20 legal support for that claim, is irresponsible. Clark's easement does not depend on
21 adjacency of her property to Thornton's. Clark's easement depends on the fact that
22 her name is on a recorded easement that burdens Thornton's land.

20 Memorandum Decision, p.16.

21 As mentioned above, the frivolity of Thornton's arguments regarding the easement is
22 demonstrated by his untenable position that Pandrea had the right to use the easement, but
23 Clark did not without any regard for the undisputed language in the deeds of record specifically
24 providing that the easement "is favor of Pandrea *and Clark*." Memorandum Decision, p. 16
25 (emphasis original). Clark agrees with the Court that "Thornton's inability to read and
26 understand what is of record, is quite mystifying." Memorandum Decision, p. 16. However,
27 Thornton's willful decision to ignore the plain language in the deeds and to wrongfully interfere
28 with Clark's easement rights goes far beyond mere neglect and constitute a calculated course of

1 conduct designed to harass Clark and wear her down with expenses and wasteful litigation.
2 Thornton's conduct in interfering with Clark's property rights and the frivolous claims that he
3 brought against Clark in this case are inexcusable. Not only was Thornton's conduct in
4 violating Clark's property rights troubling, but his continued pursuit of his unreasonable claims
5 against Clark without any foundation whatsoever is the very definition of frivolousness.
6 Thornton's deleterious tactics should fail and Clark is entitled to an award of all of her attorney's
7 fees costs pursuant to I.R.C.P. 54(d) and I.C. § 12-121.

8 **III. CLARK IS ALSO ENTITLED TO AN AWARD OF ATTORNEY'S FEES AND COSTS AGAINST**
9 **THORNTON AND HIS ATTORNEY, VALERIE THORNTON, AS SANCTIONS PURSUANT TO**
10 **I.R.C.P. 11.**

11 The district court's decision to impose Rule 11 sanctions is reviewed under the abuse of
12 discretion standard. *Chapple v. Madison County Officials*, 132 Idaho 76, 967 P.2d 278 (1998).
13 Pursuant to I.R.C.P. 11(a)(1), all pleadings, motions and other papers signed by an attorney
14 must meet certain criteria. Where such motions, pleadings or other papers are not well
15 grounded in fact, warranted by existing law or a good faith argument for extension,
16 modification, or reversal of existing law, or are interposed for improper purposes (such as to
17 harass, cause undue delay, or needlessly increase the cost of litigation), imposition of sanctions
18 results. I.R.C.P. 11(a)(1); *Slack v. Anderson*, 140 Idaho 38, 39-40, 89 P.3d 878, 879-880 (2004)
19 (citing *Durrant v. Christensen*, 117 Idaho 70, 74, 785 P.2d 634, 638 (1990)). I.R.C.P.11(a)(1)
20 authorizes the court to impose sanctions against an attorney and/or the represented party. This
21 rule does not duplicate I.C. § 12-121, and circumstances that justify an award of fees under that
22 statute do not necessarily call for imposition of Rule 11 sanctions. See *Sun Valley Shopping*
23 *Center, Inc.*, 119 Idaho 87, 96, 803 P.2d 993, 1002 (1991); *Young v. Williams*, 122 Idaho 649,
24 654, 837 P.2d 324, 329 (Ct. App. 1992). An "attorney is required to perform a prefiling inquiry
25 into both the facts and the law involved to satisfy the affirmative duty imposed by Rule 11."
26 *Riggins v. Smith*, 126 Idaho 1017, 1021, 895 P.2d 1210, 1213 (1995). Reasonableness under the
27 circumstances, and a duty to make reasonable inquiry prior to filing a pleading or other paper,
28 is the appropriate standard to apply when evaluating an attorney's conduct. *Durrant v.*

1 *Christensen*, 117 Idaho 70, 74, 785 P.2d 634, 638 (1990). Whether a pleading, motion or other
2 signed document is sanctionable must be based on an assessment of the knowledge of the
3 relevant facts and law that reasonably could have been acquired at the time the document was
4 submitted to the court. *Young*, 122 Idaho at 653, 837 P.2d at 328.

5 The frivolity of the lawsuit filed by Thornton and his attorney has already been
6 established. The claims Thornton brought against Clark were not well grounded in fact, nor
7 were they a good faith argument for the extension, modification, or reversal of existing law.
8 However, the course of conduct of Thornton and his attorney both prior to, and throughout this
9 litigation has demonstrated that Thornton and his attorney have intentionally brought and
10 pursued this litigation in an attempt to harass Clark and unnecessarily delay Clark's lawful right
11 to use the easement across Thornton's property. Despite having actual and constructive notice
12 of Clark's right to use the easement across Thornton's property, Thornton chose to block Clark's
13 access and he posted a sign directly threatening Clark with criminal prosecution. When Clark
14 attempted to use the easement to access her property, Thornton and Thornton's attorney
15 confronted Clark and told her that she had no legal right to cross the Thornton property.

16 The lawsuit that was brought by Thornton and his attorney against Clark goes above
17 and beyond frivolous and constitutes vexatious litigation. Throughout the entirety of this case,
18 Thornton and his attorney have purposefully driven up Clark's costs of litigation by completely
19 ignoring the plain language contained in two deeds of record describing Clark's easement rights
20 and by seemingly working in concert with Pandrea to harass Clark. In addition, Thornton has
21 attempted to utilize affidavits and documents provided by Pandrea in an effort to support
22 Thornton's meritless claims even though Thornton is the Plaintiff and Pandrea is a co-defendant
23 with Clark.

24 Sanctions should be imposed against Thornton and his attorney because Thornton's
25 attorney was required to perform a reasonable prefiling inquiry into both the facts and the law
26 before initiating this lawsuit against Clark. Thornton's attorney did not conduct a reasonable
27 inquiry as demonstrated by her complete failure to recognize the plain meaning of the language
28 contained in two deeds that specifically granted Clark an easement over Thornton's property.

1 As this Court discussed in its Memorandum Decision on Clark's Motion for Partial
2 Summary Judgment:

3 Thornton's attorney, at the March 14, 2014, hearing argued: "Thornton was never
4 on any notice there was a right to use." Such argument completely ignores the
5 purpose of Idaho's recording statutes. I.C. § 55-801 et.seq. Once the easement
6 was recorded in 1992, that easement is constructive notice to Thornton and the
7 entire world, of Clark's easement rights. I.C. § 55-811. How Thornton's attorney
8 can make such a statement to the Court, is not capable of being understood. The
9 fact that Thornton refused to submit proof of the fact of the recorded easement in
10 the earlier motion for summary judgment brought by Pandrea, only illustrates the
11 untenable position Thornton took not only on July 20, 2013, but throughout this
12 litigation, and Thornton, and his attorney, obviously continue to adhere to up to
13 the present time. Thornton cannot make the written recorded easement go away
14 by pretending it does not exist. Thornton's attorney cannot pretend Idaho's
15 recording statutes do not exist.

16 ...

17 Thornton's attorney also argued at the March 14, 2014, hearing that "A landowner
18 has a right to approach a person that you have never met before." Such argument
19 is disingenuous given the fact that fifteen days before meeting Clark and
20 confronting Clark, Thornton, on July 5, 2013, put up the following sign:

21 NOTICE
22 KARI CLARK
23 IS PROHIBITED FROM ENTERING UPON THIS PROPERTY FOR ANY
24 REASON UNDER PENALTY OF CRIMINAL TRESPASS. I.C. § 18-7001.

25 ...

26 Why would Thornton place such a sign if he had never met Kari Clark or at least
27 knew who Kari Clark was, and *knew Kari Clark claimed some right to cross his
28 property?*

Memorandum Decision, pp. 19-20.

Thornton and his attorney chose to ignore the facts and ignore the law in bringing this
action against Clark. The only conclusion that can be drawn from the actions of Thornton and
his attorney is that this lawsuit was brought and pursued in an effort to harass Clark and to
force Clark to incur needless costs of litigation defending against a frivolous two-pronged
attack from Thornton and Pandrea. Thornton and Pandrea have litigated this case in bad faith

1 in the cynical hope that Clark would abandon her property in order to avoid the expense of
 2 defending her legal rights. Under these circumstances, an award of attorney's fees and costs
 3 should be awarded to Clark as sanctions against Thornton and his attorney pursuant to I.R.C.P.
 4 11.

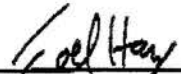
5 **V. CONCLUSION**

6 Clark is the prevailing party in this matter and is entitled to an award of
 7 attorney's fees under Idaho Code § 12-121 and an award of costs under I.R.C.P. 54(d). In
 8 addition, an award of attorney's fees and costs should be awarded to Clark as sanctions against
 9 Thornton and his attorney pursuant to I.R.C.P. 11 in the amount set forth in the Affidavit filed
 10 herewith.

11 Clark reserves the right to file supplemental affidavits for attorney's fees incurred
 12 responding to Thornton's continued motions in this case.

13 DATED this 12th day of May, 2014.

14 WITHERSPOON KELLEY

15
 16
 17 
 18 _____
 19 JASON M. GRAY
 20 JOEL P. HAZEL
 21 Attorneys for Defendant/Counterclaimant Clark
 22
 23
 24
 25
 26
 27
 28

CERTIFICATE OF SERVICE

I certify that on this the 12th day of May, 2014, I caused a true and correct copy of the within *BRIEF IN SUPPORT OF DEFENDANT/COUNTERCLAIMANT CLARK'S MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS* to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Val Thornton
4685 Upper Pack River Rd.
Sandpoint, ID 83864

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile: 208-255-2327

Mary E. Pandrea
4672 Upper Pack River Rd.
Sandpoint, ID 83864

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile:

Annette Moormann
Annette Moormann

STATE OF IDAHO
 COUNTY OF BONNER
 FIRST JUDICIAL DIST.

2014 MAY 12 AM 10 53

CLERK DISTRICT COURT

DEPUTY

1
 2 JOEL P. HAZEL, ISB # 4980
 3 JASON M. GRAY, ISB # 8539
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 Telephone: (208) 667-4000
 6 Facsimile: (208) 667-8470
 7 Email: jph@witherspoonkelley.com
 8 Email: jmg@witherspoonkelley.com

9 *Attorneys for Defendant/Counterclaimant Karl A. Clark*

10
 11 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF
 12 IDAHO, IN AND FOR THE COUNTY OF BONNER

13 JOHN F. THORNTON,
 14 Plaintiff/Counterdefendant,
 15 vs.

Case No. CV 2013-1334

16 MARY E. PANDREA, a single woman
 17 individually and as Trustee of the Kari A.
 Clark and Mary E. Pandrea Revocable Trust,
 18 u/a April 9, 2002; and

AFFIDAVIT/MEMORANDUM OF JOEL P.
 HAZEL IN SUPPORT OF MOTION FOR
 AWARD OF MOTION FOR ATTORNEY'S
 FEES AND COSTS

19 Defendant,

20 KARI A. CLARK, a single woman
 21 individually and as Trustee of the Kari A.
 Clark and Mary E. Pandrea Revocable Trust,
 22 u/a April 9, 2002 and as Trustee of the Kari
 A. Clark Trust u/a June 21, 2010,

23 Defendant/Counterclaimant.
 24

25
 26 STATE OF IDAHO)
 27 : ss
 28 County of Kootenai)

Joel P. Hazel, being first duly sworn, on oath, deposes and says:

AFFIDAVIT/MEMORANDUM OF JOEL P. HAZEL IN SUPPORT OF MOTION FOR AWARD OF MOTION FOR ATTORNEY'S FEES AND COSTS - 1

1 1. That he is a member of the firm of WITHERSPOON KELLEY, attorneys for
2 Defendant/Counterclaimant Kari A. Clark ("Clark"). That he makes this affidavit on the
3 basis of his personal knowledge.

4 2. That your affiant is well informed as to the attorney's fees and costs incurred
5 in this action and states and represents that the fees and costs below set forth were in fact
6 incurred in this action.

7 3. This Affidavit is made in compliance with I.R.C.P. 54(e)(3) and I.R.C.P.
8 54(d)(5).

9 4. That the attorney's fees were calculated on the basis of my hourly rate of
10 \$265.00 to \$275.00 per hour, and Jason M. Gray's hourly rate of \$165.00 to \$170.00 per
11 hour.

12 5. That the time and labor required for this action is summarized below and
13 further itemized as set forth in Exhibit "A" attached hereto and incorporated herein, and is
14 typical for a case of this nature and duration.

15 6. The skill required to perform the legal service was average. I am lead counsel
16 on this case and a principal with Witherspoon Kelley. I have been licensed to practice law in
17 the State of Idaho since 1994. I practice primarily in the areas of real property, civil
18 litigation, and medical malpractice defense litigation. Jason M. Gray is an associate with
19 Witherspoon Kelley, has been licensed to practice law in the State of Idaho since 2010, and
20 practices primarily in the areas of civil litigation, business and corporate law, land use, zoning
21 and real estate.

22 7. That your affiant is well informed as to the hourly rates of counsel with similar
23 skill, knowledge, and experience in the state of Idaho, and states that the attorneys' fees
24 sought are similar to prevailing charges for like work.

25 8. The fees charged were fixed and based upon the hourly rates.

26 9. The case involved relatively straightforward questions of law.

27 10. The time limitations imposed by the circumstances of the case were typical of
28 a case of this nature.

1 11. The case was initiated by John F. Thornton ("Thornton") as an action to quiet
2 title in real property against Clark and Mary E. Pandrea. Thornton claimed that Clark did not
3 have the right cross a two acre parcel that Thornton now owns, despite the fact that the
4 Warranty Deed conveying the property to Thornton specifically stated that the conveyance
5 was subject to "A 30.0 FOOT EASMENT FOR A ROAD RIGHT OF WAY AND
6 UTILITIES" in favor of "MARY E. PANDREA WILTSE" and "KARI A. CLARK" as set
7 forth in "INSTRUMENT NO. 416381." Thornton also claimed that he was entitled to sole
8 ownership of what has been referred to as the "Well Piece." Clark filed an Answer and
9 counterclaims against Thornton for interference with her easement rights, injunctive relief
10 and to quiet title.

11 12. Clark moved for summary judgment on Plaintiff's claims and on Clark's
12 counterclaims regarding the easement because there were no genuine issues of material fact
13 regarding the existence of Clark's easement appurtenant to Thornton's property. Clark's
14 Motion for Summary Judgment was granted, Thornton's Complaint against Clark was
15 dismissed with prejudice, and Clark was successful on her counterclaims to quiet title
16 regarding her appurtenant easement rights, for injunctive relief and establishing that Thornton
17 wrongfully interfered with Clark's easement rights. Clark voluntarily dismissed her claim for
18 damages against Thornton in an effort to avoid further litigation costs, but reserved the right
19 to seek any attorney's fees and costs she is entitled to.

20 13. That a substantial amount of time and labor was required in this case due to
21 the frivolous court filings and claims that were brought against Clark and it is your affiant's
22 position that the time spent is justified for the results obtained.

23 14. There is nothing particularly desirable or undesirable about the case.

24 15. Clark is a new client of the law firm Witherspoon Kelley.

25 16. The award of attorney's fees sought is higher than awards in similar types of
26 cases due to the frivolousness of the court filings and lawsuit brought by Thornton and his
27 attorney and the action of *Pro-se* codefendant Mary Pandrea (Pandrea).

28 17. That other than the Court filing fees and service fees, all costs sought

1 hereunder are discretionary costs that were necessary and exceptional costs reasonably
 2 incurred and should in the interest of justice be assessed against Thornton. Your affiant
 3 believes it was reasonable and necessary to use a modest amount of computer-assisted legal
 4 research in the preparation of the case.

5 18. That the following is a true and accurate account of the fees and costs
 6 associated with this action as charged to Clark pursuant to I.R.C.P. 54(e)(3) and 54(d)(1).

8 **SUMMARY OF FEES**

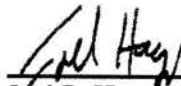
Attorney/Provider Name	Total Hours	Total Fees
Joel P. Hazel	51.4	\$13,822.00
Jason M. Gray	164.6	\$27,609.50
Westlaw research		\$32.67
TOTAL FEES:	216	\$41,464.17

13 **SUMMARY OF COSTS AS A MATTER OF RIGHT**

Description	Amount
Filing fee(s)-Appearance Fee	\$66.00
TOTAL COSTS AS A MATTER OF RIGHT	\$66.00

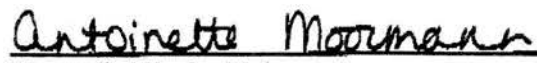
17 19. That your affiant states that to the best of his knowledge, all items set forth in
 18 this Memorandum are correct, and all items claimed are in compliance with I.R.C.P. Rule 54.

19 DATED this 12th day of May, 2014.

21 
 22 _____
 23 Joel P. Hazel
 24 WITHERSPOON KELLEY

25 SUBSCRIBED AND SWORN to before me the undersigned Notary Public this
 26 12th day of May, 2014.



27 
 28 Notary Public for Idaho
 Residing in: Coeur d'Alene, ID
 My Commission Expires: 8/2/2020

CERTIFICATE OF SERVICE

I certify that on this the 12th day of May, 2014, I caused a true and correct copy of the within *AFFIDAVIT/MEMORANDUM OF JOEL P. HAZEL IN SUPPORT OF MOTION FOR AWARD OF MOTION FOR ATTORNEY'S FEES AND COSTS* to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Val Thornton
4685 Upper Pack River Rd.
Sandpoint, ID 83864

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile: 208-255-2327

Mary E. Pandrea
4672 Upper Pack River Rd.
Sandpoint, ID 83864

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile:

Annette Moormann
Annette Moormann

Exhibit A

Time Report

Clark, Karl A. / Thornton v. Clark Litigation (14530-1)

11/11/2013	Joel P. Hazel	3.50	927.50	Review documents provided in Bonner County lawsuit; research Idaho cases re easement in Gross v. Appurtenant Easement.
11/12/2013	Joel P. Hazel	1.00	265.00	Draft notice of appearance; review complaint.
11/13/2013	Joel P. Hazel	0.50	132.50	Telephone conference with Atty. Thornton re notice of appearance; finalize pleading.
11/14/2013	Jason M. Gray	3.80	627.00	Perform legal research re potential counterclaims; prepare draft of Answer.
11/14/2013	Joel P. Hazel	1.20	318.00	Telephone conference with Atty. Val Thornton re two weeks to file answer; instruction to Atty. Gray and review documents.
11/18/2013	Jason M. Gray	3.80	627.00	Review and analyze claims alleged by Plaintiff; perform legal research re affirmative defenses.
11/20/2013	Jason M. Gray	3.90	643.50	Perform legal research re requirements for easement by implication; prepare draft of Answer/Counterclaim.
11/21/2013	Jason M. Gray	2.00	330.00	Perform legal research re requirements for easement by prescription; prepare draft of Answer/Counterclaims.
11/22/2013	Joel P. Hazel	0.50	132.50	Review correspondence and document.
11/22/2013	Jason M. Gray	4.80	792.00	Perform legal research re potential affirmative defenses and counterclaims; prepare draft of Answer/Counterclaim.
11/30/2013	Jason M. Gray		32.67	Westlaw Research
12/02/2013	Joel P. Hazel	0.40	106.00	Review discovery responses.
12/04/2013	Jason M. Gray	2.30	379.50	Prepare draft of answer to complaint; review and analyze Pandrea's motion to dismiss complaint to quiet title and for damages.
12/05/2013	Joel P. Hazel	0.20	53.00	Review title company correspondence.
12/05/2013	Jason M. Gray	0.80	132.00	Attend hearing on motion to compel.
12/06/2013	Joel P. Hazel	0.30	79.50	Office conference with Atty. Gray re outcome of hearing.
12/06/2013	Jason M. Gray	2.60	429.00	Attend hearing on Thornton's motion to intervene; telephonic meeting with Sandpoint Title re litigation guarantee and easement issues.
12/10/2013	Jason M. Gray	2.90	478.50	Prepare draft of discovery responses; prepare draft of discovery requests to Thornton.
12/11/2013	Joel P. Hazel	0.70	185.50	Review filings by Pandrea.
12/11/2013	Jason M. Gray	3.40	561.00	Review documents provided by client pertaining to discovery requests; review and analyze Memorandum in Support of Pandrea's Motion to Dismiss; office conference with Atty. Hazel re discovery responses.
12/12/2013	Jason M. Gray	3.80	627.00	Prepare draft of discovery responses; perform legal research re presumption of easement appurtenant.

12/13/2013	Jason M. Gray	1.20	198.00	Review and analyze litigation guarantee from Sandpoint Title.
12/16/2013	Jason M. Gray	0.30	49.50	Draft email to client re motion for summary judgment.
12/17/2013	Jason M. Gray	0.50	82.50	Office conference with Atty. Hazel re strategy for summary judgment motion; review email correspondence from client re negotiations with opposing counsel.
12/18/2013	Jason M. Gray	3.10	511.50	Prepare draft of memorandum in support of motion for summary judgment.
12/23/2013	Jason M. Gray	1.40	231.00	Prepare draft of summary judgment motion.
12/30/2013	Jason M. Gray	1.00	165.00	Review and analyze Pandrea's reply to Plaintiff's objection in opposition to summary judgment; office conference with Atty. Hazel re summary judgment motion.
01/02/2014	Joel P. Hazel	1.50	397.50	Review pleadings and motions.
01/02/2014	Jason M. Gray	3.30	544.50	Perform legal research re plaintiff's failure to file answer to counterclaims; review and analyze plaintiff's objection and memorandum in opposition to Pandrea's motion for summary judgment.
01/03/2014	Joel P. Hazel	2.00	530.00	Review title reports and pleadings.
01/06/2014	Joel P. Hazel	3.00	795.00	Prepare for and attend Pandrea's motion to dismiss hearing.
01/10/2014	Joel P. Hazel	3.00	795.00	Prepare for and attend Pandrea's motion to dismiss hearing.
01/10/2014	Jason M. Gray	2.90	478.50	Perform legal research re moving for summary judgment on counterclaims.
01/13/2014	Jason M. Gray	3.30	544.50	Prepare draft of brief in support of summary judgment motion.
01/14/2014	Jason M. Gray	1.90	313.50	Review and analyze decision on Pandrea's motion to dismiss; review email from client re entry of judgment in partition action; draft emails to client re Judge Mitchell's decision and order.
01/15/2014	Joel P. Hazel	2.50	662.50	Review Judge Mitchell's decision; instruction to Atty. Gray; telephone conference with client.
01/15/2014	Jason M. Gray	0.80	132.00	Prepare draft of brief in support of summary judgment.
01/17/2014	Jason M. Gray	3.30	544.50	Review and revise affidavit of Terri Boyd-Davis; review email from client re Thornton's request for documents; draft email to client re status of summary judgment motion.
01/22/2014	Joel P. Hazel	0.50	132.50	Correspondence re summary judgment and default on counter claim.
01/22/2014	Jason M. Gray	2.70	445.50	Review email and documents from Atty. Thornton re stipulation to amend scheduling order; prepare draft of brief in support of summary judgment; office conference with Atty. Hazel re documents necessary for summary judgment motion.
01/23/2014	Joel P. Hazel	2.00	530.00	Instructions on summary judgment and review memorandum.
01/23/2014	Jason M. Gray	2.20	363.00	Perform legal research re legal standards for classifying easements.

01/24/2014	Jason M. Gray	2.80	462.00	Prepare draft of affidavit of Joel Hazel in support of summary judgment; revise draft of affidavit of Terri Boyd-Davis.
01/27/2014	Joel P. Hazel	2.00	530.00	Review filings by Atty. Thornton; telephone conference with client; instruction to Atty. Gray.
01/27/2014	Jason M. Gray	0.10	16.50	Draft email to client re status of partition action.
01/28/2014	Jason M. Gray	5.60	924.00	Prepare section of summary judgment brief on Clark's counterclaims; prepare draft of 3-day notice of intent to take default; prepare draft of expert witness disclosure; draft email to client re expert witness disclosure; perform legal research re mootness of Thornton's well-pleace claim after partition action was finalized.
01/28/2014	Joel P. Hazel	3.20	848.00	Review and revise summary judgment memo, motion and affidavits.
01/29/2014	Jason M. Gray	3.60	594.00	Prepare draft of brief in support of summary judgment motion; finalize drafts of affidavits of Joel Hazel and Terri Boyd-Davis.
01/29/2014	Joel P. Hazel	2.20	583.00	Finalize summary judgment pleadings for filing.
01/30/2014	Jason M. Gray	0.40	66.00	Prepare draft of 3-day notice of intent to take default.
01/30/2014	Joel P. Hazel	0.40	106.00	Review and revise 3-day notice of default on counterclaims.
01/31/2014	Joel P. Hazel	0.70	185.50	Review Atty. Thornton's answers to counterclaims and affirmative defenses.
02/27/2014	Joel P. Hazel	0.60	165.00	Review our summary judgment memo in anticipation of response.
02/28/2014	Jason M. Gray	5.80	986.00	Review and analyze documents submitted in support of Plaintiff's opposition to summary judgment.
02/28/2014	Joel P. Hazel	1.90	522.50	Initial review of summary judgment responses; direction Atty. Gray.
03/03/2014	Jason M. Gray	0.80	136.00	Office conference with Atty. Hazel re summary judgment response.
03/03/2014	Joel P. Hazel	0.80	220.00	Office conference with Atty. Gray re summary judgment response.
03/03/2014	Jason M. Gray	3.20	544.00	Perform legal research re motion for summary judgment granting restitution of premises.
03/04/2014	Joel P. Hazel	1.50	412.50	Review summary judgment response memorandum outline issues for reply.
03/04/2014	Jason M. Gray	5.30	901.00	Perform legal research re motion to strike non-adverse party Pandrea's memorandum in opposition to Clark's motion for summary judgment; prepare draft of reply in support of motion for summary judgment.
03/05/2014	Joel P. Hazel	1.90	522.50	Review Pandrea's memorandum and affidavit.
03/05/2014	Jason M. Gray	3.80	646.00	Prepare draft of motion to strike.
03/06/2014	Joel P. Hazel	0.80	220.00	Review motion to strike and revise.
03/06/2014	Jason M. Gray	5.10	867.00	Perform legal research re Thornton's claim that easement is only appurtenant to tax lot 40; perform legal research re motion to strike Pandrea's affidavits; prepare draft of motion to strike and motion to shorten time on Pandrea's memorandum in support of plaintiff's

03/07/2014	Joel P. Hazel	3.00	825.00	response. Review and revise reply memorandum.
03/07/2014	Jason M. Gray	5.40	918.00	Draft correspondence to client re location of well piece; review correspondence from client re summary judgment hearing; prepare draft of reply memorandum in support of summary judgment motion.
03/10/2014	Jason M. Gray	0.50	85.00	Review easement documents provided by client.
03/12/2014	Jason M. Gray	0.90	153.00	Review plaintiff's motion for sanctions.
03/13/2014	Joel P. Hazel	2.00	550.00	Prepare for summary judgment argument.
03/13/2014	Jason M. Gray	2.10	357.00	Review correspondence from client re plaintiff's motion for sanctions; prepare outline of summary judgment argument.
03/14/2014	Joel P. Hazel	3.20	880.00	Prepare for and attend summary judgment oral argument; telephone conference with client; instruction to Atty. Gray.
03/14/2014	Jason M. Gray	2.10	357.00	Review correspondence from client re plaintiff's motion for sanctions; prepare outline of summary judgment argument.
03/14/2014	Jason M. Gray	2.10	357.00	Final preparation for summary judgment argument; attend summary judgment hearing.
03/19/2014	Jason M. Gray	1.90	323.00	Prepare draft of order on motion to strike.
03/21/2014	Jason M. Gray	0.20	34.00	Review correspondence from client re gate issue.
03/25/2014	Jason M. Gray	2.70	459.00	Prepare draft of response to plaintiff's second set of discovery requests.
03/26/2014	Jason M. Gray	1.20	204.00	Prepare draft of responses to plaintiff's second set of discovery requests.
03/28/2014	Jason M. Gray	3.40	578.00	Review correspondence and documents from client re attorney's fees; prepare draft of response to plaintiff's second set of discovery requests; research legal standards for motion to disqualify attorney.
04/08/2014	Jason M. Gray	5.40	918.00	Review and analyze Atty. Thornton's motion for protective order and sanctions; perform legal research re recovery of damages for easement interference.
04/09/2014	Joel P. Hazel	1.10	302.50	Review Judge Mitchell's decision; telephone conference with client; telephone conference with client re case.
04/09/2014	Jason M. Gray	5.80	986.00	Review memorandum decision issued by District Court; perform legal research re effect of motion to dismiss claim for damages on status as prevailing party.
04/10/2014	Joel P. Hazel	1.30	357.50	Further review Judge Mitchell's decision; instruction to Atty. Gray.
04/10/2014	Jason M. Gray	5.90	1,003.00	Draft email to client re motion for sanctions filed by Atty. Thornton; perform legal research re claim for damages based on wrongful interference with easement rights; begin preparation of request for attorney fees and costs.
04/11/2014	Jason M. Gray	3.10	527.00	Review Atty. Thornton's letter to Bonner County clerk re scheduling hearing date; perform legal research re motion to disqualify attorney based on conflict of interest.

04/14/2014	Joel P. Hazel	1.50	412.50	Review correspondence re new trespass; telephone conference with Atty. Thornton re stipulation and alleged confrontation with Terri Boyd-Davis and her husband; instruction to Atty. Gray.
04/14/2014	Jason M. Gray	2.60	442.00	Perform legal research re motion for contempt and motion for disqualification of attorney; draft letter to client re decision on motion for summary judgment.
04/17/2014	Jason M. Gray	2.80	476.00	Prepare draft of stipulation for entry of order for dismissal; prepare draft of final judgment.
04/18/2014	Jason M. Gray	2.10	357.00	Prepare draft of motion for attorney's fees and costs.
04/23/2014	Jason M. Gray	2.00	340.00	Prepare draft of motion for attorney's fees and costs.
04/24/2014	Jason M. Gray	2.30	391.00	Review and analyze Pandrea's motion to amend, motion to reconsider and corresponding documents.
04/25/2014	Jason M. Gray	3.20	544.00	Review email from client with attached documents in response to motion filed by Pandrea.
04/29/2014	Jason M. Gray	2.70	459.00	Perform legal research re award of attorney's fees and costs based on frivolous lawsuit.
04/30/2014	Jason M. Gray	5.70	969.00	Prepare draft of motion for attorney's fees and costs; prepare draft of response to Pandrea's motion to amend/reconsider.
05/05/2014	Joel P. Hazel	0.50	137.50	Review judgment.

VAL THORNTON
Attorney for Plaintiff
4685 Upper Pack River Rd.
Sandpoint, ID 83864
(208) 263-5017 phone
(208) 255-2327 fax
ISB #6517

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2014 MAY 13 AM 9 10

CLERK DISTRICT COURT

DEPUTY

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

JOHN F. THORNTON,)

Plaintiff,)

v.)

MARY E. PANDREA, et al,)

Defendants.)

Case No. CV-2013-1334

PLAINTIFF'S
AMENDED

NOTICE OF HEARING
AND MOTION TO
SHORTEN TIME

TO: Mary Pandrea, Defendant pro se, to Kari Clark, her attorney Joel P. Hazel, and to the clerk of the above-entitled court.

PLEASE TAKE NOTICE that Plaintiff's motion to reconsider summary judgment is scheduled to be heard **Tuesday, the 20th day of May, 2014, at the hour of 4:00 o'clock p.m.**, or as soon thereafter as the matter may be heard before the Honorable John T. Mitchell, at the **Kootenai County Courthouse, 324 West Garden Avenue, Coeur d'Alene, Idaho.**

MOTION TO SHORTEN TIME

Plaintiff hereby moves the court to shorten time for hearing of this motion, because the date and time set forth in notice of hearing of this matter was incorrect.

DATED this 12th day of May, 2014.

Val Thornton
VAL THORNTON, Attorney at Law

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 9th day of May, 2014, to:

JOEL P. HAZEL

WITHERSPOON KELLEY
608 Northwest Blvd., Ste. 300
Coeur d'Alene, ID 83864

mailed, postage prepaid
 faxed to (208) 667-8470
 hand-delivered

MARY PANDREA

4687 Upper Pack River Rd.
Sandpoint, ID 83864

mailed, postage prepaid
 faxed to (208) _____
 hand-delivered

HON. JOHN T. MITCHELL

P. O. Box 9000
Coeur d'Alene, ID 83864

mailed, postage prepaid
 faxed to (208) 446-1132
 hand-delivered

Val Thornton

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 12th day of May, 2014, to:

JOEL P. HAZEL

WITHERSPOON KELLEY
608 Northwest Blvd., Ste. 300
Coeur d'Alene, ID 83814

mailed, postage prepaid
 faxed to (208) 667-8470
 hand-delivered

MARY PANDREA

4687 Upper Pack River Rd.
Sandpoint, ID 83864

mailed, postage prepaid
 faxed to (208) _____
 hand-delivered

HON. JOHN T. MITCHELL

P. O. Box 9000
Coeur d'Alene, ID 83816

mailed, postage prepaid
 faxed to (208) 446-1132
 hand-delivered

Val Thornton

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2014 MAY 13 PM 2 24

CLERK DISTRICT COURT

DEPUTY

1
2 JOEL P. HAZEL, ISB # 4980
3 JASON M. GRAY, ISB # 8539
4 WITHERSPOON KELLEY
5 The Spokesman-Review Building
6 608 Northwest Blvd., Suite 300
7 Coeur d'Alene, Idaho 83814-2146
8 Telephone: (208) 667-4000
9 Facsimile: (208) 667-8470
10 Email: jph@witherspoonkelley.com
11 Email: jmg@witherspoonkelley.com

12 *Attorneys for Defendant/Counterclaimant Kari A. Clark*

13
14 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF
15 IDAHO, IN AND FOR THE COUNTY OF BONNER

16 JOHN F. THORNTON,

17 Plaintiff/Counterdefendant,

Case No. CV 2013-1334

18 vs.

DEFENDANT/COUNTERCLAIMANT
CLARK'S RESPONSE TO THORNTON'S
MOTION FOR RECONSIDERATION AND
OBJECTION TO THE AFFIDAVITS OF
MARY PANDREA AND JOHN THORNTON
FILED IN SUPPORT THEREOF

19 MARY E. PANDREA, a single woman
20 individually and as Trustee of the Kari A.
21 Clark and Mary E. Pandrea Revocable Trust,
22 u/a April 9, 2002; and

23 Defendant,

24 KARI A. CLARK, a single woman
25 individually and as Trustee of the Kari A.
Clark and Mary E. Pandrea Revocable Trust,
u/a April 9, 2002 and as Trustee of the Kari A.
Clark Trust u/a June 21, 2010,

Defendant/Counterclaimant.

DEFENDANT/COUNTERCLAIMANT CLARK'S RESPONSE TO THORNTON'S MOTION FOR
RECONSIDERATION AND OBJECTION TO THE AFFIDAVITS OF MARY PANDREA AND JOHN
THORNTON FILED IN SUPPORT THEREOF - 1

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1 COMES NOW Defendant/Counterclaimant Kari A. Clark ("Clark") by and through her
2 attorneys of record, Joel P. Hazel and Jason M. Gray of the firm of Witherspoon Kelley and
3 hereby provides the following response to Thornton's Motion for Reconsideration.

4 In addition, Clark hereby requests an award of attorney's fees and costs as a sanction
5 against Thornton and Thornton's attorney, Valerie Thornton, pursuant to I.R.C.P. 11 on the
6 grounds that the Motion for Reconsideration and the documents filed in support thereof are
7 frivolous, they are not well grounded in fact or warranted by existing law or a good faith
8 argument for the extension, modification, or reversal of existing law, and these documents were
9 filed for the improper purpose of harassing Clark, causing unnecessary delay and needless
10 increase in the cost of litigation.
11

12 I. ARGUMENT

13 A. Thornton's Motion to Reconsider is without merit.

14 In the Memorandum Decision and Order Granting Defendant Clark's Motion for
15 Summary Judgment ("Memorandum Decision") that was entered on April 9, 2014, this Court
16 correctly determined that Clark is entitled to judgment as a matter of law on Thornton's claims
17 and on Clark's counterclaims because there are no genuine issues of material fact regarding
18 the existence of Clark's easement appurtenant to Thornton's property based on the language
19 contained in Quitclaim Deed, Instrument No. 416381, records of Bonner County and
20 Warranty Deed, Instrument No. 525386, records of Bonner County, which both provide that
21 Thornton's property is subject to a 30 foot easement for right of way and utilities in favor of
22 Pandrea and Clark. The subsequent Judgment that was entered against Thornton accurately
23 reflects the Court's ruling.
24
25

DEFENDANT/COUNTERCLAIMANT CLARK'S RESPONSE TO THORNTON'S MOTION FOR
RECONSIDERATION AND OBJECTION TO THE AFFIDAVITS OF MARY PANDREA AND JOHN
THORNTON FILED IN SUPPORT THEREOF - 2

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1 There are no genuine issues of material fact for trial regarding the claims and
2 counterclaims between Thornton and Pandrea and the lengths that Thornton and his attorney
3 have gone to in attempting to distort the facts in an effort to justify their blatant disregard for
4 the plain language contained in the deeds of record in this case is alarming.

5 In his Motion for Reconsideration, Thornton takes issue with language contained in the
6 Judgment that was entered by this Court. However, the Judgment utilizes the exact metes and
7 bounds description of the property burdened that is contained in Warranty Deed, Instrument
8 No. 525386, which is the very document that conveyed Thornton's property to him. Warranty
9 Deed, Instrument No. 525386 refers to the language contained in Quitclaim Deed, Instrument
10 No. 416381 for a description of the easement, just as the Judgment does.

11 It is unclear exactly why Thornton is taking issue with this Court referring to the deeds
12 of record for a description of the easement. However, to the extent that Thornton is concerned
13 about the portions of the easement that are not on his property, Clark would simply note that
14 the Memorandum Decision and Judgment are clear that this Court was only determining the
15 claims and counterclaims between Thornton and Clark regarding the easement across
16 Thornton's property. Therefore, Thornton's Motion for Reconsideration should be denied.

17
18 **B. The Affidavits of Pandrea and Thornton filed in support of Thornton's**
19 **Motion for Reconsideration should be stricken.**

20 Thornton's efforts to manufacture some type of factual dispute so that he can force
21 Clark to endure a lengthy and expensive trial should be rejected by this Court. The
22 "illustrative" hand drawn-maps that were submitted through Pandrea and Thornton in their
23 Affidavits are completely irrelevant to the issue of whether Clark has an appurtenant easement
24 across Thornton's property based on the deeds of record that were properly recorded.

25
DEFENDANT/COUNTERCLAIMANT CLARK'S RESPONSE TO THORNTON'S MOTION FOR
RECONSIDERATION AND OBJECTION TO THE AFFIDAVITS OF MARY PANDREA AND JOHN
THORNTON FILED IN SUPPORT THEREOF - 3

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1 Thornton's depictions of the parcels based on his interpretation of "tax plat maps, survey
2 maps, and satellite imagery" are without foundation and the legal descriptions contained in the
3 actual deeds of record speak for themselves. As such, the Affidavits filed by Pandrea and
4 Thornton regarding the property boundaries should be stricken in their entirety.

5 **C. This Court should award Clark attorney's fees and costs as a sanction**
6 **against Thornton and his attorney pursuant to I.R.C.P. 11.**

7 The district court's decision to impose Rule 11 sanctions is reviewed under the abuse
8 of discretion standard. *Chapple v. Madison County Officials*, 132 Idaho 76, 967 P.2d 278
9 (1998). Pursuant to I.R.C.P. 11(a)(1), all pleadings, motions and other papers signed by an
10 attorney or a party must meet certain criteria. Where such motions, pleadings or other papers
11 are not well grounded in fact, warranted by existing law or a good faith argument for
12 extension, modification, or reversal of existing law, or are interposed for improper purposes
13 (such as to harass, cause undue delay, or needlessly increase the cost of litigation), imposition
14 of sanctions results. I.R.C.P. 11(a)(1); *Slack v. Anderson*, 140 Idaho 38, 39-40, 89 P.3d 878,
15 879-880 (2004) (citing *Durrant v. Christensen*, 117 Idaho 70, 74, 785 P.2d 634, 638 (1990)).

17 Despite this Court's clear ruling in its Memorandum Decision adjudicating the claims
18 and counterclaims between Clark and Thornton regarding the Thornton parcel, Thornton
19 continues to assert in his Motion for Reconsideration that Clark does not have an easement
20 across his property because the property Clark now owns (following the partition action in
21 Bonner County Case No. CV-2011-835) "is not adjacent to Thornton property and does not
22 even touch the dominant parcel." Motion for Reconsideration, p. 17. This incredulous
23 argument goes far beyond ignorance and constitutes gross misconduct designed to harass
24 Clark further by filing as many frivolous motions as possible in order to substantially increase
25

DEPENDANT/COUNTERCLAIMANT CLARK'S RESPONSE TO THORNTON'S MOTION FOR
RECONSIDERATION AND OBJECTION TO THE AFFIDAVITS OF MARY PANDREA AND JOHN
THORNTON FILED IN SUPPORT THEREOF - 4

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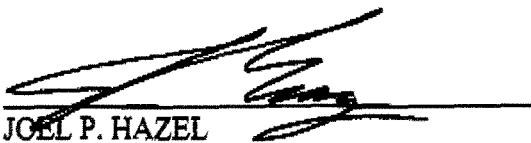
1 Clark's litigation costs. These tactics should not be tolerated by this Court and Clark should
 2 be awarded the attorney's fees and costs that she has been forced to incur in responding to
 3 Thornton's vexatious Motion for Reconsideration.

4 **II. CONCLUSION**

5 Clark respectfully requests that this Court deny Thornton's Motion for Reconsideration
 6 and strike the Affidavits of Pandrea and Thornton filed in support thereof. Additionally, Clark
 7 requests an award of attorney's fees and costs as a sanction against Thornton and his attorney
 8 pursuant to I.R.C.P. 11.

9 DATED this 13th day of May, 2014.

10 WITHERSPOON KELLEY

11 

12
 13 JOEL P. HAZEL
 14 JASON M. GRAY
 15 *Attorneys for Defendant/Counterclaimant Clark*

CERTIFICATE OF SERVICE

I certify that on this the 13th day of May, 2014, I caused a true and correct copy of the within *DEFENDANT/COUNTERCLAIMANT CLARK'S RESPONSE TO THORNTON'S MOTION FOR RECONSIDERATION AND OBJECTION TO THE AFFIDAVITS OF MARY PANDREA AND JOHN THORNTON FILED IN SUPPORT THEREOF* to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Val Thornton
4685 Upper Pack River Rd.
Sandpoint, ID 83864

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile: 208-255-2327

Mary E. Pandrea
4672 Upper Pack River Rd.
Sandpoint, ID 83864

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile:

Annette Moormann
Annette Moormann

VAL THORNTON
 Attorney for Plaintiff
 4685 Upper Pack River Rd.
 Sandpoint, ID 83864
 (208) 263-5017 phone
 (208) 255-2327 fax
 ISB #6517

STATE OF IDAHO
 COUNTY OF BONNER
 FIRST JUDICIAL DIST.

2014 MAY 14 A 10:25

CLERK DISTRICT COURT

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

JOHN F. THORNTON,)	
	)	Case No. CV-2013-1334
Plaintiff,)	
v.	)	AFFIDAVIT OF CORRECTION
	)	AFFIDAVIT OF VAL THORNTON
MARY E. PANDREA, et al,	)	IN SUPPORT OF PLAINTIFF'S
	)	MOTION TO RECONSIDER
Defendants.	)	SUMMARY JUDGMENT
)	

The undersigned counsel hereby submits the following correction to the above referenced affidavit of Val Thornton, changing the letter "A" to "B" in paragraph two.

STATE OF IDAHO)
) :ss
 County of Bonner)

I, VAL THORNTON, hereby correct an error in my affidavit, changing the letter "A" to "B" in paragraph two of the Affidavit of Val Thornton in Support of Plaintiff's Motion to Reconsider Summary Judgment, filed May 6, 2014, and swear and allege as follows:

1. The above referenced paragraph states as follows:
 2. The attached Exhibit Three is a true and correct certified copy of the Warranty Deed from the Harry F. Clark and Edith E. Clark Irrevocable Trust to Mary Pandrea, dated and recorded May 2, 1980, Instrument No. 226223, Records of Bonner County, conveying Parcel A.
2. The paragraph should have stated as follows:
 2. The attached Exhibit Three is a true and correct certified copy of the Warranty Deed from the Harry F. Clark and Edith E. Clark Irrevocable Trust to

ORIGINAL

Mary Pandrea, dated and recorded May 2, 1980, Instrument No. 226223, Records of Bonner County, conveying Parcel B.

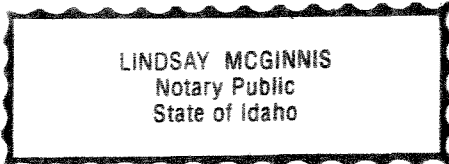
Undersigned counsel intended to refer to Parcel B. For purposes of Plaintiff's motion to reconsider, "Parcel B" is the designation placed on the property Mary Pandrea purchased from her parent's trust in 1980. "Parcel B" is further identified in the illustrative evidence provided for the court's greater understanding, where, the property ownership of "Parcel B", subsequent to the conveyance entitled Warranty Deed, documented as Instrument No. 226223, is illustrated in Plaintiff's Map Exhibit One-B.

DATED this 13th day of May, 2014.

Val Thornton
VAL THORNTON, Attorney at Law

SUBSCRIBED AND SWORN TO before me this 13th day of May, 2014.

Lindsay McGinnis
Notary Public
Residing at: Sandpoint
Commission Expires: December 5, 2018



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 13th day of May, 2014, to:

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 hand-delivered

MARY PANDREA
4687 Upper Pack River Rd.
Sandpoint, ID 83864

mailed, postage prepaid
 faxed to (208) _____
 hand-delivered

HON. JOHN T. MITCHELL
P. O. Box 9000
Coeur d'Alene, ID 83864

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Val Thornton

VAL THORNTON
Attorney for Plaintiff
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Sandpoint, ID 83864
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ISB #6517

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2014 MAY 16 AM 9 13

CLERK DISTRICT COURT

DEPUTY

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

JOHN F. THORNTON,

Plaintiff,

v.

MARY E. PANDREA, et al,

Defendants.

Case No. CV-2013-1334

PLAINTIFF'S
REPLY BRIEF
IN SUPPORT OF HIS MOTION
TO RECONSIDER SUMMARY
JUDGMENT

JOHN F. THORNTON, Plaintiff in the above entitled action, by and through his undersigned counsel, hereby replies to Defendant Counterclaimant Clark's response to his motion for reconsideration, and objection to the affidavits of Pandrea and Thornton filed in support thereof, as follows:

- 1. The facts are in dispute as to the boundaries, title and ownership of the dominant and servient estates involved in this easement dispute, precluding summary judgment.

The easement in this case was once part of Parcel B. John Thornton's property, Parcel A, was originally a smaller piece that did not include the shoreline. The shoreline is that portion of Parcel B lying southeasterly of Tavern Creek. That piece was conveyed from Parcel B to Parcel A in the Quitclaim Deed, Instrument No. 416381.

The Warranty Deed describes Parcel A by describing first that portion of Thornton property as it existed prior to the conveyance contained in the Quitclaim Deed, then goes on to describe the Shoreline: "AND That portion of a tract of land located in Section 11, Township 59

North, Range 2 West of the Boise meridian, Bonner County, Idaho, lying southeasterly of the centerline of Tavern Creek, more fully described as follows: Commencing at the Southeast corner of said Section 11..." and goes on to describe Parcel B. The conveyance conveys that portion of Parcel B lying southeasterly of Tavern Creek, which is the Shoreline.

Parcel C was originally Kari Clark's property. She quit-claimed 50% to her sister, then to a trust, and finally back to herself again. In Bonner County Case No. CV-2011-835 the court allocated a portion of Parcel C to Mary Pandrea. Mary Pandrea now owns all of Parcel B and a portion of Parcel C. Kari Clark does not own any portion of Parcel B.

However, Kari Clark claims that the two parcels were one, and further claims that she now owns the dominant estate to which the easement appurtenant. Plaintiff respectfully disputes both these allegations as untrue and incorrect statements of fact.

There is no explanation for the discrepancy, Kari Clark does not address the contradictions in her earlier statements, where she has admitted that the two parcels were separate and distinct. She continues to insist that she owns the dominant estate to which the easement pertains, in spite of all property descriptions to the contrary, and without any evidence to support her statements. The court should recognize that summary judgment is improper when the facts upon which the court relied have been proven to be untrue.

2. Illustrative Maps are highly relevant and effective means of communicating property disputes and demonstrating historic changes in title and boundary lines.

Defendant Kari Clark contends that "the legal descriptions contained in the actual deeds of record speak for themselves". However, if this were true, the court would not have been misled. The legal descriptions contained in the judgment Ms. Clark has produced for the court's signature do not mirror the legal descriptions contained in the actual deeds of record.

The Idaho Supreme Court has begun demanding that maps be provided in appeals involving property disputes, in order to assist the court to understand the matter. One can easily see the nature of the dispute when the map is correlated to the deed of conveyance, and the property can be identified with its description. This is especially true in this case, where the property containing the easement was conveyed from one of the two parcels claiming the easement. It helps the court to see that the parcels were two distinct properties, and not one twenty-acre parcel. And it helps the court to be able to identify the proper descriptions.

3. The judgment does not describe an easement; it describes the entire Parcel B.

The correct language describing the easement, contained in Instrument 416381, is as follows:

"...said road easement being 30.0 feet wide (15.0 feet each side of the centerline) the centerline being more fully described as follows:
Commencing at the Southeast corner of said Section 11, thence North 0 degrees 58'55" East along the East line of said section a distance of 1325.42 feet; thence West a distance of 1978.63 feet; thence North 27 degrees 57'08" West a distance of 448.04 feet to the point of beginning; thence South 59 degrees 03'17" East a distance of 637.22 feet; thence South 58 degrees 03'22" East a distance of 300.00 feet more or less to the Westerly right-of-way of Pack River County Road."

Instead of using that language, the court has granted what appears to be an easement in gross to Kari Clark and her family forever, as well as an easement appurtenant to a ten-acre parcel that does not touch John Thornton's property. The court goes on to say that this easement is over all of both John Thornton's and Mary Pandrea's separate properties, without any limits or denotation as to the purpose of the easement. It is not clear whether the Clarks, and their heirs and assigns forever, are to be permitted to use the Thornton's and Pandrea's properties for any particular purpose other than egress and ingress, for example, for parking, fishing and picnics, or if the use of the easement contemplates construction of parking garages and hunting cabins in furtherance of other possible uses of the said unlimited and undescribed easement.

CONCLUSION

The court should have considered all the affidavits of the parties and determined that the material facts are in dispute. The easement in question was never appurtenant to the land now owned by Defendant Kari Clark, and she is not entitled to the right of way on John Thornton's property now that she does not own the land from which the easement was conveyed. The property description that she has provided does not describe an easement, and the language does instead create an unlimited easement in gross and appurtenant to property that is not adjacent to the servient estate. The court should reconsider its order granting summary judgment, and John Thornton should be awarded attorney fees and costs for having to defend against baseless claims that are not supported by fact or law.

DATED this 16th day of May, 2014.

Val Thornton
Val Thornton, Attorney for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 16th day of May, 2014, to:

JOEL P. HAZEL
WITHERSPOON KELLEY
608 Northwest Blvd., Ste. 300
Coeur d'Alene, ID 83864

___ mailed, postage prepaid
 faxed to (208) 667-8470
___ hand-delivered

MARY PANDREA
4687 Upper Pack River Rd.
Sandpoint, ID 83864

___ mailed, postage prepaid
___ faxed to (208) _____
 hand-delivered

HON. JOHN T. MITCHELL
P. O. Box 9000
Coeur d'Alene, ID 83864

___ mailed, postage prepaid
 faxed to (208) 446-1132
___ hand-delivered

Val Thornton

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2014 MAY 16 PM 3 14

CLERK DISTRICT COURT

DEPUTY

VAL THORNTON
Attorney for Plaintiff
4685 Upper Pack River Rd.
Sandpoint, ID 83864
(208) 263-5017 phone
(208) 255-2327 fax
ISB #6517

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

JOHN F. THORNTON,)
)
Plaintiff,)
v.)
)
MARY E. PANDREA, et al,)
)
Defendants.)

Case No. CV-2013-1334

AFFIDAVIT OF DEFENDANT
MARY PANDREA IN SUPPORT
OF JOHN THORNTON'S
MOTION TO RECONSIDER

I, MARY PANDREA, Defendant pro se, hereby swear and allege under oath that I am over the age of eighteen, and am competent to testify, as follows:

1. I have personal knowledge, as a beneficiary the Harry F. Clark and Edith E. Clark Irrevocable Trust, of the property conveyances of the Clark Estates, and of the easement agreement on the access road John Thornton refers to as the Upper Road. Kari Clark's property has easement access via the Upper Road.
2. My property is the one referred to by John Thornton as Parcel B for the purpose of his motion to reconsider.
3. The metes and bounds description of Parcel B is the identical description contained in the Rule 54(a) Final Judgment entered by the court on April ^{30th - yms} 24, 2014, purporting to describe a tract lying southeasterly of Tavern Creek.
4. When John Thornton purchased his property in 1998, that he refers to as Parcel A, my property was the dominant estate that had the reserved easement through his property, and it was the only property that did. My property did not have an easement running through it to the benefit of any other property.
5. I have seen the illustrative maps. Plaintiff's Map Exhibits One-A through and

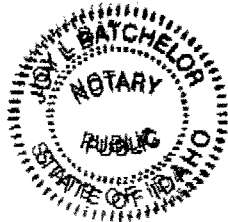
AMENDED AFFIDAVIT OF MARY PANDREA IN SUPPORT
OF PLAINTIFF'S MOTION TO RECONSIDER

including One-L. To the best of my knowledge and belief, they appear to be fair and accurate depictions of the property boundaries, and the history of ownership, of the tracts denominated Parcels A, B and C, the three properties owned by the parties.

DATED this 16th day of May, 2014.

Mary Pandrea
MARY PANDREA, Plaintiff pro se

SUBSCRIBED AND SWORN TO before me this 16 day of May, 2014.



Joy L. Batchelor
Notary Public
Residing at: Sandpoint, ID
Commission Expires: January 30, 2020

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the ___ day of _____, 2014, to:

JOEL P. HAZEL
WITHERSPOON KELLEY
608 Northwest Blvd., Ste. 300
Coeur d'Alene, ID 83864

___ mailed, postage prepaid
___ faxed to (208) 667-8470
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HON. JOHN T. MITCHELL
P. O. Box 9000
Coeur d'Alene, ID 83864

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___ faxed to (208) 446-1132
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AMENDED AFFIDAVIT OF MARY PANDREA IN SUPPORT
OF PLAINTIFF'S MOTION TO RECONSIDER

VAL THORNTON
Attorney for Plaintiff
4685 Upper Pack River Rd.
Sandpoint, ID 83864
(208) 263-5017 phone
(208) 255-2327 fax
ISB #6517

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2014 MAY 21 AM 9 02

CLERK DISTRICT COURT

DEPUTY

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

JOHN F. THORNTON,)

Plaintiff,)

v.)

MARY E. PANDREA, a single woman)
individually and as Trustee of the Kari A.)
Clark and Mary E. Pandrea Revocable)
Trust u/a April 9, 2002; and)
KARI A. CLARK, a single woman)
individually and as Trustee of the Kari A.)
Clark and Mary E. Pandrea Revocable)
Trust u/a April 9, 2002, and as Trustee)
of the Kari A. Clark Trust u/a June 21, 2010,)

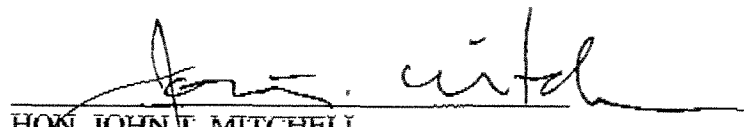
Defendants.)

Case No. CV-2013-1334

ORDER
OF DISMISSAL OF
PLAINTIFF'S COMPLAINT
TO QUIET TITLE AND FOR
DAMAGES AGAINST
DEFENDANT MARY PANDREA

BASED UPON the stipulation of the parties, the court having considered the matter, and, good cause appearing, John Thornton's Complaint to Quiet Title and for Damages against Defendant Mary Pandrea, is hereby dismissed with prejudice, and each party shall pay his or her own attorney fees and costs.

DATED this 20th day of May, 2014,


HON. JOHN F. MITCHELL
District Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 20 day of May, 2014, to:

JOEL P. HAZEL
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MARY PANDREA
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mailed, postage prepaid
 faxed to (208) _____
 hand-delivered

VAL THORNTON
THORNTON LAW OFFICE
4687 Upper Pack River Rd.
Sandpoint, ID 83864

mailed, postage prepaid
 faxed to (208) _____
 hand-delivered

*Faxed -
Bonner Clerk.
9c 5/20/14*



VAL THORNTON
 Attorney for Plaintiff
 4685 Upper Pack River Rd.
 Sandpoint, ID 83864
 (208) 263-5017 phone
 (208) 255-2327 fax
 ISB #6517

COURT OF IDAHO
 COUNTY OF BONNER
 FIRST JUDICIAL DIST.

2014 MAY 27 A 10:31

CLERK DISTRICT COURT
 DEPUTY

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

JOHN F. THORNTON,)
)
Plaintiff,)
 v.)
)
MARY E. PANDREA, a single woman)
 individually and as Trustee of the Kari A.)
 Clark and Mary E. Pandrea Revocable)
 Trust u/a April 9, 2002; **and**)
KARI A. CLARK, a single woman)
 individually and as Trustee of the Kari A.)
 Clark and Mary E. Pandrea Revocable)
 Trust u/a April 9, 2002, and as Trustee of)
 the Kari A. Clark Trust u/a June 21, 2010,)
)
Defendants.)

Case No. CV-2013-1334

PLAINTIFF'S OBJECTION AND
 MOTION TO DISALLOW
 DEFENDANT KARI CLARK'S
 MOTION FOR ATTORNEY FEES
 AND COSTS

PLAINTIFF John Thornton, by and through his undersigned counsel, pursuant to Rule 54(d)(6) and Rule 54(e)(6), hereby objects and moves the court to disallow the Motion for Attorney Fees and Costs, as follows:

- 1. Defendant Kari Clark is not a prevailing party for the purposes of an award of attorney fees pursuant to I.C. §12-121.**

Defendant Kari Clark answered Plaintiff's Complaint with several affirmative defenses: 1) failure to state a claim for which relief can be granted; 2) failure to mitigate damages, and Plaintiff's damages were caused by his own acts or omissions; 3) damages were caused by third

ORIGINAL

parties; 4) laches; 5) estoppel; 6) unclean hands; 7) statute of limitations; 8) express easement appurtenant; 9) easement by implication; 10) prescriptive easement.

Of all the above defenses alleged by Defendant Kari Clark, she proved and prevailed on summary judgment on only one issue. The court held on summary judgment that the language in the Quitclaim Deed, Instrument No. 416381 reserved an express easement appurtenant for the benefit of Kari Clark and Mary Pandrea. Defendant Kari Clark is not entitled to attorney fees regarding the other nine defenses that she asserted and which Plaintiff was required to expend litigational time addressing.

Defendant Kari Clark further counterclaimed on several theories: she claimed to be entitled to declaratory and injunctive relief, and her easement rights were interfered with, because she had acquired the right to use the easement by way of 1) the 1992 Quitclaim Deed, Instrument No. 416381; 2) an easement by implication based upon "prior unity of title of all the properties involved, subsequent separation by grant of the dominant estate, apparent continuous use of the road and reasonable necessity for an easement based on the lack of a viable alternative for access to Clark's parcel;" 3) a prescriptive easement based upon open and notorious, continuous and uninterrupted, adverse and under a claim of right and with the actual or imputed knowledge of John Thornton for the applicable statutory period.

Of all the theories upon which Kari Clark's counterclaim was based, she only prevailed on the theory that she had acquired the right to use the easement by way of the 1992 Quitclaim Deed, Instrument No. 416381. Defendant Kari Clark is not entitled to attorney fees for litigating issues on which she did not prevail and which Plaintiff was required to expend litigational time addressing.

In complex litigation with multiple counts, the parties often prevail on some counts and

not on others. There is often an attempt by the parties to segregate each count for the purpose of determining attorney fees. In such a case, the trial court denied attorney fees and the Supreme Court affirmed upon the basis that "there was no overall prevailing party." *Int'l Eng'g Co., Inc. v Daum Indus., Inc.*, 102 Idaho 363, 367, 630 P.2d 155, 159 (1981). In this case, Defendant Kari Clark advanced several theories or claims to justify her claim that she had the right to use the easement across Thornton's property. She did not prevail, however, on the majority of the issues that she advanced.

Defendant Kari Clark did not prevail on the Well Piece; the issue became moot as to her when the property changed hands during the pendency of this litigation. It is the change of property boundaries and ownership that has caused this court's erroneous ruling. Just as Defendant Kari Clark no longer has any interest in the Well Piece, she no longer has any interest in the property that owned the shoreline easement. Furthermore, Plaintiff prevailed on the issue of damages, which Kari Clark dismissed with prejudice against him, "in an effort to avoid further wasteful litigation costs..." Therefore, Defendant admitted that the litigation of the issue of damages was wasteful; the claim for damages was frivolous and Defendant Kari Clark not only did not prevail, but created substantial litigational expense for Plaintiff in the course of her pursuing that claim, including the attempt to remove Plaintiff's attorney with the pretext that counsel could be called as a witness to the damages claimed by Defendant Kari Clark.

2. Plaintiff did not bring, pursue, or defend this action frivolously, unreasonably, or without foundation.

Plaintiff brought this action when he discovered that his neighbors, who owned the property that used the easement through his own property, were litigating the issue of creating an additional easement that would serve a third parcel.

Plaintiff has acted at all times in the interests of discovery and prompt resolution, and good faith effort to resolve the matter without resource to the courts. Defendant Kari Clark could have contacted him at the outset and at least clarified the issues whereby she claimed the right to use his property. She failed to do so, and failed to properly disclose all her claims in discovery. Plaintiff did not know, for example, that she alleged that there were not two parcels but one big parcel, until her motion for summary judgment was filed, and Plaintiff was forced to respond to the deadline with appellate briefs and oral argument before the Supreme Court due that month. It would be an easy matter to check Plaintiff's small court calendar; Thornton Law Office handles maybe five clients at a time. The failure to prevail on summary judgment did not indicate a frivolous case, but, instead, unfair surprise and prejudice through procedural tactics.

Plaintiff defended reasonably against Kari Clark's counterclaim. The litigation was the only way for him to get Kari Clark to state how it is that she believes she owns the right to an easement through his property. The facts and the law that have emerged through the litigation, continue to support his cause.

As pointed out by counsel for Defendant Kari Clark, the court found: "Clark is named in the easement. The easement exists and is recorded, so for Thornton's attorney to state on March 14, 2014, that "The easement, if any..." ignores the uncontroverted evidence. For Thornton's counsel to make the claim that an easement appurtenant depends on "adjacency" to the burdened land, without any legal support for that claim, is irresponsible. Clark's easement does not depend on adjacency of her property to Thornton's. Clark's easement depends on the fact that her name is on a recorded easement that burdens Thornton's land." Memorandum Opinion p. 16.

Plaintiff does not claim that an easement appurtenant depends on adjacency to the burdened land, although in many cases it does. Plaintiff claims that an easement appurtenant runs

with the land, not the person. Kari Clark could have claimed an easement in gross. That would attach to the person, and only that person, unless otherwise stated. However, an easement cannot be both an easement in gross, and an easement appurtenant. If the language creating the easement only says for the benefit of Kari Clark and Mary Pandrea, is it an easement in gross? Unless expressly stated otherwise, the law presumes that the easement is appurtenant to the parcel from which the easement is conveyed.

The affidavit/memorandum of Joel Hazel in support of his motion for attorney fees states that, "there were no genuine issues of material fact regarding the existence of Clark's easement appurtenant to Thornton's property."

Plaintiff is astounded that the court could have found that Kari Clark had an easement appurtenant to Thornton's parcel.

An easement is never appurtenant to the servient parcel. Otherwise, all easements would be appurtenant. An easement is a right to use the land of another, which becomes a servitude upon the land being used. The servitude may benefit a person or company, like a utility, for telephone poles, in which case it is *in gross*, or it may benefit another peice of land, in which case it "runs with the land" and is *appurtenant* to the dominant parcel. The court has been convinced, by counsel for Kari Clark, that an easement can be appurtenant to the servient parcel, for the benefit of a person who does not own the dominant parcel. Plaintiff is reasonable in his efforts to try to understand the court's error and to attempt to correct the same. Plaintiff believes that the Defendant Kari Clark's arguments are faulty and based upon falsities of which the court has been persuaded are facts, including the idea that the easement can belong to Kari Clark and attach to her separately owned distant parcel, that there was ever any necessity other than her desire to avoid building her own driveway, that the dominant property consisted of one big twenty-acre

parcel, or that these parcels were ever all owned by one person.

Plaintiff remains convinced that the court will reverse its order, and that his position is lawful and factually based, even if it has not, thus far, prevailed. His position is not frivolous, and he is not attempting to increase litigation costs. Unlike the Defendant Kari Clark, his claims are few, and properly brought, with a verified complaint and specific factual allegations that are the truth of the matter asserted.

3. Plaintiff is not liable for Rule 11 Sanctions.

For all the above reasons, Plaintiff is not liable for Rule 11 sanctions. He has not brought any pleadings in bad faith, and has not made assertions that are untrue. His claims are validly brought before the court, for an adjudication of the rights and responsibilities of the parties, that Plaintiff still seeks to obtain.

4. The attorney fees sought are not appropriate to the judgment.

Even if Kari Clark were entitled to attorney fees awarded to a prevailing party pursuant to I.C. §12-121, the attorney fees she seeks are not for time expended upon the summary judgment in which she prevailed. Her time report, five pages long, includes every item upon which her attorneys expended any time. Without waiving his objection to any award of attorney fees, Plaintiff objects to all fees that do not relate to the issue upon which Kari Clark prevailed in summary judgment. Without waiving the above objection as to every item in the five pages of itemized costs totalling \$41,464.17, Plaintiff points to the following as exemplifying the unreasonable and frivolous memorandum of costs and fees propounded by Defendant's counsel:

1. 1.2 hours tel conference re two weeks to file answer; instruction to Gray 11/14/13
2. 3.9 hours research easement by implication 11/20/13
3. 2 hours research easement by prescription; draft counterclaim 11/20/2013

4. .5 hour review correspondence and document 11/22/2013
5. 4.8 research legal defenses and counterclaims; draft counterclaim 11/22/2013
6. No time, but charged expense of \$32.67 for Westlaw research 11/30/2013
7. .4 hour review discovery responses 12/02/2013
8. 2.3 hours draft Answer; review Pandrea's motion to dismiss 12/05/2013
9. .2 hour review title company correspondence 12/05/2013
10. .8 hour attend hearing on motion to compel 12/05/2013
11. .3 Mr. Hazel office conference re hearing on motion to compel 12/05/2013 note: there is no corresponding entry of time for Mr. Gray's participation in this conference.
12. 2.6 hours attend hearing on Thornton's motion to Intervene. Note: this is a different case! T/conference with Sandpoint Title re litigation. 12/06/2013
13. 2.9 hours drafting discovery responses and requests. 12/10/2013
14. .7 hour review Pandrea's filings 12/11/2013
15. 3.4 hour review discovery responses; analyze Pandrea Memorandum; office conference with Joel Hazel. Note: again, there is no corresponding time for both attorneys. 12/11/2013
16. 3.8 hour draft discovery; research presumption easement appurtenant 12/12/2013
17. 1.2 hour review litigation guarantee from Sandpoint Title 12/13/2013
18. 1.5 review pleadings and motions 01/02/2014
19. 3.3 hours research failure to file Answer to counterclaim; review objection to Pandrea's pleadings 01/02/2014
20. 2 hours review title reports and pleadings 01/03/2014
21. 3 hours Joel Hazel prepare for and attend Pandrea's hearing 01/10/2014
22. 3 hours Jason Gray prepare for and attend Pandrea's hearing 01/10/2014

23. 1.9 hours review decision on Pandrea's motion; review client emails re partition action; email client re decision on Pandrea's motion 01/14/2014
24. 2.5 hours Joel Hazel review decision on Pandrea's motion; instruct attorney Gray; telephone conference with client 01/15/2014
25. 3.3 revise affidavit of Terri Boyd-Davis; review email client; email client 01/17/2014
26. 2.7 review email and documents re stipulation to amend scheduling order 01/17/2014 Note: Plaintiff does not object to the portion of time spent drafting the brief on summary judgment included in this itemization, but the time has not been separated.
27. 2 hours instructions on summary judgment and review memorandum 01/23/2014
28. 2.2 hours legal research re standards for classifying easements
29. .1 draft email re partition action
30. 5.6 hours include draft of expert witness disclosure; draft email to client re expert witness disclosure; legal research re mootness of well claim; 01/28/2014
31. .4 hour prepare notice of intent to take default 01/30/2014
32. .4 hour review and revise notice of intent to take default 01/30/2014
33. .7 review answers to counterclaims and affirmative defenses 01/31/2014
34. 5.3 hours research motion to strike Pandrea's memorandum 03/04/2014
35. 1.9 hours review Pandrea's motion and affidavit 03/05/2014
36. 3.8 prepare motion to strike Pandrea's pleadings 03/06/2014
37. .8 hours Joel Hazel review and revise motion to strike 03/06/2014;
38. 5.1 hours research easement appurtenant to Tax Lot 40; research motion to strike; prepare draft of motion to strike; motion to shorten time on Pandrea's memorandum; 03/06/2014.

Note: Plaintiff does not object to the time spent on legal research of claim that easement is

appurtenant to tax lot 40, would appreciate seeing that research.

39. 1.9 hours prepare draft of order on motion to strike 03/19/2014.

Mr. Gray spent 2.8 hours drafting, and Mr. Hazel spent .5 hours reviewing, an order which does not accurately and fairly represent the court's ruling, and which has created a new easement with greater scope and burdening the wrong property. Other fees to which Plaintiff objects includes time spent on telephone conference with Teri Boyd-Davis regarding her criminal conduct as invitee of Kari Clark on the easement, and her cousin's trespass on Kari Clark's new parcel. Mr. Hazel also includes time spent researching a motion to disqualify the undersigned, researching a motion for contempt of court, and reviewing and discussing various pleadings filed by Mary Pandrea. In short, Plaintiff further objects to any award of attorney fees for time expended after the hearing on summary judgment March 14, 2014.

Plaintiff further submits that the motion for rule 11 sanctions is frivolous and is not based in fact or in law, and is intended purely to harrass the Plaintiff.

Plaintiff does not object to the rate that opposing counsel charge for their time.

CONCLUSION

The court should determine that Plaintiff did not act without a reasonable basis in fact and in law, and that Defendant Kari Clark prevailed on one issue, where she raised nine defensive issues and three different theories in her counterclaim. Plaintiff has not acted unreasonably and has pursued his claims reasonably and with a good faith basis in the fact that Defendant Kari Clark does not own the dominant parcel to which the easement appurtains, and that this suffices to quiet title to the right to the use of an easement appurtenant. Defendant should not be awarded attorney fees pursuant to to I.C. §12-121, where Plaintiff did not pursue the matter frivolously or without reasonable basis.

Neither should Defendant be awarded fees as a Rule 11 sanction. Defendant has no valid objection that Plaintiff has made any statements that were untrue, or that his facts are not adequately researched and verified. Even though Plaintiff has not prevailed in the proceeding, the court should not assess attorney fees against him, where his cause of action is just, based upon the truth and upon long-standing law.

DATED this 27th of May, 2014.

Val Thornton
Val Thornton, Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 27th day of May, 2014, to:

JOEL P. HAZEL
WITHERSPOON KELLEY
608 Northwest Blvd., Ste. 300
Coeur d'Alene, ID 83864

mailed, postage prepaid
 faxed to (208) 667-8470
 hand-delivered

MARY PANDREA
4687 Upper Pack River Rd.
Sandpoint, ID 83864

mailed, postage prepaid
 faxed to (208) _____
 hand-delivered

HON. JOHN T. MITCHELL
P. O. Box 9000
Coeur d'Alene, ID 83864

mailed, postage prepaid
 faxed to (208) 446-1132
 hand-delivered

Val Thornton

FILED 6214

AT 12:45 O'Clock P M
CLERK OF DISTRICT COURT

Deputy

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

JOHN F. THORNTON,)
Plaintiff,)
vs.)
MARY E. PANDREA, a single woman)
individually and as Trustee of the Kari A.)
Clark and Mary E. Pandrea Revocable)
Trust u/a April 9, 2002, and KARI A.)
CLARK, a single woman individually and)
as Trustee of the Kari A. Clark and Mary E.)
Pandrea Revocable Trust u/a April 9, 2002,)
and as Trustee of the Kari A. Clark Trust)
u/a June 21, 2010,)
Defendants.)

Case No. **BON CV 2013 1334**

**MEMORANDUM DECISION AND
ORDER DENYING PLAINTIFF
THORNTON'S MOTION TO
RECONSIDER SUMMARY
JUDGMENT, AND DENYING
DEFENDANT PANDREA'S
MOTIONS**

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on plaintiff John F. Thornton's (Thornton) Motion to Reconsider Summary Judgment and on various motions filed by defendant Mary E. Pandrea's (Pandrea).

On August 14, 2013, Thornton filed his "Complaint to Quiet Title and for Damages" against Mary E. Pandrea and Kari A. Clark (Clark). Thornton attached to that Complaint a typed property descriptions purporting to describe his property, but Thornton attached no copies of any deed, let alone a copy of the recorded deed to his property.

On September 3, 2013, Pandrea filed *pro se* "Defendant Pandrea's Answer to Complaint to Quiet Title and for Damages." At no time in this litigation has Pandrea filed a counterclaim against Thornton nor has Pandrea filed a cross-claim against Clark.

On December 5, 2013, Clark filed "Defendant Clark's Answer, Affirmative Defenses, Counterclaim and Demand for Jury Trial." At no time in this litigation did Clark file a cross-claim against Pandrea.

On January 29, 2014, Clark filed a "Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counterclaims". Oral argument on that motion was held on March 14, 2014. At the March 14, 2014, hearing, the Court also took up the issue of "Clark's Motion to Strike Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment and the Affidavits Filed in Support Thereof." The basis of that motion was Pandrea is not an adverse party to Clark, and Clark's Motion for Summary Judgment only pertained to Thornton's claims against Clark and Clark's counterclaims against Thornton. Defendant/Counterclaimant Clark's Motion to Strike Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment and the Affidavits Filed in Support Thereof, pp. 2, 3. At the conclusion of oral argument, the Court granted "Clark's Motion to Strike Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment and the Affidavits Filed in Support Thereof", because Pandrea is not an adverse party to Clark, and also granted Clark's Motion for Summary Judgment.

At the March 14, 2014, hearing on Clark's motion for summary judgment, this Court granted summary judgment on all of Clark's counterclaims against Thornton, and dismissing all of Thornton's claims against Clark. On April 9, 2014, this Court entered its "Memorandum Decision and Order Granting Defendant Clark's Motion for Summary

Judgment as to Claims of Plaintiff Thornton, and Granting Defendant Clark's Motion for Partial Summary Judgment on Clark's Counter-Claims Against Thornton." In that decision and order, this Court held:

For the above stated reasons, this Court grants summary judgment in favor of Clark as against Thornton's claims, and grants partial summary judgment in favor of Clark as against Thornton on all of Clark's counterclaims, except for the issue of damages to Clark by Thornton, if any, which will be tried to a jury.

Memorandum Decision and Order Granting Defendant Clark's Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Defendant Clark's Motion for Partial Summary Judgment on Clark's Counter-Claims Against Thornton, p. 22. On April 30, 2014, this Court entered its Judgment consistent with that written decision.

This matter is now before the Court because on May 6, 2014, Thornton timely filed "Plaintiff's Motion to Reconsider Summary Judgment and Notice of Hearing", a "Memorandum of Law in Support of Plaintiff's Motion to Reconsider Summary Judgment", an "Affidavit of John Thornton in Support of Motion to Reconsider" attached to which are twelve "illustrative maps" he feels "create a fair and accurate depiction of the properties and easements involved in this case." Affidavit of John Thornton in Support of Motion to Reconsider, p. 1. Thornton also submitted an "Affidavit of Mary Pandrea in Support of Plaintiff's Motion to Reconsider", in which Pandrea stated Thornton's "illustrative maps" "appear to be fair and accurate depictions of the history of the property boundaries and ownership of the three parcels owned by the parties." Affidavit of Mary Pandrea in Support of Motion to Reconsider, p. 1. On May 6, 2014, Val Thornton, the attorney for John Thornton, filed an "Affidavit of Val Thornton in Support of Plaintiff's Motion to Reconsider Summary Judgment" (and on May 14, 2014, Thornton filed "Affidavit of Correction Affidavit of Val Thornton in Support of Plaintiff's Motion to Reconsider Summary Judgment"). On May 13, 2014, Clark filed

“Defendant/Counterclaimant Clark’s Response to Thornton’s Motion for Reconsideration and Objection to the Affidavits of Mary Pandrea and John Thornton Filed in Support Thereof.” On May 16, 2014, Thornton, four days before oral argument, untimely filed “Plaintiff’s Reply Brief in Support of His Motion to Reconsider Summary Judgment.” Also on May 16, 2014, Pandrea filed another affidavit in support of Thornton’s Motion to Reconsider Summary Judgment. Oral argument on these motions by Thornton was held on May 20, 2014. At oral argument, counsel for Clark objected to the untimely filing of Thornton’s “reply brief”, but did not demonstrate any prejudice. The Court finds that because Thornton’s arguments are specious, there is no prejudice to Clark due to Thornton’s untimely filing of Thornton’s reply brief.

This matter is also now before the Court on Pandrea’s motions. On April 23, 2014, Pandrea, *pro se* filed “Defendant Pandrea’s Motion to Amend Findings of Fact and to Alter or Amend Judgment; Motions to Reconsider the Order Granting Clark’s Motion to Strike; Denying Pandrea a Hearing; and Granting Partial Summary Judgment in Favor of Clark”, a “Memorandum in Support of Pandrea’s Motion to Amend Findings of Fact and to Alter or Amend Judgment; Motions to Reconsider the Order Granting Clark’s Motion to Strike; Denying Pandrea a Hearing; and Granting Partial Summary Judgment in Favor of Clark”, and “Supplemental (Page 12) to the Memorandum in Support of Pandrea’s Motion to Amend Findings of Fact and to Alter or Amend Judgment; Motions to Reconsider the Order Granting Clark’s Motion to Strike; Denying Pandrea a Hearing; and Granting Partial Summary Judgment in Favor of Clark.” On May 8, 2014, Pandrea *pro se* filed “Pandrea’s Motion to Void Judgment”, an “Affidavit of Mary E. Pandrea in Support of Her Motion to Void the Clark Judgment” and “Pandrea’s Memorandum in Support of Motion to Void Judgment.” On May 12, 2014, Clark filed “Defendant/Counterclaimant Clark’s Objection to Pandrea’s Motion to Amend and

Motion to Reconsider. On May 3, 2014, Pandrea signed a "Stipulation for Order of Dismissal of Plaintiff's Complaint to Quiet Title and for Damages Against Defendant Mary Pandrea." On May 6, 2014, Val Thornton signed that document on behalf of John Thornton. On May 14, 2014, that stipulation was filed with the Court. That stipulation, in its entirety, reads: "JOHN THORNTON AND MARY PANDREA hereby stipulate to move the court to enter an order dismissing John Thornton's Complaint to Quiet Title and for Damages against Defendant Mary Pandrea, with prejudice, and that each party shall pay his or her own attorney fees and costs." Oral argument on Pandrea's motions was held on May 22, 2014. At that hearing, the Court found Pandrea had no standing to bring her claim for reconsideration of this Court's decision as to the relationship between plaintiff Thornton and defendant Clark. The reasons for that decision are discussed below.

On May 12, 2014, Clark filed "Defendant/Counterclaimant Clark's Motion for Award of Attorney's fees and Costs", a "Brief in Support of Defendant/Counterclaimant Clark's Motion for Award of Attorney's fees and Costs", and an "Affidavit/Memorandum of Joel Hazel in Support of Motion for Award of Attorney's fees and Costs." On May 27, 2014, Thornton timely filed "Plaintiff's Objection and Motion to Disallow Defendant Kari Clark's Motion for Attorney Fees and Costs."

As set forth in the April 9, 2014, Memorandum Decision and Order, the factual background of this case is as follows:

On August 14, 2013, this action was commenced by Thornton against his neighbors Pandrea and Clark to quiet title to his real property. Thornton and Pandrea own adjacent parcels of real property in Sandpoint, Bonner County, Idaho, near Tavern Creek. Complaint to Quiet Title and for Damages (Complaint) pp. 3-5, ¶¶ 2.7-2.22. Thornton and Pandrea share a common boundary border. Affidavit of Mary E. Pandrea in Support of Defendant Pandrea's Motion to Dismiss Complaint for Quiet Title and for Damages (First Affidavit of Mary E. Pandrea), p. 2, ¶ 3.

In 1993, prior to owning his land, Thornton rented the property from Robert Wiltse (Wiltse) and Wiltse's wife at the time, Mary Pandrea. Complaint, p. 2, ¶ 2.2. This property Thornton now owns is a two-acre parcel of land. Affidavit of Joel P. Hazel in Support of Defendant Clark's Motion for Partial Summary Judgment (Affidavit of Joel P. Hazel), p. 2 ¶ 3. Wiltse and Pandrea had obtained the two-acre parcel of land from Clark and Pandrea, by Bonner County Quitclaim Deed, Instrument No. 416381, on November 10, 1992. Affidavit of Joel P. Hazel in Support of Defendant Clark's Motion for Partial Summary Judgment (Affidavit of Joel P. Hazel), Exhibit A. That Quitclaim Deed conveyed the property to Wiltse and Pandrea "[s]ubject to and reserving a 30.0 foot easement for a road right of way and utilities" *Id.* Wiltse and Pandrea divorced in 1996. First Affidavit of Mary E. Pandrea, p. 2, ¶ 6.

On May 4, 1998, after he was divorced from Pandrea, Wiltse conveyed the two-acre parcel of land to Thornton by Warranty Deed, Bonner County Instrument No. 525386 (Thornton Property). Affidavit of Joel P. Hazel, Exhibit B. The Warranty Deed has a provision for an easement as follows:

EASEMENT AND CONDITIONS THEREOF RESERVED BY INSTRUMENT:

IN FAVOR OF: MARY E. PANDREA WILTSE, A MARRIED WOMAN DEALING IN HER SOLE AND SEPARATE PROPERTY; AND KARI A. CLARK, A SINGLE WOMAN
FOR: A 30.0 FOOT EASEMENT FOR A ROAD RIGHT OF WAY AND UTILITIES
RECORDED: DECEMBER 1, 1992
INSURMENT NO.: 416381

Id. Clark maintains that since the 1940s the road referred to in Warranty Deed, Instrument No. 525386, which goes through the Thornton Property, is the only road her family has used to access approximately twenty acres of land that was jointly owned by Pandrea and Clark. Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counterclaim, p. 3; Affidavit of Terry Boyd-Davis in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counter Claims (Affidavit of Terri Boyd-Davis), p. 2 ¶ 4. Pandrea disputes that Clark and Pandrea jointly owned the twenty-acre parcel of land. Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment, p. 9. However, on May 11, 2011, Pandrea sued Clark to partition the twenty-acre parcel of land in Bonner County case number CV-2011-835. Defendant Clark's Answer Affirmative Defenses and Counterclaim, p. 5 ¶ 6; Affidavit of Joeli P. Hazel, Exhibit C. On August 16, 2012, District Judge John P. Luster issued a decision in that case, partitioning the parcel in kind, with Clark receiving 10.423 acres and Pandrea receiving 12.739 acres. *Id.* [On January 24, 2014, Judge Luster issued a Revised Judgment and Decree

of Partition, which awarded Clark 10.423 acres of real property “subject to an easement appurtenant to the land for ingress through and over the parcel awarded to Plaintiff Mary E. Pandrea as the servient parcel and estate” Affidavit of Joel P. Hazel, Exhibit C.]

According to Clark, in 2013, Thornton erected a locked gate across the easement, interfering with Clark’s easement rights. Memorandum in Support of Defendant Clark’s Motion for Summary Judgment of Dismissal of Thornton’s Complaint and Motion for Partial Summary Judgment on Clark’s Counterclaim, p. 2; Affidavit of Terry Boyd-Davis, pp. 2-3 ¶¶ 5-6. A sign dated July 5, 2013, was posted next to the gate, which read as follows:

NOITCE
KARI CLARK
IS PROHIBITED FROM ENTERING UPON THIS PROPERTY FOR ANY
REASON UNDER PENALTY OF CRIMINAL TRESPASS. I.C. § 18-7001.

JOHN F. THORNTON
4685 UPPER PACK RIVER ROAD
SANDPOINT IDAHO 83864

OWNER

Affidavit of Terri Boyd-Davis, Exhibit G. Thornton claims that “[s]ince 1993, when I began renting Thornton property, the easement was used solely by Mary Pandrea and her invitees. Mary Pandrea gated and locked the easement at times, and decided who was to have a key to the gate.” Affidavit of John Thornton Opposing Summary Judgment (Second Affidavit of John Thornton), p. 1 ¶ 2.

On August 14, 2013, Thornton brought this present action to quiet title to a parcel of land, approximately one tenth of an acre in size, which contains a well, against Pandrea and Clark. Complaint to Quiet Title and for Damages, pp. 3-5, ¶¶ 2.7-2.22. Thornton contends that in 2012 he had the Thornton Property surveyed, and apparently that survey is how and when Thornton discovered the physical property description on his Deed did not include about one-tenth acre (Well Piece). *Id.* at 3, ¶ 2.6. Thornton attaches as Exhibit 2 to his Complaint to Quiet Title and for Damages, a property description. *Id.*, Exhibit 2. However, that property description is simply printed on a piece of paper and attached to his Complaint; it is not a certified copy of any recorded document. *Id.* When this Court issued its Memorandum Decision and Order Granting in Part and Denying in Part Defendant Pandrea’s Motion to Dismiss (Motion for Summary Judgment) on February 14, 2014, the Court had not at that time been provided a copy of Thornton’s deed. Two weeks after that decision was issued, when Clark filed the instant motion for summary judgment, was the first time the Court was provided a copy of Thornton’s deed. Affidavit of Joel P. Hazel, Exhibit B. It is now apparent that at all times Thornton was deeded this parcel, the metes and bounds description of which did not include the “Well Piece”. However, Thornton claims he only discovered that fact in 2012 through a survey he had performed on his

property. Clark maintains that following the Revised Judgment and Decree of Partition issued by Judge Luster on January 24, 2014, in Bonner County case number CV 2011 835, the twenty- acre parcel of land was divided so that Clark no longer has an ownership interest in the Well Piece. Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counterclaim, p. 2.

Memorandum Decision and Order Granting Defendant Clark's Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Defendant Clark's Motion for Partial Summary Judgment on Clark's Counter-claims Against Thornton, pp. 4-7. The Judgment was entered on April 30, 2014. In that decision and in that Judgment, the Court granted Clark partial summary judgment in favor of Clark as against Thornton on all of Clark's counterclaims, except for the issue of damages which were to be tried to a jury, the trial scheduled to begin June 23, 2014. On April 18, 2014, Val Thornton, attorney for John Thornton, signed, as did the attorney for Clark, a "Stipulation for Order of Dismissal of Defendant/Counterclaimant Clark's Damage Claim for Interference with Easement." In this stipulation Clark reserved her right to seek attorney fees against Thornton, but Clark gave up her right to seek damages for Thornton's interference with Clark's easement rights. Thus, nothing remains for trial.

II. STANDARD OF REVIEW.

"A motion to amend findings of fact, pursuant to Idaho Rule of Civil Procedure 52, is addressed to the discretion of the trial court." *McGregor v. Phillips*, 96 Idaho 779, 781, 537 P.2d 59, 61 (1975). A trial court's decision to deny the motion "will not be disturbed on appeal where the court's findings are supported by competent and substantial evidence." *Johnson v. Edwards*, 113 Idaho 660, 662, 747 P.2d 69, 71 (1987) (citing I.R.C.P. 52(a)).

A trial court's decision to grant or deny a motion for reconsideration is reviewed for an abuse of discretion. *Jordan v. Beeks*, 135 Idaho 586, 592, 21 P.3d 908, 914

(2001). A motion for reconsideration of an interlocutory order of the trial court may be made at any time before entry of the final judgment, but not later than fourteen days after entry of the final judgment. I.R.C.P. 11(a)(2)(B). A party making a motion for reconsideration is permitted to present new evidence, but is not required to do so. *Johnson v. Lambros*, 143 Idaho 468, 147 P.3d 100 (Ct. App. 2006). A district court must consider new evidence or authority bearing on the correctness of a summary judgment order if the motion to reconsider is timely filed under Idaho Rule of Civil Procedure 11(a)(2)(B). *Kepler-Fleenor v. Fremont County*, 152 Idaho 207, 210-11, 268 P.3d 1159, 1162-63 (2012).

When deciding a motion for reconsideration, the district court must apply the same standard of review that it applied when deciding the original order being reconsidered. *Fagnella v. Petrovich*, 153 Idaho 266, 276, 281 P.3d 103, 113 (2012). Since the motion sought to be reconsidered in the present case is Clark's Motion for Partial Summary Judgment, the standard of review under Idaho Rule of Civil Procedure 56(c) applies. In considering a motion for summary judgment, the Court is mindful that summary judgment may properly be granted only where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. I.R.C.P. 56(c). In determining whether any issue of material fact exists, this court must construe all facts and inferences contained in the pleadings, depositions, and admissions, together with the affidavits, if any, in the light most favorable to the non-moving party. I.R.C.P. 56(c); *Sewell v. Neilson, Monroe Inc.*, 109 Idaho 192, 194, 706 P.2d 81, 83 (Ct. App. 1985). A mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue for purposes of summary judgment. *Samuel v. Hepworth, Nungester & Lezamiz, Inc.*, 134, Idaho 84, 87, 996 P.2d 303, 306 (2002).

Summary judgment must be denied if reasonable persons could reach differing conclusions or draw conflicting inferences from the evidence. *Smith v. Meridian Joint School District No. 2*, 128 Idaho 714, 718, 918 P.2d 583, 587 (1996).

III. ANALYSIS OF THORNTON'S MOTION TO RECONSIDER SUMMARY JUDGMENT.

Thornton objects to the Court's reliance on the Affidavit of Joel P. Hazel in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counterclaims because he claims "Joel P. Hazel has no personal knowledge of the property boundaries subject of the quitclaim deeds to which he testifies in his affidavit and his statements are untrue." Memorandum of Law in Support of Plaintiff's Motion to Reconsider, p. 11. This is but one more illustration of the ill-thought out positions Thornton has taken throughout the litigation he has wrought upon Clark. What Thornton ignores is that the Court cited to the *attachments* to the Affidavit of Joel P. Hazel, not the statements of Hazel within the affidavit. The attachments to the Affidavit of Joel P. Hazel were certified documents and were properly before the Court for its consideration.

Thornton further objects to the Court's reliance on Defendant Clark's Answer, Affirmative Defenses, Counterclaim and Demand for Jury Trial, and the Affidavit of Joel P. Hazel in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counterclaims, "for the proposition that the two parcels comprise one big twenty-acre parcel of land." *Id.* Thornton's argument completely ignores the fact that District Judge John P. Luster, in Bonner County Case No. CV 2011 835, found that Clark and Pandrea owned twenty acres of land as tenants in common. Affidavit of Mary Pandrea,

Exhibit 1. That evidence is before the Court and that evidence is uncontroverted. Thornton's stubborn insistence to the contrary is unavailing.

Thornton argues, "The court further considered Joel P. Hazel's allegations concerning the property boundaries, and what easements were described in the documents, which he could not possibly know. The court did not consider John Thornton's affidavit, showing disputed facts." *Id.*, p. 12. Again, the Court cited to the documents attached to the Affidavit of Joel P. Hazel, not the statements contained within the affidavit, when making its ruling.

Thornton claims that since he attested that "Kari Clark had excellent access to her property via the Upper Road", the Court thus has sufficient facts to deny summary judgment. *Id.*, p. 11. Thornton steadfastly refuses to recognize Clark has a written express easement of record across his land. As such, whether or not Clark has access via another means is entirely irrelevant to the inquiry before the Court. In an "easement by necessity", the quality of another route by which to access property is relevant, as the person seeking the easement must prove "reasonable necessity", which can be disproved by an alternative access, the quality of which is relevant. *MacCaskill v. Ebbert*, 112 Idaho 1115, 1121, 739 P.2d 414, 419 (Ct.App. 1987). But in this case, Clark has a written express easement of record. Thornton's irrelevant discussion of implied easement theory will not change that fact.

Finally, Thornton maintains "where Kari Clark seeks to use the easement conveyed from Parcel B, in order to serve Parcel C, it is impermissible as a matter of law. If the easement attaches to land, it attaches to Parcel B, the land from which the portion of land containing the easement was conveyed, and to no other." Memorandum of Law in Support of Motion to Reconsider, p. 16. However, as the Court stated in its written decision:

At oral argument, Thornton's attorney echoed the claim made by Thornton in his affidavit that: "At the time the easement was created, the only acreage adjacent to my property was the 5-acre parcel, formerly Mary Pandrea's sole and separate property also known as Tax Lot 40." Affidavit of John Thornton in Opposition to Summary Judgment, p. 1, ¶ 1. At oral argument, Thornton's attorney argued that an easement appurtenant had to be adjacent to the property burdened. Thornton's attorney stated: "The easement, if any, appertaining to the adjacent parcel only appertains to the adjacent parcel." No legal authority supporting such circular argument has ever been submitted by Thornton. No legal authority for Thornton's argument exists. Clark is named in the easement. The easement exists and is recorded, so for Thornton's attorney to state on March 14, 2014, that "The easement, if any...", ignores the uncontroverted evidence. For Thornton's counsel to make the claim that an easement appurtenant depends on "adjacency" to the burdened land, without any legal support for that claim, is irresponsible. Clark's easement does not depend on adjacency of her property to Thornton's. **Clark's easement depends on the fact that her name is on a recorded easement that burdens Thornton's land.**

Memorandum Decision and Order Granting Defendant Clark's Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Defendant Clark's Motion for Partial Summary Judgment on Clark's Counter-claims Against Thornton, pp. 15-16 (emphasis added).

In response, Clark maintains the language of Warranty Deed, Bonner County Instrument No. 525386, and Quitclaim Deed, Bonner County Instrument No. 416381, grant Clark an easement appurtenant to the Thornton Property. Defendant/Counterclaimant Clark's Response to Thornton's Motion for Reconsideration and Objection to the Affidavits of Mary Pandera and John Thornton Filed in Support Thereof, p. 2. Clark further requests that this Court strike the Affidavits of Pandrea and Thornton in support of the Motion for Reconsideration, as she claims they are irrelevant to whether Clark has an easement appurtenant to the Thornton Property, the maps hand-drawn by Thornton are without foundation, and the legal descriptions contained within deeds speak for themselves. *Id.*, pp. 3, 4. The Court will not strike Thornton's affidavit. While Thornton's affidavit provides no relevant evidence to rebut the express

easement of record Clark has across Thornton's land, Thornton's affidavit is relevant to show the absurd lengths he is willing to travel to try and trump Clark's easement.

Drawing twelve maps with colored pencils in an attempt to show what happened at various times in history, does nothing to change the fact that Clark has a written express easement across Thornton's land.

In the underlying motion, Clark sought a determination by the Court that she had an easement appurtenant across the Thornton Property according to the language of Warranty Deed, Bonner County Instrument No. 525386, and Quitclaim Deed, Bonner County Instrument No. 416381. Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counterclaim, pp. 5-6. At no time in this litigation, from its inception by Thornton to the current time, does Thornton address the actual language of these documents. When Thornton filed his Complaint to Quiet Title and for Damages, he breathed not a word about Clark's recorded express easement. Throughout summary judgment, Thornton refused to discuss that easement, instead he chose to make irrelevant arguments to the Court. Now, Thornton supplies the Court with additional documents that do nothing to dispute the language of Warranty Deed, Bonner County Instrument No. 525386, and Quitclaim Deed, Bonner County Instrument No. 41638. The hand-illustrated maps made by John Thornton alleging to depict the properties and easements involved in this case are of no relevance. Clark shifted the burden to Thornton to show that there is a genuine issue of material fact and Thornton has failed to meet his burden via admissible and relevant evidence.

Thornton's audacity has continued through oral argument. At the beginning of oral argument on Thornton's Motion to Reconsider, attorney Val Thornton, counsel for her husband John Thornton, acknowledged that Clark had a "colorable claim" to an

easement. This is simply untenable. Clark has an *express written easement* which has been recorded. That language in that easement is unambiguous. That easement gives Clark an unequivocal thirty foot wide easement right to cross Thornton's land. From Clark's point of view, the only way her easement rights could be stronger would be if she owned fee simple title to that thirty foot wide strip of land. "Color" is defined as "An apparent, but legally insufficient, ground of action, admitted in a defendant's pleading to exist for the plaintiff; especially, a plaintiff's apparent (and usually false) right or title to property..." Black's Law Dictionary, 7th Ed., p. 259 (1999). "Color of title" is defined as "A written instrument or other evidence that appears to give title, but does not do so." *Id.*, p. 260. "Color of law" is defined as "The appearance or semblance, without the substance, of a legal right." *Id.* There is nothing "apparent" about Clark's easement. Clark's express, recorded, unambiguous easement she has over Thornton's land is "legally sufficient", it has "the substance of a legal right." This Court made all of this quite clear in its April 9, 2014, Memorandum Decision and Order Granting Defendant Clark's Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Defendant Clark's Motion for Partial Summary Judgment on Clark's Counter-claims Against Thornton. Following that decision, for Thornton's attorney to claim at oral argument that Clark simply has a "colorable claim" to an easement is beyond cavil.

Thornton further makes an absurd argument that Clark no longer owns the dominant estate. Memorandum of Law in Support of Plaintiff's Motion to Reconsider, pp. 14-15. There is no factual basis to Thornton's argument. Clark and Pandrea owned property as tenants in common which was adjacent to Thornton's property. That property which Clark and Pandrea owned as tenants in common has now been partitioned by Judge Luster. However, in no way have Pandrea or Thornton been divested of the dominant estate. There is no legal basis to support Thornton's

argument. Thornton cites to *Hodgins v. Sales*, 139 Idaho 225, 76 P.3d 969 (2003); *Christensen v. City of Pocatello*, 142 Idaho 132, 124 P.3d. 1008 (2005); *Coward v. Hadley*, 150 Idaho 282, 246 P.3d 391 (2010) and *Tungsten Holdings, Inc. v. Drake*, 143 Idaho 69, 137 P.3d 456 (2006).

Hodgins contains the very quote which is the undoing of Thornton's argument. The Idaho Supreme Court in *Hodgins* wrote: "*When an appurtenant easement is created, it becomes fixed as an appurtenance to the real property, which is subject to the prescriptive use and may be claimed by a successor in interest.*" 139 Idaho 225, 230, 76 P.3d 969, 974 (citing *Marshall v. Blair*, 130 Idaho 675, 680, 946 P.2d 975, 980). (italics added). This tells us that as a matter of law, to determine what the dominant estate is, the pertinent time to make that determination is *when the easement was created*. The easement appurtenant in the present case was created on December 1, 1992, when Wiltse expressly and specifically signed it in favor of Pandrea and Clark. At that moment "it becomes fixed as an appurtenance to the real property." At that moment, Pandrea and Clark owned adjacent property as tenants in common. "The real property" in this case is the property held as tenants in common (until earlier this year) by Pandrea and Clark. All Judge Luster did on January 14, 2014, in a different lawsuit, was to partition that property between Pandrea and Clark, but Pandrea and Clark still own the dominant estate. But more importantly, *Hodgins* tells us January 14, 2014, is not the pertinent time period to determine the dominant estate... December 1, 1992, is the pertinent date. And *Hodgins* tells us that anyone to whom either Pandrea or Clark chose to transfer their property in the future, will receive the benefit of the easement across Thornton's land. If a subsequent transferee of either Pandrea or Clark would

receive the benefit of the express appurtenant easement across Thornton's land, then certainly Pandrea and Clark post-apportionment retain that same benefit.

While Thornton correctly quotes *Christensen* he misapplies that quote. The quote is "Thus, where one seeks to use an easement appurtenant to an identified dominant estate to serve a parcel other than that dominant estate, it is impermissible as a matter of law and the factual inquiry regarding increased use is not conducted." Memorandum of Law in Support of Plaintiff's Motion to Reconsider, p. 16 (citing *Christensen*, 142 Idaho 132, 137, 124 P.3d. 1008, 1013). However, Thornton is seriously misguided when, immediately following the above quote, he argues:

Thus, in this case, where Kari Clark seeks to use the easement conveyed from Parcel B, in order to serve as access to Parcel C, it is impermissible as a matter of law. If the easement attaches to land, it attaches to Parcel B, the land from which the portion of the land containing the easement was conveyed, and to no other.

Id. This phenomenon of Parcel A, B and C, was not before the Court on summary judgment, and there is no admissible evidence before the Court at this time on reconsideration. In any event, the Court must look at what Pandrea and Clark owned on December 1, 1992, not colored pencil drawings with new alphabet designations ascribed by John Thornton. There is no doubt what Pandrea and Clark owned on December 1, 1992; there is no doubt Wiltse intended that property to be the dominant property. By taking quotes from case law out of context, and then applying that to facts not in evidence, Thornton simply intends to create confusion in what is a clear issue.

Likewise Thornton twists the quotation from *Coward*. Thornton correctly quotes "unless the terms of the servitude...provide otherwise, and appurtenant easement or profit may not be used for the benefit of property other than the dominant estate." *Id.* (citing *Coward*, 250 [sic 150] Idaho 282, 287, 246 P.3d 391, 396). All this means is

Pandrea and Clark cannot extend to *additional* landowners further down the road, the ability to use this easement across Thornton's property. Additionally, the Idaho Supreme Court in *Coward* determined Cowards did not have an express easement, which is certainly not the situation in the present case.

Finally, *Tungsten* is not on point as the Idaho Supreme Court reversed because Tungsten failed to put on any evidence that he had bought the Siemens' (the grantees of the easement) property. 143 Idaho 69, 71, 137 P.3d 456, 459. In the present case, there is no doubt Thornton is the successor in interest to Wiltse, the grantee of the easement. Thornton's predecessor Wiltse specifically stated Clark and Pandrea held the easement over what is now Thornton's property.

Thornton's argument that Clark no longer owns the dominant estate is really just a repackaged version of the argument Thornton floated past this Court at summary judgment. That argument was that the owner of the appurtenant property had to be an *adjacent* owner. Thornton's argument was that since Judge Luster apportioned the property between Pandrea and Clark, Clark's property no longer touched (no longer was adjacent to) Thornton's land, Clark's easement was no longer in effect. The problem is such argument finds no basis in the law, as this Court previously found:

At oral argument, Thornton's attorney argued that an easement appurtenant had to be adjacent to the property burdened. Thornton's attorney stated: "The easement, if any, appertaining to the adjacent parcel only appertains to the adjacent parcel." No legal authority supporting such circular argument has ever been submitted by Thornton.

Memorandum Decision and Order Granting Defendant Clark's Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Defendant Clark's Motion for Partial Summary Judgment on Clark's Counter-Claims Against Thornton, p. 6. As such, Thornton's Motion to Reconsider Summary Judgment is denied.

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IV. ANALYSIS OF PANDREA'S MOTION TO AMEND FINDINGS OF FACT.

Pandrea requests this Court amend the findings of fact contained within its April, 9, 2014, Memorandum Decision and Order Granting Clark's Motion for Summary Judgment, which she believes were made in error. Memorandum in Support of Pandrea's Motion to Amend Findings of Facts and to Alter or Amend Judgment; Motion to Reconsider the Order Granting Clark's Motion to Strike; Denying Pandrea a Hearing; and Granting Partial Summary Judgment in Favor of Clark, pp. 11-22. Specifically, she claims the Court erred in making findings of fact when it summarized the following in the Procedural History and Factual Background section of the Memorandum Decision and Order: 1) Pandrea and Clark jointly owned a twenty-acre parcel of land (the specific language used by the Court reads "on May 11, 2011, Pandrea sued Clark to partition the twenty-acre parcel of land in Bonner County case number CV-2011-835."); 2) "Pandrea and Clark are sisters who still own land bordering Thornton's land"; 3) "Wiltse and Pandrea had obtained the two-acre parcel of land from Clark and Pandrea, by Bonner County Quitclaim Deed, Instrument No. 416381, on November 10, 1992"; and 4) "Clark maintains that since the 1940s the road referred to in Warranty Deed, Instrument No. 525386, which goes through the Thornton Property, is the only road her family has used to access approximately twenty acres of land that was jointly owned by Pandrea and Clark." *Id.* (citing April, 9, 2014, Memorandum Decision and Order Granting Clark's Motion for Summary Judgment, pp. 1, 4, 5).

The Court did not make findings of fact in its April, 9, 2014, Memorandum Decision and Order Granting Clark's Motion for Summary Judgment. The Court is not the finder of fact in this case. A demand for jury trial was filed by Clark on December 9, 2013. Defendant Clark's Answer, Affirmative Defenses, Counterclaim and Demand for Jury Trial, p. 7. The above quoted language is contained in the Procedural History and

Factual Background section of the Memorandum Decision and Order. The factual background set forth by the Court was based on the evidence submitted by the parties. In granting summary judgment in favor of Clark, the Court found that Clark established the absence of a genuine issue of material fact through the evidence it submitted to the Court in support of its Motion for Partial Summary Judgment. That shifted the burden to Thornton to provide a sufficient showing to establish the essential elements of his case. Thornton failed to do so. The Court construed the admissible facts presented to it, drawing all reasonable factual inferences in favor of Thornton, the non-moving party. After doing so, it found Thornton failed to meet his burden and establish a genuine issue of material fact on the issues. At no time did this Court make findings of facts. Because no findings were made, Pandrea's motion to amend findings of fact is denied.

V. ANALYSIS OF PANDREA'S MOTION TO RECONSIDER.

Pandrea moves this Court to "reconsider" its April 9, 2014, Order granting Clark's Motion for Partial Summary Judgment "...whereby Pandrea was denied her inclusion as a necessary party and her Memorandum and Affidavits in Support of Thornton's Response to Clark's Motion for Summary Judgment was allowed to be stricken." Defendant Pandrea's Motion to Amend Findings of Facts and to Alter or Amend Judgment; Motion to Reconsider the Order Granting Clark's Motion to Strike; Denying Pandrea a Hearing; and Granting Partial Summary Judgment in Favor of Clark, pp. 1-2. The Court, in its April 9, 2014, decision, wrote, in its entirety:

Also, at the March 14, 2014, hearing, the Court took up the issue of "Clark's Motion to Strike Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment and the Affidavits Filed in Support Thereof." The basis of that motion was Pandrea is not an adverse party to Clark, and Clark's motion for summary judgment only pertained to Thornton's claims against Clark and Clark's counterclaims against Thornton. Defendant/Counterclaimant Clark's Motion to Strike Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment and the

Affidavits Filed in Support Thereof, pp. 2, 3. Pandrea (pro se) had no objection to Clark's motion to shorten time to hear this motion, and counsel for Thornton objected, stated her client Thornton was prejudiced, but articulated no actual prejudice. Accordingly, this Court granted Clark's motion to shorten time. The Court then heard argument from the attorneys and Pandrea. At the conclusion of oral argument, the Court granted "Clark's Motion to Strike Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment and the Affidavits Filed in Support Thereof", because Pandrea is not an adverse party to Clark (thus, the Court stated it did not need to reach the untimeliness of Pandrea's submissions). An order to that effect has not been submitted, so the Court will include such at the end of this decision. Although the motion to strike was granted, the Court will discuss Pandrea's claims and arguments in this memorandum decision, to provide context. The affidavits submitted by Pandrea have been read by the Court, but will not be considered in this motion for summary judgment between Clark and Thornton.

Memorandum Decision and Order Granting Defendant Clark's Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Defendant Clark's Motion for Partial Summary Judgment on Clark's Counter-Claims Against Thornton, pp. 3-4.

Pandrea now seeks a reconsideration of the Court decision on the Motion to Strike.

Memorandum in Support of Pandrea's Motion to Amend Findings of Facts and to Alter or Amend Judgment; Motion to Reconsider the Order Granting Clark's Motion to Strike; Denying Pandrea a Hearing; and Granting Partial Summary Judgment in Favor of Clark, p. 22. Specifically, Pandrea claims "Clark was required to include Pandrea as a party to her counterclaim against Thornton for quiet title in Thornton's Property and quiet title in Pandrea's interest in the same property." *Id.* Pandrea cites I.R.C.P. 3(a) for this proposition, but such is inapt. At any point in time, Pandrea could have filed her own counterclaim against Thornton, but Pandrea chose not to.

Moreover, Pandrea claims she is adversely affected by the judgment granting Clark an easement across the Thornton Property because for Clark to reach the Clark Property via the easement she must also cross the Pandrea Property. *Id.*, p. 23. By failing to include Pandrea as a necessary party, Pandrea claims she "was not given her

right to due process as she was not included in a judicial process that resulted in depriving her of [the] right to protect her property.” *Id.*, p. 27. Pandrea maintains that she “is undoubtedly a party to this action as Clark can only reach her property by crossing Pandrea’s Property, **not** just the Thornton Property.” *Id.*, p. 28 (emphasis in original). As such, she claims it was error for the Court to strike her memorandum and affidavits. *Id.*

Pandrea also challenges the Court’s decision granting partial summary judgment to Clark. Memorandum in Support of Pandrea’s Motion to Amend Findings of Facts and to Alter or Amend Judgment; Motion to Reconsider the Order Granting Clark’s Motion to Strike; Denying Pandrea a Hearing; and Granting Partial Summary Judgment in Favor of Clark, p. 29. She contends “the Court determined that there was a ‘20-acre Parcel’ held in co-tenancy between Clark/Pandrea; [yet] there is no substantial competent evidence on record to support this fact.” *Id.* She maintains this creates a genuine issue of material fact. *Id.*

In response, Clark contends Pandrea is not an adverse party to Clark’s Motion for Summary Judgment against Thornton. Defendant/Counterclaimant Clark’s Objection to Pandrea’s Motion to Amend and Motion to Reconsider, p. 3. Moreover, Clark maintains “Pandrea does not have any standing to challenge the Judgment that was entered regarding Clark’s legal rights as they pertain to Thornton’s property.” *Id.*

The Court agrees with Clark that Pandrea does not have standing to challenge the Judgment. “[T]he doctrine of standing focuses on the party seeking relief and not on the issues the party wishes to have adjudicated.” *Idaho Branch Inc. of Associated Gen. Contractors of Am. v. Nampa Hwy. Dist. No. 1*, 123 Idaho 237, 240, 846 P.2d 239, 242 (Ct. App. 1993) (citing I.C. §§ 10-1205 –1206). “To satisfy the requirement of

standing litigants must allege an injury in fact, a fairly traceable causal connection between the claimed injury and the challenged conduct, and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury.” *Doe v. Doe*, 155 Idaho 660, 315 P.3d 848, 850 (2013) (citing *Bagley*, 149 Idaho 806, 807, 241 P.3d 979, 980 (2012)). The claimed injury must be against the party whose standing is in question. *Id.* (citing *Abolafia v. Reeves*, 152 Idaho 898, 902, 277 P.3d 345, 349 (2012)).

The lack of standing was made even more clear on May 6, 2014, when Pandrea signed the “Stipulation for Order of Dismissal of Plaintiff’s Complaint to Quiet Title and for Damages Against Defendant Mary Pandrea.” On May 20, 2014, this Court signed the Order of Dismissal of Plaintiff’s Complaint to Quiet Title and for Damages Against Defendant Mary Pandrea. The filing of Thornton’s complaint in this case naming Pandrea as defendant was the only pleading which made Pandrea a party. Now, Thornton’s complaint against Pandrea has been dismissed, at Pandrea’s stipulation upon Pandrea’s signature. At all times, Pandrea has completely lacked standing to request this Court to reconsider its opinion or its Judgment. At present, due to her own stipulation, she is not even a party.

While it may be true that Clark can only reach her property by crossing the Pandrea property after crossing the Thornton property, the Judgment in this case did not grant Clark an easement across the Pandrea property, nor could the Court have done so *in this litigation*. But in *other litigation*, Clark was granted an easement across the Pandrea Property on January 24, 2014, when District Judge John P. Luster issued a Revised Judgment and Decree of Partition in Bonner County case number CV 2011 835, awarding Clark 10.423 acres of real property and Pandrea 12.739 acres of real property “subject to an easement appurtenant to the land for ingress through and over

the parcel awarded to Plaintiff Mary E. Pandrea as the servient parcel and estate”
Affidavit of Joel P. Hazel, Exhibit C.

The Judgment in this case does not alter or change the easement rights awarded to Clark in Bonner County case number CV 2011 835. Rather, the Judgment in this case grants Clark an easement across the Thornton Property, which leads to the easement on the Pandrea Property. The only property rights affected by the Judgment in this case are those of Clark and Thornton. Pandrea is attempting to make the easement granted to Clark in Bonner County case number CV 2011 835 ineffective, and circumvent the Judgment entered by Judge Luster. Pandrea does not have an interest in the Thornton Property, as it pertains to the easement.

Moreover, the evidence before the Court is that Bonner County case number CV 2011 835 was initiated by Pandrea on May 11, 2011, when Pandrea sued Clark to partition land owned by Clark and Pandrea as tenants in common. Defendant Clark’s Answer Affirmative Defenses and Counterclaim, p. 5 ¶ 6; Affidavit of Joel P. Hazel, Exhibit C; Affidavit of Mary E. Pandrea, Exhibit 1. Pandrea now claims that somehow a genuine issue of material fact exists about the parcel, such that summary judgment should not have been awarded in this case. It is unclear, given the evidence provided to this Court, how she could make that claim if she had standing to do so.

As such, the Court denies Pandrea’s motion to reconsider.

VI. PANDREA’S MOTION TO VOID JUDGMENT.

A motion for relief from a final judgment, pursuant to I.R.C.P. 60(b), is committed to the sound discretion of the trial court. *Clear Springs Trout Co. v. Anthony*, 123 Idaho 141, 143, 845 P.2d 559, 561 (1992); *Johnston v. Pascoe*, 100 Idaho 414, 599 P.2d 985 (1979). “Although courts have broad discretion to grant a motion for relief from judgment, that discretion is bounded by the requirement that the party seeking relief

demonstrate 'unique and compelling circumstances' which justify relief." *McLean v. Cheyovich Family Trust*, 153 Idaho 425, 429, 283 P.3d 742, 746 (2012) (quoting *Miller v. Haller*, 129 Idaho 345, 349, 924 P.2d 607, 611 (1996)). "It is incumbent upon a party seeking relief from a judgment not only to meet the requirements of I.R.C.P. 60(b), but also to show, plead or present evidence of facts which, if established, would constitute a meritorious defense to the action." *Maynard v. Nguyen*, 152 Idaho 724, 726, 274 P.3d 589, 591 (2011) (citing *Ponderosa Paint Mfg., Inc. v. Yack*, 125 Idaho 310, 317, 870 P.2d 663, 670 (Ct. App.1994)).

Idaho Rule of Civil Procedure 60(b) provides in pertinent part:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

I.R.C.P. 60(b). "Idaho's Rule 60(b) is similar to that found in the Federal Rules of Civil Procedure. I.R.C.P. 60(b), *Federal Rules Comparison*. Several federal circuits have held that a non-party has standing to bring a Rule 60(b) motion so long as the non-party was directly affected by the judgment sought to be set aside." *Campbell v. Kildew*, 141 Idaho 640, 646, 115 P.3d 731, 737 (2005) (citing *Eyak Native Vill. v. Exxon Corp.*, 25 F.3d 773, 777 (9th Cir.1994); *Houck v. Folding Carton Admin.*, 881 F.2d 494, 505 (7th Cir.1989); *Kem Mfg. Corp. v. Wilder*, 817 F.2d 1517, 1521 (11th Cir.1987); *Southerland v. Irons*, 628 F.2d 978, 980 (6th Cir.1980); *Root Refining Co. v. Universal Oil Products*

Co., 169 F.2d 514, 522-25 (3d Cir.1948); *U.S. v. Buck*, 281 F.3d 1336, 1341-42 (10th Cir.2002)).

Pandrea seeks to void the Judgment which was entered in favor of Clark on April 30, 2014, pursuant to I.R.C.P. 60(b), alleging Clark lacks standing to quiet title to an easement now solely belonging to the Pandrea Property, as determined by Bonner County case number CV 2011 835. Pandrea's Motion to Void Judgment, pp. 1, 2; Pandrea's Memorandum in Support of Motion to Void Judgment, pp. 6-7. In support of this position, Pandrea relies upon *Tungsten Holdings, Inc. v. Drake*, 143 Idaho 69, 137 P.3d 456 (2006). In that case, the Idaho Supreme Court found that "close examination of the record, exhibits, and trial transcripts reveals no evidence to support the district court's finding that the Tungsten property was previously owned by the Siemens" and as such a successor in interest of the grantees of the easement in question. 143 Idaho 69, 72, 137 P.3d 456, 459. Pandrea maintains that there is no evidence that Pandrea and Clark jointly twenty acres of land with Clark (Pandrea's Memorandum in Support of Motion to Void Judgment, p. 9), despite the fact that she submits as evidence to this Court a decision issued by District Judge John P. Luster in Bonner County case number CV 2011 835, where a twenty acres of land owned by Clark and Pandrea as tenants in common was partitioned, with Clark receiving 10.423 acres and Pandrea receiving 12.739 acres. Affidavit of Mary Pandrea, Exhibit 1. Unlike *Tungsten Holdings*, this is evidence that Clark previously owned the entire parcel as tenants in common with Pandrea. As such, Clark does have standing to seek quiet title of the easement.

In turn, Clark requests that this Court strike Pandrea's Motion to Void Judgment and the memorandum and affidavit filed in support of the motion because Pandrea is not an adverse party to Clark and, as such, has no standing to challenge the judgment. Defendant/Counterclaimant Clark's Objection to Pandera's Motion to Void Judgment, p.

2. She also objects under Idaho Rule of Civil Procedure 7(b)(3), as the notice of hearing for Pandrea's motion was untimely. *Id.*

The Court finds Pandrea does not have standing to challenge the Judgment since she was not directly affected by it. As stated above, "the doctrine of standing focuses on the party seeking relief and not on the issues the party wishes to have adjudicated." *Idaho Branch Inc. of Associated Gen. Contractors of Am. v. Nampa Hwy. Dist. No. 1*, 123 Idaho 237, 240, 846 P.2d 239, 242 (Ct. App. 1993) (citing I.C. §§ 10-1205 –1206). "To satisfy the requirement of standing litigants must allege an injury in fact, a fairly traceable causal connection between the claimed injury and the challenged conduct, and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury." *Doe v. Doe*, 155 Idaho 660, 315 P.3d 848, 850 (2013) (citing *Bagley*, 149 Idaho 806, 807, 241 P.3d 979, 980 (2012)). The claimed injury must be against the party whose standing is in question. *Id.* (citing *Abolafia v. Reeves*, 152 Idaho 898, 902, 277 P.3d 345, 349 (2012)).

Pandrea claims that she is damaged by the Judgment in this case because her "property value would be diminished by up to 30%", "she [will] not be able to further develop her property, and the property would be greatly burdened if it were ever sold." Pandrea's Memorandum in Support of Motion to Void Judgment, pp. 10, 11.

The Judgment in this case grants Clark an easement across the Thornton Property only, and not the Pandrea Property. While it may be true that once Clark crosses the Thornton Property, she must then cross the Pandrea Property to access the Clark Property, the Judgment in the present case does not give Clark any right to cross the Pandrea Property. However, Clark was granted an easement across the Pandrea Property on January 24, 2014, when District Judge John P. Luster issued a

Revised Judgment and Decree of Partition in Bonner County case number CV 2011 835, awarding Clark 10.423 acres of real property and awarding Pandrea 12.739 acres of real property “subject to an easement appurtenant to the land for ingress through and over the parcel awarded to Plaintiff Mary E. Pandrea as the servient parcel and estate” Affidavit of Joel P. Hazel, Exhibit C. That easement right exists whether or not a Judgment was awarded to Clark in this case. The Judgment in this case does not alter or change the easement rights awarded to Clark in Bonner County case number CV 2011 835. The only property rights affected by the Judgment in this case are those of Clark and Thornton. Pandrea does not have an interest in the Thornton Property, as it pertains to the easement granted to Clark.

For the above stated reasons, Pandera’s Motion to Void the Judgment is denied.

VII. ANALYSIS OF CLARK’S MOTION FOR AWARD OF ATTORNEY’S FEES AND COSTS.

On May 12, 2014, Clark filed “Defendant/Counterclaimant Clark’s Motion for Award of Attorney’s Fees and Costs”, a “Brief in Support of Defendant/Counterclaimant Clark’s Motion for Award of Attorney’s Fees and Costs”, and an “Affidavit/Memorandum of Joel P. Hazel in Support of Motion for Attorney’s Fees and Costs.” This was timely, as the Judgment was entered by this Court on April 30, 2014. I.R.C.P. 54(d)(5). On May 16, 2014, Thornton filed “Plaintiff’s Reply Brief in Support of His Motion to Reconsider Summary Judgment.” In that reply, Thornton did not address Clark’s claim for attorney fees against Thornton. Instead, Thornton obliquely stated: “The court should reconsider its order granting summary judgment, and John Thornton should be awarded attorney fees and costs for having to defend against baseless claims that are not supported by fact or law.” Plaintiff’s Reply Brief in Support of His Motion to

Reconsider Summary Judgment, p. 4. This court finds that cannot be construed as an objection under I.R.C.P. 54(e)(6).

On May 27, 2014, Thornton timely filed "Plaintiff's Objection and Motion to Disallow Defendant Kari Clark's Motion for Attorney Fees and Costs." Under I.R.C.P. 54(e)(5), attorney fees are to be processed in the same manner as costs, and under I.R.C.P. 54(e)(6), objections to attorney fees are to be made in the same manner as an objection to costs as provided by I.R.C.P. 54(d)(6). Idaho Rule of Civil Procedure 54(d)(6) provides, "Any party may object to the claimed costs of another party set forth in a memorandum of costs by filing and serving on adverse parties a motion to disallow part or all of such costs within fourteen (14) days of service of the memorandum of cost." Because the "day of the act", in this case the day of filing of Clark's motion for attorney fees (May 12, 2014) is not to be included in computing the amount of time passed for Thornton's "objection", said objection was timely filed.

Under I.R.C.P. 54(d)(7), the Court is required to hold a hearing if there has been an objection to costs.

VIII. CONCLUSION AND ORDER.

For the reasons stated above,

IT IS HEREBY ORDERED Thornton's "Plaintiff's Motion to Reconsider Summary Judgment and Notice of Hearing" is DENIED.

IT IS FURTHER ORDERED Pandrea's motion to amend findings of fact is DENIED.

IT IS FURTHER ORDERED Pandrea's motion to reconsider Clark's motion for partial summary judgment is DENIED.

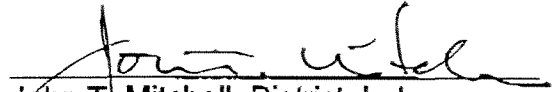
IT IS FURTHER ORDERED Pandrea's motion to void judgment is DENIED.

IT IS FURTHER ORDERED counsel for Clark must prepare an adequate survey

of Clark's easement across Thornton's land, file such with the Court, cause such to be recorded, and prepare a final judgment which includes that description.

IT IS FURTHER ORDERED the jury trial scheduled for June 23, 2014, is VACATED.

Entered this 2nd day of June, 2014.


John T. Mitchell, District Judge

Certificate of Service

I certify that on the 3rd day of June, 2014, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

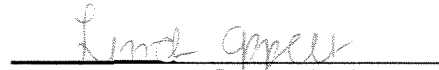
Lawyer
Val Thornton
Mary E. Pandrea, Pro Se

Fax #
208-255-2327

Lawyer
Joel P. Hazel

Fax #
208-667-8470

Mailed


Jeanne Clausen, Deputy Clerk
Linda Goppel

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2014 JUN 19 PM 3 14

CLERK DISTRICT COURT

DEPUTY

1
2 JOEL P. HAZEL, ISB # 4980
3 JASON M. GRAY, ISB # 8539
4 WITHERSPOON KELLEY
5 The Spokesman-Review Building
6 608 Northwest Blvd., Suite 300
7 Coeur d'Alene, Idaho 83814-2146
8 Telephone: (208) 667-4000
9 Facsimile: (208) 667-8470
10 Email: jph@witherspoonkelley.com
11 Email: jmg@witherspoonkelley.com

12 *Attorneys for Defendant/Counterclaimant Kari A. Clark*

13
14 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF
15 IDAHO, IN AND FOR THE COUNTY OF BONNER

16 JOHN F. THORNTON,
17
18 Plaintiff/Counterdefendant,

Case No. CV 2013-1334

19 vs.

20 MARY E. PANDREA, a single woman
21 individually and as Trustee of the Kari A.
22 Clark and Mary E. Pandrea Revocable Trust,
23 u/a April 9, 2002; and

RESPONSE TO PLAINTIFF'S OBJECTION
AND MOTION TO DISALLOW
DEFENDANT KARI CLARK'S MOTION
FOR ATTORNEY FEES AND COSTS

24 Defendant,

25 KARI A. CLARK, a single woman
26 individually and as Trustee of the Kari A.
27 Clark and Mary E. Pandrea Revocable Trust,
28 u/a April 9, 2002 and as Trustee of the Kari
A. Clark Trust u/a June 21, 2010,

Defendant/Counterclaimant.

Defendant/Counterclaimant Kari A. Clark ("Clark") hereby submits the following response to Plaintiff/Counterdefendant John F. Thornton's ("Thornton") Objection and Motion to Disallow Defendant Kari Clark's Motion for Attorney Fees and Costs.

RESPONSE TO PLAINTIFF'S OBJECTION AND MOTION TO DISALLOW
DEFENDANT KARI CLARK'S MOTION FOR ATTORNEY FEES AND COSTS - 1

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I. CLARK IS THE PREVAILING PARTY AGAINST THORNTON AND CLARK IS ENTITLED TO ATTORNEY'S FEES AND COSTS.

As this Court knows, in order to determine if a party is entitled to costs and attorney's fees under I.R.C.P. 54(d)(1) and I.R.C.P. 54(e)(1), the Court must first determine which party is the "prevailing party." I.R.C.P. 54(d)(1)(B) provides that:

Prevailing Party. In determining which party to an action is a prevailing party and entitled to costs, the trial court shall in its sound discretion consider the final judgment or result of the action in relation to the relief sought by the respective parties.

...

Thornton argues that Clark was not the prevailing party in this action because "she proved and prevailed on summary judgment on only one issue." Thornton's Objection to Attorney Fees, p. 2. However, Thornton completely ignores the fact that this one issue was dispositive of the entire case that was frivolously brought against Clark.

This case was initiated by Thornton and Thornton claimed Clark did not have the right cross a two acre parcel that Thornton now owns, despite the fact that the Warranty Deed conveying the property to Thornton specifically stated that the conveyance was subject to "A 30.0 FOOT EASMENT FOR A ROAD RIGHT OF WAY AND UTILITIES" in favor of "MARY E. PANDREA WILTSE" and "KARI A. CLARK" as set forth in "INSTRUMENT NO. 416381." Thornton also claimed that he was entitled to sole ownership of what has been referred to as the "Well Piece." Clark filed an Answer and counterclaims against Thornton for interference with her easement rights, injunctive relief and to quiet title.

Clark moved for summary judgment on Thornton's claims and on Clark's counterclaims regarding the easement because there were no genuine issues of material fact regarding the existence of Clark's easement appurtenant to Thornton's property. Clark's Motion for Summary Judgment was granted, Thornton's entire Complaint against Clark was dismissed with prejudice, and Clark was successful on her counterclaims to quiet title regarding her appurtenant easement rights, for injunctive relief and establishing that Thornton wrongfully interfered with Clark's easement rights.

1 It is difficult to understand how Thornton could possibly claim that Clark is not the
2 prevailing party in this case when the judgment dismissed all of Thornton's claims against
3 Clark with prejudice. Thornton argues that because Clark voluntarily dismissed her claim for
4 damages against Thornton in an effort to avoid further litigation costs and Clark was not forced
5 to litigate all of her counterclaims that Clark did not prevail. Thornton's Objection to Attorney
6 Fees, p. 3. However, the reason that it was unnecessary for Clark to pursue her counterclaims
7 is the lawsuit Thornton brought against Clark was frivolous and Clark's Motion for Partial
8 Summary Judgment awarded Clark complete relief regarding her easement rights, other than
9 the issue of damages. Clark's decision not to incur the expense of going to trial to recover the
10 damages she is entitled to does not alter Clark's status as the prevailing party. Nor does the fact
11 that Thornton erroneously asserted a claim against Clark regarding the "well piece," even
12 though it was clear that Clark had no ownership interest, and did not claim any ownership
13 interest, in the well piece when Thornton initiated this lawsuit.

14 Thornton's attempts to ignore the frivolous nature of this lawsuit brought against Clark
15 to now claim that Clark is not a prevailing party because Clark only won on "one issue" is
16 absurd. There is no question that Clark is the prevailing party in this action against Thornton
17 based on the plain language of the judgment that was entered and this Court should find that
18 Clark was the prevailing party for purposes of determining whether Clark is entitled to an
19 award of attorney's fees and costs.

20 **II. CLARK IS ENTITLED TO ATTORNEY'S FEES AND COSTS UNDER I.R.C.P. 54 AND I.C. §**
21 **12-121.**

22 The district court's decision to award attorney fees is a discretionary decision, subject to
23 the abuse of discretion standard of review. *Bailey v. Sanford*, 139 Idaho 744, 753, 86 P.3d 458,
24 467 (2004). Idaho Code § 12-121 provides in pertinent part:

25 In any civil action, the judge may award reasonable attorney's fees to the
26 prevailing party or parties, provided that this section shall not alter, repeal or
amend any statute which otherwise provides for an award of attorney's fees.

27 Idaho Courts have held that I.C. § 12-121, read together with I.R.C.P. 54(e)(1), limits
28 attorney's fees to those situations in which the Court finds that the action was "brought,

1 pursued or defended frivolously, unreasonably or without foundation." *Ortiz v. Reamy*, 115
2 Idaho 1099, 1101, 772 P.2d 737, 739 (Ct. App. 1989).

3 Thornton continues to claim that this action against Clark was not frivolous and
4 maintains that "Kari Clark could have contacted him at the outset and at least clarified the issue
5 whereby she claimed the right to use his property." Thornton's Objection to Attorney Fees, p.
6 4. This argument is meritless because there is no burden for the person who is identified by
7 name in a deed of record granting an easement to that person to explain the plain language of
8 the deed to anyone. Thornton continues his gross misunderstanding that the deed to his
9 property granting an easement to Clark does what it purports to do; it grants an easement to
10 Clark. Thornton's ignorance of the plain meaning of the deeds at issue in this case is
11 presumably what led to this frivolous lawsuit against Clark being filed in the first place and
12 Thornton is continuing to maintain his position regardless of the undisputed facts and law that
13 provide otherwise.

14 The absurdity of Thornton's arguments regarding the easement rights at issue is further
15 demonstrated by his untenable position that Pandrea had the right to use the easement, but
16 Clark did not, despite the fact that the undisputed language in the deeds of record specifically
17 provides that the easement is favor of Pandrea *and* Clark. Thornton's conduct in interfering
18 with Clark's property rights and the frivolous claims that he brought against Clark in this case
19 are inexcusable and this Court should award Clark all of her attorney's fees costs pursuant to
20 I.R.C.P. 54(d) and I.C. § 12-121.

21 **III. CLARK IS ALSO ENTITLED TO AN AWARD OF ATTORNEY'S FEES AND COSTS AGAINST**
22 **THORNTON AND HIS ATTORNEY, VALERIE THORNTON, AS SANCTIONS PURSUANT TO**
23 **I.R.C.P. 11.**

24 Pursuant to I.R.C.P. 11(a)(1), all pleadings, motions and other papers signed by an
25 attorney must meet certain criteria. Where such motions, pleadings or other papers are not well
26 grounded in fact, warranted by existing law or a good faith argument for extension,
27 modification, or reversal of existing law, or are interposed for improper purposes (such as to
28 harass, cause undue delay, or needlessly increase the cost of litigation), imposition of sanctions

1 results. I.R.C.P. 11(a)(1); *Slack v. Anderson*, 140 Idaho 38, 39-40, 89 P.3d 878, 879-880 (2004)
2 (citing *Durrant v. Christensen*, 117 Idaho 70, 74, 785 P.2d 634, 638 (1990)). I.R.C.P.11(a)(1)
3 authorizes the court to impose sanctions against an attorney and/or the represented party. This
4 rule does not duplicate I.C. § 12-121, and circumstances that justify an award of fees under that
5 statute do not necessarily call for imposition of Rule 11 sanctions. *See Sun Valley Shopping*
6 *Center, Inc.*, 119 Idaho 87, 96, 803 P.2d 993, 1002 (1991); *Young v. Williams*, 122 Idaho 649,
7 654, 837 P.2d 324, 329 (Ct. App. 1992). An "attorney is required to perform a prefiling inquiry
8 into both the facts and the law involved to satisfy the affirmative duty imposed by Rule 11."
9 *Riggins v. Smith*, 126 Idaho 1017, 1021, 895 P.2d 1210, 1213 (1995). Reasonableness under
10 the circumstances, and a duty to make reasonable inquiry prior to filing a pleading or other
11 paper, is the appropriate standard to apply when evaluating an attorney's conduct. *Durrant v.*
12 *Christensen*, 117 Idaho 70, 74, 785 P.2d 634, 638 (1990). Whether a pleading, motion or other
13 signed document is sanctionable must be based on an assessment of the knowledge of the
14 relevant facts and law that reasonably could have been acquired at the time the document was
15 submitted to the court. *Young*, 122 Idaho at 653, 837 P.2d at 328.

16 Thornton provides no substantive response to Clark's request for sanctions other than
17 stating that "[h]e has not brought any pleadings in bad faith, and has not made assertions that
18 are untrue. Thornton's Objection to Attorney Fees, p. 6. These conclusory statements do not
19 demonstrate that the claims Thornton and his attorney wife brought against Clark were well
20 grounded in fact or that they were a good faith argument for the extension, modification, or
21 reversal of existing law. The course of conduct of Thornton and his attorney both prior to, and
22 throughout this litigation has clearly demonstrated that Thornton and his attorney wife have
23 intentionally brought and pursued this lawsuit in an attempt to harass Clark and unnecessarily
24 delay Clark's lawful right to use the easement across Thornton's property. As such, attorney's
25 fees and costs should be awarded to Clark as a sanction against Thornton and his attorney wife
26 pursuant to I.R.C.P. 11.

1
2 **IV. THORNTON'S ARGUMENT THAT CLARK SHOULD ONLY BE ALLOWED TO RECOVER**
3 **ATTORNEY'S FEES AND COSTS FOR TIME SPENT ON CLARK'S MOTION FOR PARTIAL**
4 **SUMMARY JUDGMENT IS WITHOUT MERIT.**

5 Without providing any authority for this proposition, Thornton claims that Clark should
6 only be allowed to recover attorney's fees and costs for "time expended upon the summary
7 judgment in which she prevailed." Thornton's Objection to Attorney Fees, p. 6. This argument
8 is not in accordance with the law regarding an award of attorney's fees and costs. An award of
9 attorney's fees and costs is based on the reasonable amount spent by the prevailing party on the
10 entire litigation, not just the dispositive motion that ends the case. See I.C. 12-121. But for the
11 frivolous lawsuit brought against Clark by Thornton, Clark would not have had to expend any
12 resources whatsoever in utilizing the easement rights that she was granted based on the plain
13 language of the deeds at issue in this case. However, Clark was forced to engage in this
14 litigation to protect her lawful rights and Thornton's argument that Clark can only recover
15 attorney's fees and costs relating to one motion despite the fact that Clark had to respond to
16 numerous frivolous filings by Thornton must be rejected.

17 Thornton also indicates that any attorney's fees and costs Clark incurred in responding
18 to documents filed by Pandrea should not be awarded. Thornton's Objection to Attorney Fees,
19 p. 9. However, Thornton and Pandrea have made it very clear that despite being named as
20 opposing parties in this lawsuit, they will collude to file any documents or affidavits that they
21 possibly could in support of each other's various motions and court filings. Under these
22 circumstances, Clark is entitled to an award of all of her attorney's fees and costs against
23 Thornton.

24 **V. CONCLUSION**

25 Clark is the prevailing party in this matter and is entitled to an award of
26 attorney's fees under Idaho Code § 12-121 and an award of costs under I.R.C.P. 54(d). In
27 addition, an award of attorney's fees and costs should be awarded to Clark as sanctions against
28

1 Thornton and his attorney wife pursuant to I.R.C.P. 11 in the amount set forth in the Affidavit
2 filed herewith.

3 DATED this 19th day of June, 2014.

4 WITHERSPOON KELLEY

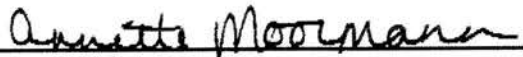
5
6
7 
8 JASON M. GRAY
9 JOEL P. HAZEL
10 Attorneys for Defendant/Counterclaimant Clark

11 **CERTIFICATE OF SERVICE**

12 I certify that on this the 19th day of June, 2014, I caused a true and correct copy of the
13 within *RESPONSE TO PLAINTIFF'S OBJECTION AND MOTION TO DISALLOW*
14 *DEFENDANT KARI CLARK'S MOTION FOR ATTORNEY FEES AND COSTS* to be
15 forwarded, with all required charges prepaid, by the method(s) indicated below, to the
16 following person(s):

17 Val Thornton
18 4685 Upper Pack River Rd.
19 Sandpoint, ID 83864

- 20 U.S. Mail, Postage Prepaid
- 21 Hand Delivered
- 22 Overnight Mail
- 23 Facsimile: 208-255-2327

24 
25 Annette Moormann

VAL THORNTON
Attorney for Plaintiff
4685 Upper Pack River Rd.
Sandpoint, ID 83864
(208) 263-5017 phone
(208) 255-2327 fax
ISB #6517

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2014 JUN 26 AM 10 37

CLERK DISTRICT COURT

DEPUTY

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

JOHN F. THORNTON,)
)
 Plaintiff,)
 v.)
 MARY E. PANDREA, et al,)
)
 Defendants.)

Case No. CV-2013-1334

PLAINTIFF'S
NOTICE OF EASEMENT
LOCATION

TO: Mary Pandrea, Defendant pro se, to Kari Clark, her attorney Joel P. Hazel, and to the clerk of the above-entitled court:

PLEASE TAKE NOTICE that PLAINTIFF JOHN F. THORNTON, by and through his undersigned counsel, reserving and not waiving his right to appeal on the issue of the persons and parcels entitled to the use thereof, hereby asserts his right to determine the location of the easement, or to move it at his own expense, so long as the dimensions are those reasonably necessary for enjoyment of the servitude, do not lessen the utility of the easement or frustrate the purpose for which the easement was created. Restatement Third of Property (Servitudes) § 4.8 (2000); Bethel v. Van Stone, 120 Idaho 522, 817 P.2d 188 (Cl. App. 1991).

PLEASE TAKE FURTHER NOTICE that the easement shall not be moved or altered in any way, and that the legal description of the location of the easement is as follows:

That portion of a 30.0 foot easement for a road right of way and utilities lying southeasterly of Tavern Creek, more fully described as follows:

A tract of land for a road easement located in Section 11, Township 59 North, Range Two West, Boise Meridian, Bonner County Idaho, said road easement being 30.0 feet wide (15.0 each side of the centerline) the centerline being more fully described as follows:

Commencing at the Southeast corner of said Section 11, thence North 0 degrees 58'55" East along the East line of said section a distance of 1325.42 feet; thence West a distance 1978.63 feet; thence North 27 degrees 57'08" West a distance of 448.04 feet to the point of beginning; thence South 59 degrees 03'17" East a distance of 637.22 feet; thence South 58 degrees 03'22" East a distance of 300.00 feet more or less to the Westerly right-of-way of the Pack River County Road.

DATED this 26th day of June, 2014.

Val Thornton
VAL THORNTON, Attorney at Law

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 26th day of June, 2014, to:

JOEL P. HAZEL
WITHERSPOON KELLEY
608 Northwest Blvd., Ste. 300
Coeur d'Alene, ID 83814

mailed, postage prepaid
 faxed to (208) 667-8470
 hand-delivered

MARY PANDREA
4687 Upper Pack River Rd.
Sandpoint, ID 83864

mailed, postage prepaid
 faxed to (208) _____
 hand-delivered

HON. JOHN T. MITCHELL
P. O. Box 9000
Coeur d'Alene, ID 83816

mailed, postage prepaid
 faxed to (208) 446-1132
 hand-delivered

Val Thornton

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2014 JUN 26 PM 3 58

CLERK DISTRICT COURT

DEPUTY

1
2 JOEL P. HAZEL, ISB # 4980
3 JASON M. GRAY, ISB # 8539
4 WITHERSPOON KELLEY
5 The Spokesman-Review Building
6 608 Northwest Blvd., Suite 300
7 Coeur d'Alene, Idaho 83814-2146
8 Telephone: (208) 667-4000
9 Facsimile: (208) 667-8470
10 Email: jph@witherspoonkelley.com

11 *Attorneys for Defendant/Counterclaimant Kari A. Clark*

12
13
14 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF
15 IDAHO, IN AND FOR THE COUNTY OF BONNER

16 JOHN F. THORNTON,

17 Plaintiff/Counterdefendant,

18 vs.

19 MARY E. PANDREA, a single woman
20 individually and as Trustee of the Kari A.
21 Clark and Mary E. Pandrea Revocable Trust,
22 u/a April 9, 2002; and

23 Defendant,

24 KARI A. CLARK, a single woman
25 individually and as Trustee of the Kari A.
26 Clark and Mary E. Pandrea Revocable Trust,
27 u/a April 9, 2002 and as Trustee of the Kari
28 A. Clark Trust u/a June 21, 2010,

Defendant/Counterclaimant.

Case No. CV 2013-1334

AFFIDAVIT OF JOHN MARQUETTE RE
LEGAL DESCRIPTION OF EASEMENT
CONTAINED IN PROPOSED AMENDED
JUDGMENT

STATE OF IDAHO)

: ss

County of Bonner)

John Marquette, being first duly sworn upon oath, deposes and says:

1 I am over the age of 18 years of age, duly competent to testify as to the facts
2 stated herein and make this affidavit based upon my personal knowledge.

3 2. I am a Professional Land Surveyor in the State of Idaho, and am familiar with the
4 property at issue in this matter and the documents described herein.

5 3. I currently work for J.R.S. Surveying, Inc. and I have been a Professional Land
6 Surveyor in Idaho since 1995.

7 4. During my career as a Professional Land Surveyor, I have conducted hundreds of
8 surveys and have prepared hundreds of legal descriptions pertaining to real property.

9 5. Based on existing survey data, I have prepared a legal description of the portion
10 of the easement set forth in Warranty Deed, Bonner County Instrument No. 525386 that crosses
11 the property currently owned by John F. Thornton. Said legal description is attached hereto as
12 Exhibit "A".

13 6. In preparing the legal description referenced above, I reviewed the survey that
14 was prepared by J.R.S. Surveying, Inc., Revision No. 5, dated January 16, 2014. That survey
15 was prepared for the District Court in *Pandrea v. Clark*, Bonner County Case No. CV-2011-835,
16 which was a partition action.

17 7. I have also reviewed the deeds of record pertaining to the easement that crosses
18 John F. Thornton's parcel in preparing the legal description referenced above. Those deeds
19 include, but are not necessarily limited to, Bonner County Instrument Nos. 416381, 525386 and
20 226223.

21 8. I have reviewed the proposed Amended Judgment in this matter, and it is my
22 opinion that the legal description that I have prepared of the easement across John F. Thornton's
23 property is in accordance with the survey data and recorded deeds that I have reviewed.
24
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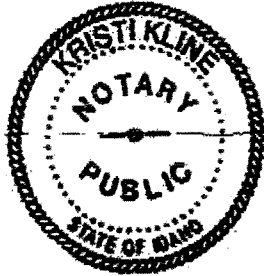
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9. It also my opinion that said legal description is a fair and accurate representation of the metes and bounds of the easement across John F. Thornton's property.

DATED this 26 day of June, 2014.

John Marquette
John Marquette

SUBSCRIBED AND SWORN TO before me this 26 day of June, 2014.



Kristi Kline
Notary Public for the State of Idaho
Residing at: BUNNERS FERRY
My commission expires: 9/11/2014

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CERTIFICATE OF SERVICE

I certify that on this the 26th day of June, 2014, I caused a true and correct copy of the within *AFFIDAVIT OF JOHN MARQUETTE RE LEGAL DESCRIPTION OF EASEMENT CONTAINED IN PROPOSED AMENDED JUDGMENT* to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Val Thornton
4685 Upper Pack River Rd.
Sandpoint, ID 83864

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile: 208-255-2327

Annette Moormann
Annette Moormann

EXHIBIT "A"

EASEMENT DESCRIPTION

An easement for ingress, egress, and utilities, situated in the Southeast Quarter (SE1/4) of Section Eleven (11), Township Fifty-nine (59) North, Range Two (2) West of the Boise Meridian, Bonner County, Idaho, being a portion of that easement previously described in Instrument No. 226223, which is Thirty (30) feet in width and lying Fifteen (15) feet on each side of the following described centerline:

Commencing at a point on the north line of said SE1/4 which is N 89°58'35" E, 192.12 feet from the northwest corner of the SE1/4; thence, leaving said north line in a perpendicular direction S 00°01'25" E, 1206.24 feet to a point; thence, parallel to the north line of the SE1/4, N 89°58'35" E, 735.50 feet to the intersection of the centerline of that easement described in Instrument No. 226223 and the northwesterly line of that parcel described in Instrument No. 525386 which is the TRUE POINT OF BEGINNING; thence, leaving said northwesterly line and along said centerline the following Two (2) courses: S 59°07'07" E, 62.68 feet; thence S 58°07'12" E, 297.92 feet to the intersection with the northwesterly right of way of the Pack River Road and the terminus of this easement, with the sidelines extended or shortened to intersect adjacent boundaries.

1 1. That he is a member of the firm of WITHERSPOON KELLEY, attorneys for
2 Defendant/Counterclaimant Kari A. Clark ("Clark"). That he makes this affidavit on the
3 basis of his personal knowledge.

4 2. That your affiant is well informed as to the attorney's fees and costs incurred
5 in this action and states and represents that the fees and costs set forth below have been
6 incurred since May 12, 2014, which is the date that Clark filed her Motion for Award of
7 Attorney's Fees and Costs in this action.

8 3. This Affidavit is made in compliance with I.R.C.P. 54(e)(3) and I.R.C.P.
9 54(d)(5).

10 4. That the attorney's fees were calculated on the basis of my current hourly rate
11 of \$170.00 per hour, and Joel P. Hazel's current hourly rate of \$275.00 per hour.

12 5. That the time and labor required for this action since May 12, 2014 is
13 summarized below and further itemized as set forth in Exhibit "B" attached hereto and
14 incorporated herein, and is typical for a case of this nature and duration.

15 6. The skill required to perform the legal service was average.

16 7. I am an associate with Witherspoon Kelley, have been licensed to practice law
17 in the State of Idaho since 2010, and practice primarily in the areas of civil litigation,
18 business and corporate law, land use, zoning and real estate.

19 8. Joel Hazel has been licensed to practice law in the State of Idaho since 1994.
20 He practices primarily in the areas of real property, civil litigation, and medical malpractice
21 defense litigation.

22 9. That your affiant is well informed as to the hourly rates of counsel with similar
23 skill, knowledge, and experience in the state of Idaho, and states that the attorneys' fees
24 sought are similar to prevailing charges for like work.

25 10. The fees charged were fixed and based upon the hourly rates.

26 11. The case involved relatively straightforward questions of law.

27 12. The time limitations imposed by the circumstances of the case were typical of
28 a case of this nature.

1 13. The case was initiated by John F. Thornton ("Thornton") as an action to quiet
2 title in real property against Clark and Mary E. Pandrea. Thornton claimed that Clark did not
3 have the right cross a two acre parcel that Thornton now owns, despite the fact that the
4 Warranty Deed conveying the property to Thornton specifically stated that the conveyance
5 was subject to "A 30.0 FOOT EASMENT FOR A ROAD RIGHT OF WAY AND
6 UTILITIES" in favor of "MARY E. PANDREA WILTSE" and "KARI A. CLARK" as set
7 forth in "INSTRUMENT NO. 416381." Thornton also claimed that he was entitled to sole
8 ownership of what has been referred to as the "Well Piece." Clark filed an Answer and
9 counterclaims against Thornton for interference with her easement rights, injunctive relief
10 and to quiet title.

11 14. Clark moved for summary judgment on Plaintiff's claims and on Clark's
12 counterclaims regarding the easement because there were no genuine issues of material fact
13 regarding the existence of Clark's easement appurtenant to Thornton's property. Clark's
14 Motion for Summary Judgment was granted, Thornton's Complaint against Clark was
15 dismissed with prejudice, and Clark was successful on her counterclaims to quiet title
16 regarding her appurtenant easement rights, for injunctive relief and establishing that Thornton
17 wrongfully interfered with Clark's easement rights. Clark voluntarily dismissed her claim for
18 damages against Thornton in an effort to avoid further litigation costs, but reserved the right
19 to seek any attorney's fees and costs she is entitled to.

20 15. That a substantial amount of time and labor was required in this case due to
21 the frivolous court filings and claims that were brought against Clark and it is your affiant's
22 position that the additional time spent since May 12, 2014 is justified.

23 16. There is nothing particularly desirable or undesirable about the case.

24 17. Clark is a new client of the law firm Witherspoon Kelley.

25 18. The award of attorney's fees sought is higher than awards in similar types of
26 cases due to the frivolousness of the court filings and lawsuit brought by Thornton and his
27 attorney and the actions of *Pro-se* codefendant Mary Pandrea ("Pandrea").
28

1 19. That all costs sought hereunder are discretionary costs that were necessary and
2 exceptional costs reasonably incurred and should in the interest of justice be assessed against
3 Thornton.

4 20. That the following is a true and accurate account of the fees and costs
5 associated with this action since May 12, 2014 as charged to Clark pursuant to I.R.C.P.
6 54(e)(3) and 54(d)(1).

8 **SUMMARY OF FEES**

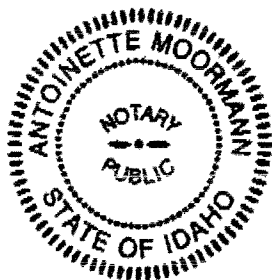
Attorney/Provider Name	Total Hours	Total Fees
Joel P. Hazel	3.7	1017.50
Jason M. Gray	46.30	7871.00
SUBTOTAL	50.00	8,888.50
Courtesy Discount		4,348.57
TOTAL FEES BILLED TO CLIENT		4,539.93

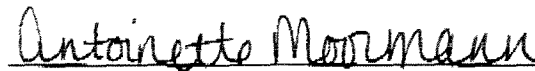
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14 21. That your affiant states that to the best of his knowledge, all items set forth in
15 this Affidavit are correct, and all items claimed are in compliance with I.R.C.P. Rule 54.

16 DATED this 27th day of June, 2014.

17
18 
19 Jason M. Gray
20 WITHERSPOON KELLEY

21
22 SUBSCRIBED AND SWORN to before me the undersigned Notary Public this
23 27th day of June, 2014.



24 
25 Notary Public for Idaho
26 Residing in: Coeur d'Alene, ID
27 My Commission Expires: 2/2/20
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CERTIFICATE OF SERVICE

I certify that on this the 27th day of June, 2014, I caused a true and correct copy of the within *SUPPLEMENTAL AFFIDAVIT OF JASON M. GRAY IN SUPPORT OF MOTION FOR ATTORNEY'S FEES AND COSTS* to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Val Thornton
4685 Upper Pack River Rd.
Sandpoint, ID 83864

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile: 208-255-2327

Annette Moormann
Annette Moormann

Exhibit B

Exhibit B

Exhibit B

575

Exhibit B

Time Report

Billed and Unbilled

Clark, Kari A. /Thornton v. Clark Litigation (14530-1)

05/12/2014	Joel P. Hazel	3.00	825.00	Billed	Finalize motion for attorney's fees and various filings; deal with Atty. Thornton's fax machine issues.
05/12/2014	Jason M. Gray	7.30	1,241.00	Billed	Prepare draft of motion for attorney's fees and costs and memorandum in support thereof; finalize affidavit of Joel Hazel in support of motion for attorney's fees and costs; prepare draft of response to Pandrea's motion to amend and motion to reconsider.
05/13/2014	Jason M. Gray	6.20	1,054.00	Billed	Prepare draft of objection to Pandrea's motion to void judgment; prepare draft of response to Thornton's motion to reconsider.
05/14/2014	Jason M. Gray	2.40	408.00	Billed	Perform legal research re timeliness of Val Thornton's corrected affidavit in support of motion to reconsider; perform legal research re Pandrea's standing to contest judgment following voluntary dismissal.
05/16/2014	Jason M. Gray	1.80	306.00	Billed	Review and analyze Thornton's reply brief in support of motion to reconsider; review affidavit of Pandrea in support of Thornton's motion to reconsider; perform legal research re timeliness of Pandrea's affidavit in support of Thornton's motion to reconsider.
05/20/2014	Jason M. Gray	5.80	986.00	Billed	Prepare outline of argument on plaintiff's motion to reconsider; attend hearing on plaintiff's motion to reconsider; perform legal research re identification of dominant parcel; review and analyze Pandrea's reply memorandum in support of motion to void judgment; review and analyze Pandrea's reply memorandum in support of motion to amend/motion to reconsider.
05/21/2014	Joel P. Hazel	0.40	110.00	Billed	Telephone conference with client.
05/21/2014	Jason M. Gray	1.60	272.00	Billed	Review and respond to correspondence from client re easement description; prepare outline of argument on Pandrea's motion for reconsideration and motion to void judgment.
05/22/2014	Joel P. Hazel	0.30	82.50	Billed	Consult with Atty. Gray re argument.
05/22/2014	Jason M. Gray	2.70	459.00	Billed	Review and respond to correspondence from client re language in proposed judgment; perform legal research re cases cited by Pandrea in motion for reconsideration; attend hearing on Pandrea's motion for reconsideration and motion to void judgment.

05/23/2014	Jason M. Gray	2.00	340.00	Billed	Draft correspondence to surveyor re easement descriptions; perform legal research re requirements for legal description of easement in judgment.
05/27/2014	Jason M. Gray	0.50	85.00	Billed	Review correspondence from surveyor re easement description. Review easement description provided by surveyor; perform legal research re timelines of objection to costs; review and analyze plaintiff's objection to request for attorney's fees and costs.
05/28/2014	Jason M. Gray	5.20	884.00	Billed	Prepare draft of response to plaintiff's objection to request for attorney's fees and costs.
05/29/2014	Jason M. Gray	2.40	408.00	Billed	Review email from surveyor re easement description; perform legal research re plaintiff's claim that succeeding on summary judgment motion does not make Clark the prevailing party.
06/02/2014	Jason M. Gray	0.90	153.00	Unbilled	Review memorandum and decision/order denying plaintiff's motion to reconsider; draft correspondence to client re surveyor's easement description; draft correspondence to surveyor re description.
06/03/2014	Jason M. Gray	0.80	136.00	Unbilled	Review correspondence from client re easement description; review correspondence from surveyor re easement description; draft email to client re Thornton's objection to attorney's fees and costs.
06/04/2014	Jason M. Gray	0.60	102.00	Unbilled	
6/5/2014	Jason M. Gray	0.20	34.00	Unbilled	Draft email to client re sanctions against Pandrea. Draft correspondence to opposing counsel re hearing date of motion for attorneys fees and costs; review correspondence from client re motion for sanctions against Pandrea; begin drafting motion for sanctions against Pandrea.
6/6/2014	Jason M. Gray	0.20	34.00	Unbilled	Review correspondence from client re motion for sanctions against Pandrea; draft email to client re status of amended judgment and motion for sanctions; finalize draft of response to Thornton's objection.
06/13/2014	Jason M. Gray	1.20	204.00	Unbilled	Prepare draft of amended judgment with updated legal description of easement.
06/16/2014	Jason M. Gray	0.60	102.00	Unbilled	Complete draft of amended judgment awarding fees and costs and containing easement description.
06/17/2014	Jason M. Gray	0.40	68.00	Unbilled	Complete draft of amended judgment with easement description; begin drafting affidavit of surveyor re new easement description.
06/18/2014	Jason M. Gray	0.70	119.00	Unbilled	Complete draft of affidavit of John Marquette in support of amended judgment.
06/23/2014	Jason M. Gray	0.40	68.00	Unbilled	Prepare amended draft of John Marquette Affidavit; draft correspondence to John Marquette re easement description; perform legal research re substitution of party under IRCP 25 and IAR 7.
6/25/2014	Jason M. Gray	1.40	238.00	Unbilled	

6/26/2014 Jason M. Gray 1.00 170.00 Unbilled
[REDACTED]

Draft correspondence to John Marquette re
notarization of affidavit; finalize draft of John
Marquette affidavit; finalize draft of amended
judgment for submission to the court.

2014 JUN 30 AM 9:41



1
2 JOEL P. HAZEL, ISB # 4980
3 JASON M. GRAY, ISB # 8539
4 WITHERSPOON KELLEY
5 The Spokesman-Review Building
6 608 Northwest Blvd., Suite 300
7 Coeur d'Alene, Idaho 83814-2146
8 Telephone: (208) 667-4000
9 Facsimile: (208) 667-8470
10 Email: jph@witherspoonkelley.com
11 Email: jmg@witherspoonkelley.com

12 *Attorneys for Defendant/Counterclaimant Kari A. Clark*

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

JOHN F. THORNTON,

Plaintiff/Counterdefendant,

vs.

Case No. CV 2013-1334

AMENDED JUDGMENT

MARY E. PANDREA, a single woman
individually and as Trustee of the Kari A.
Clark and Mary E. Pandrea Revocable Trust,
u/a April 9, 2002; and

Defendant,

KARI A. CLARK, a single woman
individually and as Trustee of the Kari A.
Clark and Mary E. Pandrea Revocable Trust,
u/a April 9, 2002 and as Trustee of the Kari A.
Clark Trust u/a June 21, 2010,

Defendant/Counterclaimant.

JUDGMENT IS ENTERED AS FOLLOWS:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
Plaintiff/Counterdefendant JOHN F. THORNTON's *Complaint* against

1 Defendant/Counterclaimant KARI A. CLARK is dismissed with prejudice and JOHN F.
2 THORNTON shall take nothing thereby.

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as set forth in
4 Warranty Deed, Bonner County Instrument No. 525386 and Quitclaim Deed, Bonner County
5 Instrument No. 416381, KARI A. CLARK and KARI A. CLARK's heirs, successors and
6 assigns have a 30.0 foot appurtenant easement for road right of way and utilities across the
7 following described Tract lying Southeasterly of the Centerline of Tavern Creek:

8 A tract of land located in Section 11, Township 59 North, Range 2 West, Boise
9 meridian, Bonner County, Idaho, more fully described as follows:

10 Commencing at the Southeast corner of said Section 11; thence North 0 degrees
11 58'55" East along the East line of said Section a distance of 1325.42 feet; thence
12 West a distance of 1978.63 feet to the point of beginning; thence North 27
13 degrees 57'08" West a distance of 448.04 feet; thence North 0 degrees 01'23"
14 West a distance of 225.00 feet; thence South 70 degrees 01'23" East a distance of
15 245.00 feet; thence South 46 degrees 01'23" East a distance of 375.00 feet; thence
16 South 18 degrees 32'25" East a distance of 195.54 feet; thence South 59 degrees
17 26'55" East a distance of 302.20 feet to the Westerly right-of-way of the County
18 Road; thence Southwesterly along the right-of-way of the County Road to the
19 thread of Pack River; thence Northwesterly along the thread of Pack River to a
20 point that is South 27 degrees 57'08" East of the point of beginning; thence North
21 27 degrees 57'08" West to the point of beginning.

22 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the appurtenant
23 easement across the above described tract of land is situated in the Southeast Quarter (SE1/4)
24 of Section Eleven (11), Township Fifty-nine (59) North, Range Two (2) West of the Boise
25 Meridian, Bonner County, Idaho, being a portion of that easement previously described in
26 Instrument No. 226223, which is Thirty (30) feet in width and lying Fifteen (15) feet on each
27 side of the following described centerline:

28 Commencing at a point on the north line of said SE1/4 which is N 89°58'35" E,
192.12 feet from the northwest corner of the SE1/4; thence, leaving said north line
in a perpendicular direction S 00°01'25" E, 1206.24 feet to a point; thence,
parallel to the north line of the SE1/4, N 89°58'35" E, 735.50 feet to the
intersection of the centerline of that easement described in Instrument No. 226223
and the northwesterly line of that parcel described in Instrument No. 525386
which is the TRUE POINT OF BEGINNING; thence, leaving said northwesterly
line and along said centerline the following Two (2) courses: S 59°07'07" E,
62.68 feet; thence S 58°07'12" E, 297.92 feet to the intersection with the

1 northwesterly right of way of the Pack River Road and the terminus of this
2 easement, with the sidelines extended or shortened to intersect adjacent
3 boundaries.

4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the above described
5 appurtenant easement grants KARI A. CLARK and KARI A. CLARK's heirs, successors and
6 assigns the right to use said easement for right of way and utilities to the following described
7 ten and 423/1000s (10.423) acres of real property that were awarded to KARI A. CLARK
8 pursuant to the Revised Judgment and Decree of Partition entered in Bonner County Case No.
9 CV-2011-835:

10 A tract of land situated in the Southeast Quarter (SE1/4) of Section Eleven (11),
11 Township Fifty-nine (59) North, Range Two (2) West of the Boise Meridian,
12 Bonner County, Idaho; being a portion of that parcel described in Instrument No.
13 396781; more particularly described as follows:

14 Beginning at the northwest corner of said SE1/4, which is marked on the ground
15 by a 2" brass cap stamped PE 3318; thence, along the north line of the SE1/4, N
16 89°58'35" E, 1003.87 feet to the centerline of a creek; thence, leaving said north
17 line and along said centerline the following Three (3) courses: S 53°38'47" W,
18 103.74 feet; thence S 29°42'32" W, 93.41 feet; thence S 46°31'11" W, 41.15 feet;
19 thence, leaving said centerline S 00°00'13" E, 18.02 feet to a 5/8" rebar; thence,
20 continuing S 00°00'13" E, 116.74 feet to a 5/8" rebar, which marks on the ground
21 the northeast corner of that parcel described in Instrument No. 389489; thence,
22 along the boundary of that parcel described in Instrument No. 389489 the
23 following Two (2) courses; N 81°41'17" W, 122.60 feet to the northwest corner
24 thereof; thence S 04°14'29" E, 142.10 feet to the southwesterly corner of that
25 parcel described in Instrument No. 389489; thence S 63°18'32" W, 715.77 feet to
26 the thread of Pack River as it was found to exist April 22, 2013; thence, along the
27 thread of the river the following Five (5) courses: N 13°48'51" E, 103.04 feet,
28 thence N 03°30'35" W, 56.87 feet; thence N 08°08'32" W, 123.52 feet; thence N
21°08'12" W, 73.68 feet; thence N 41°11'16" W, 115.48 feet to the intersection
with the west line of the SE1/4 of Section 11; thence, leaving said thread of the
river and along said west line N 00°55'33" E, 85.02 feet to a 5/8" rebar and plastic
cap stamped PLS 7877; thence, continuing along said west line N 00°55'33" E,
231.08 feet to the POINT OF BEGINNING, encompassing an area of 10.423
acres.

26 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that JOHN F.
27 THORNTON wrongfully interfered with KARI A. CLARK's easement rights.

28 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that JOHN F.
THORNTON is permanently enjoined from interfering with the easement rights of KARI A.

1 CLARK and KARI A. CLARK's heirs, successors and assigns.

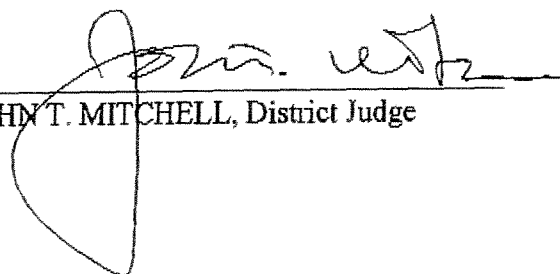
2 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that JOHN F.
3 THORNTON must, as of March 14, 2014, remove any gate blocking the easement established
4 by this Amended Judgment.

5 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that KARI A. CLARK's
6 counterclaim for damages related to the wrongful interference claim against JOHN F.
7 THORNTON is dismissed with prejudice.

8 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that KARI A. CLARK is
9 awarded reasonable attorney's fees and costs in the total sum of \$ 41,530.17 against
10 JOHN F. THORNTON.

11 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that KARI A. CLARK
12 is awarded reasonable attorney's fees and costs in the total sum of \$ 41,530.17
13 against JOHN F. THORNTON's attorney, VALERIE THORNTON, as a sanction pursuant to
14 I.R.C.P. 11(a)(1), which amount shall be joint and several as against JOHN F. THORNTON
15 and VALERIE THORNTON.

16 DATED this 30th day of June, 2014

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19 JOHN T. MITCHELL, District Judge
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CLERK'S CERTIFICATE OF SERVICE

I certify that on this the 30 day of June, 2014, I caused a true and correct copy of the *AMENDED JUDGMENT* to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Val Thornton
4685 Upper Pack River Rd.
Sandpoint, ID 83864

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile: 208-255-2327

Mary E. Pandrea
4672 Upper Pack River Rd.
Sandpoint, ID 83864

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile:

Joel P. Hazel
Jason M. Gray
Witherspoon • Kelley
The Spokesman Review Building
608 Northwest Blvd., Suite 300
Coeur d'Alene, Idaho 83814-2146

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile: 208-667-8470

CLERK OF THE DISTRICT COURT
OF BONNER COUNTY, IDAHO

By: Lacey B
Deputy Clerk

VAL THORNTON
Attorney for Plaintiff
4685 Upper Pack River Rd.
Sandpoint, ID 83864
(208) 263-5017 phone
(208) 255-2327 fax
ISB #6517

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2014 JUN 30 PM 3 23

CLERK DISTRICT COURT

Dmit
DEPUTY

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

JOHN F. THORNTON,)
)
 Appellant,)
 v.)
)
 MARY E. PANDREA, et al,)
)
 Respondents.)

Case No. CV-2013-1334

NOTICE OF APPEAL

TO: Mary Pandrea, Defendant pro se, to Kari Clark, her attorney Joel P. Hazel, and to the clerk of the above-entitled court:

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant, John Thornton, appeals to the Idaho Supreme Court from the Memorandum Decision and Order Granting Defendant Clarks Motion for Summary Judgment as to Claims of Plaintiff Thornton and Granting Defendant Clark's Motion for Paritons Summary Judgment on Clark's Counter-Claims Against Thornton, entered in the above entitled action on April 9, 2014, the Judgment filed May 1, 2014, the Memorandum Decision Denying Motion to Reconsider, entered in the above entitled action on June 2, 2014, and the order awarding attorney fees and costs, entered in the above entitled action on the 30th day of June, 2014, Honorable Judge John T. Mitchell presiding.
2. The appellant has a right to appeal to the Idaho Supreme Court, and the order described above is an appealable order pursuant to I.A.R. 11(a)(1)
3. Issue on appeal is whether the district court erred in failing to set for hearing Appellant's

Motion to Strike and For Sanctions, in granting Kari Clark's motion for summary judgment, in denying motion for reconsideration, and in awarding attorney fees and sanctions against appellant and his attorney.

4. No portion of the record has been sealed.
5. Appellant requests the following transcript to be included in the record on appeal:

Hearing on Respondent's Motion for Summary Judgment, March 14, 2014.

Hearing on Appellant's Motion For Reconsideration, May 20, 2014.

Hearing on Respondent's Motion for Attorney Fees, June 30, 2014.
6. Pursuant to Rule 28(a), I.A.R., the appellant requests the clerk's record on his appeal be more limited than the standard record.
7. Appellant requests the following documents be included in the clerk's record:
 - i. Register of actions;
 - ii. Complaint filed August 14, 2013;
 - iii. Mary Pandrea's Answer, filed 9/3/2013;
 - iv. Scheduling Order, Notice of Trial Setting and Intial Pretrial Order, filed 1/14/14;
 - v. Memorandum Decision and Order Granting in Part and Denying in Part Defendant Panreas's Motion to Dismiss (Motion for Summary Judgment), filed 1/14/14;
 - vi. Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial summary Judgment on Clark's Counterclaims, filed 1/29/14;
 - vii. Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counterclaims, filed 01/30/2014;
 - viii. Affidavit of Joel P. Hazel in support of Defendant Clark's Motion for Summary Judgment of

- Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counter Claims, filed 01/30/2014;
- ix. Affidavit of Terri Boyd-Davis in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counter Claims, filed 01/30/2014;
- x. Answer to Defendant Kari Clark's Counterclaim, filed 01/31/2014;
- xi. Plaintiff's Objection to Defendant Kari Clark's Motion for Summary Judgment, filed 02/28/2014;
- xii. Affidavit of John Thornton in opposition to Summary Judgment, filed 02/28/2014;
- xiii. Plaintiff's Memorandum of Law in Opposition to Summary Judgment, filed 02/28/2014;
- xiv. Reply Memorandum in Support of Defendant Clark's Motion For Summary Judgment Of Dismissal Of Thornton's Complaint And Motion For Partial Summary Judgment, filed 03/07/2014;
- xv. Plaintiff's Motion to Shorten Time For Hearing, Motion for Sanctions, To Dismiss or to Continue hearing on Defendant's Motion for Summary Judgment and to Vacate Trial Schedule, filed 03/11/2014;
- xvi. Affidavit of Counsel in Support of Motion for Sanctions to Shorten Time and to Continue, filed 03/11/2014;
- xvii. Withdrawal of Notice of Hearing, filed 03/13/2014;
- xviii. Defendant/Counterclaimant Clark's Objection to Plaintiff's Motion to Shorten Time for Hearing Motion for Sanctions to Dismiss or to Continue Hearing on Defendant's Motion for Summary Judgment and to Vacate Trial Schedule and the Affidavit of Counsel in Support Thereof, filed 03/13/2014;

- xix. Motion in Limine for Protective Order and for Sanctions, filed 04/08/2014;
- xx. Certification of Counsel in support of Motion in Limine, Motion for Protective Order, and for Sanctions, filed 04/08/2014;
- xxi. Memorandum Decision and Order Granting Defendant Clark's Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Summary Judgment on Clark's Counter-Claims Against Thornton, filed 04/09/2014;
- xxii. Defendant/Counterclaimant's Clark's Motion to Voluntarily Dismiss the Damage Claim of Interference with Easement, filed 04/11/2014;
- xxiii. Notice of No Objection to Defendant Clark's Motion to Dismiss Damage Claim, filed 04/15/2014;
- xxiv. Stipulation for Order of Dismiss of Defendant Clark's Damage Claim for Interference with Easement, filed 04/15/2014;
- xxv. Order of Dismissal of Defendant /Counterclaimant Clark's Damage Claim for Interference with Easement, filed 04/18/2014;
- xxvi. Judgment, filed 04/30/2014;
- xxvii. Plaintiff's Motion to Reconsider Summary Judgment, and Notice of Hearing, filed 05/06/2014;
- xxviii. Affidavit of John Thornton in Support of Motion to Reconsider, filed 05/06/2014;
- xxix. Affidavit of Val Thornton in Support of Motion to Reconsider, filed 05/06/2014;
- xxx. Affidavit of Mary Pandrea in Support of Motion to Reconsider, filed 05/06/2014;
- xxxi. Memorandum of Law in Support of Plaintiff's Motion to Reconsider, filed 05/06/2014;
- xxxii. Defendant/Counterclaimant Clark's Motion for Award of Attorney's Fees and Costs, filed 05/12/2014;

- xxxiii. Brief in Support of Defendant/Counterclaimant Clark's Motion for Award of Attorney's Fees and Costs, filed 05/12/2014;**
- xxxiv. Affidavit /Memorandum of Joel P. Hazel in Support of Motion for Award of Motion for Attorney's Fees and Costs, filed 05/12/2014;**
- xxxv. Plaintiff's Amended Notice of Hearing and Motion to Shorten Time, filed 05/13/2014;**
- xxxvi. Defendant/Counterclaimant Clark's Response to Thornton's Motion for Reconsideration and Objection to the Affidavit of Mary Pandrea and John Thornton Filed in Support Thereof, filed 05/2013;**
- xxxvii. Affidavit of Correction Affidavit of Val Thornton in Support of Motion to Reconsider Summary Judgment, filed 05/14/2014;**
- xxxviii. Plaintiff's Reply Brief in Support of Motion to Reconsider Summary Judgment, filed 05/16/2014;**
- xxxix. Affidavit of Defendant Mary Pandrea in Support of John Thornton's Motion to Reconsider, filed 05/16/2014;**
- xl. Order of Dismissal of Plaintiff's Complaint to Quiet Title and For Damages Against Defendant Mary Pandrea, filed 05/21/2014;**
- xli. Plaintiff's Objection and Motion to Disallow Defendant Kari Clark's Motion for Award of Attorney Fees and Costs, filed 05/27/2014;**
- xlii. Memorandum Decision and Order Denying Plaintiff Thornton's Motion to Reconsider Summary Judgment and Denying Defendant Pandrea's Motions, filed 06/02/2014;**
- xliii. Response to Plaintiff's Objection and Motion to Disallow Defendant Kari Clark's Motion for Award of Attorney Fees and Costs, filed 06/19/2014;**
- xliv. Plaintiff's Notice of Easement Location, filed 06/26/2014;**

xlv. Affidavit of John Marquette Re Legal Description of Easement Contained in Proposed Amended Judgment, filed 06/26/2014;

xlvi. Supplemental Affidavit of Jason M. Gray in Support of Motion for Award of Attorney Fees and Costs, filed 06/27/2014;

xlvii. Amended Judgment, filed 06/30/2014;

7. I hereby certify that:

- a) The estimated fee for preparation of transcripts has been paid;
- b) The estimated fee for preparation of the clerk's record has been paid.
- c) The appellate filing fee has been paid.
- d) Service has been made upon all parties required to be served.

DATED this 30th day of June, 2014.

Val Thornton
Val Thornton, Attorney at Law

CERTIFICATION OF MAILING

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated, on the 30 day of June, 2014, to:

JOEL P. HAZEL
WITHERSPOON KELLEY
608 Northwest Blvd., Ste. 300
Coeur d'Alene, ID 83814

mailed, postage prepaid
 faxed to (208) 667-8470
 hand-delivered

MARY PANDREA
4687 Upper Pack River Rd.
Sandpoint, ID 83864

mailed, postage prepaid
 faxed to (208) _____
 hand-delivered

HON. JOHN T. MITCHELL
P. O. Box 9000
Coeur d'Alene, ID 83816

mailed, postage prepaid
 faxed to (208) 446-1132
 hand-delivered

Val Thornton

Mary E. Pandrea
4687 Upper Pack River Road
Sandpoint, Idaho 83864
(208)263-5494

Appellant, Pro Se

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2014 JUL 14 PM 2 23

CLERK DISTRICT COURT
DMT
DEPUTY

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

MARY E. PANDREA, a single woman,)	
)	
Appellant,	)	NO. CV-2013-1334
)	
vs.)	
	)	NOTICE OF APPEAL
KARI A. CLARK, a single woman)	
and as Trustee of the Kari A. Clark Trust)	
u/a/ Dated June 21, 2010)	
)	
Respondent.)	
)	
)	

TO: THE ABOVE NAMED RESPONDENT, Kari A. Clark, AND THE PARTY'S ATTORNEY, Joel P. Hazel, 608 Northwest Blvd., Ste. 300, Coeur d'Alene, ID 83814, AND THE CLERK OF THE ABOVE-ENTITLED COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER IN THE STATE OF IDAHO.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant, Mary Pandrea, appeals against the above-named

Respondent, Kari A. Clark, to the Idaho Supreme Court from the Memorandum Decision and Order Granting Defendant Clark's Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Defendant Clark's Motion for Partial Summary Judgment on Clark's Counter-Claims Against Thornton entered April 9, 2014; Judgment entered 4-30-2014; Memorandum Decision and Order Denying Plaintiff Thornton's Motion to Reconsider Summary Judgment, and Denying Defendant Pandrea's Motions entered June 2, 2014; Amended Judgment entered June 30, 2014, the Honorable John T. Mitchell presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule (11(a)(1)).

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

- a. Did the district court err in determining that Clark had standing?
- b. Did the district court have jurisdiction?
- c. Did the district court violate Pandrea's right to due process by denying her request to be added as a real party of interest?
- d. Did the district court err in striking Pandrea's memorandum and supporting affidavits in opposition to Clark's summary judgment?
- e. Did the district court err in denying Pandrea's Motion to Amend Findings of Facts and to Alter or Amend Judgment?
- f. Did the district court err in denying Pandrea's Motion to Void Judgment?

4. The Appellant requests the following reporter's transcripts:

- a. Hearing on Respondent's Motion for Summary Judgment 3-14-2014
- b. Hearing on Appellant's Motion to Amend Findings of Facts and to Alter or Amend Judgment; Motion to Reconsider the Order Granting Clark's Motion to Strike; Denying Pandrea a Hearing; Granting Partial Summary Judgment in Favor of Clark; Motion to Void Judgment 5-22-2014

5. The Appellant requests the following documents to be included in the clerk's record *limited in designation* (under Rule 28, L.A.R.(b)(1)), instead of those automatically included:

- a. Defendant Clark's Answer, Affirmative Defenses, Counterclaim and Demand for Jury Trial 12/09/2013
- b. Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counter Claims 01/30/2014
- c. Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counter Claims 01/30/2014
- d. Affidavit of Joel P. Hazel in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counter Claims 01/30/2014
- e. Affidavit of Terri Boyd-Davis in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counter Claims 01/30/2014
- f. Pandrea's Memorandum In Support Of Plaintiff's Response To Defendant's Motion For Summary Judgment 02/27/2014
- g. Affidavit Of Mary Pandrea In Support Of Defendant Pandrea's Memorandum In Support Of Thornton's Response To Clark's Motion For Summary Judgment 02/27/2014
- h. Affidavit Of James Gillette In Support Of Defendant Pandrea's

- Memorandum In Support Of Thornton's Response To Clark's Motion For Summary Judgment 02/27/2014
- i. Affidavit Of Debbie Gadbow In Support Of Defendant Pandrea's Memorandum In Support Of Thornton's Response To Clark's Motion For Summary Judgment 02/27/2014
- j. Affidavit Of John Pandrea In Support Of Defendant Pandrea's Memorandum In Support Of Thornton's Response To Clark's Motion For Summary Judgment 02/27/2014
- k. Affidavit Of Nellie Gilbertson In Support Of Defendant Pandrea's Memorandum In Support Of Thornton's Response To Clark's Motion For Summary Judgment 02/27/2014
- l. Reply Memorandum In Support of Defendant Clark's Motion For Summary Judgment Of Dismissal Of Thornton's Complaint And Motion For Partial Summary Judgment Of Clark's Counterclaims 03/07/2014
- m. Defendant/Counterclaimant Clark's Motion To Shorten Time On Clark's Motion To Strike Pandrea's Memorandum In Support Of Plaintiff's Response To Defendant's Motion For Summary Judgment And The Affidavits Filed In Support Thereof 03/07/2014
- n. Defendant/Counterclaimant Clark's Motion To Strike Pandrea's Memorandum In Support Of Plaintiff's Response To Defendant's Motion For Summary Judgment And The Affidavits Filed In Support Thereof 03/07/2014
- o. Pandrea's Response to Clark's Motion to Strike Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion For Summary Judgment and the Affidavits Filed in Support Thereof 03/13/2014
- p. Memorandum Decision and Order Granting Defendant Clark's Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Defendant Clark's Motion for Partial Summary Judgment on Clark's Counter-Claims Against Thornton 04/09/2014

- q. Defendant Pandrea's Motion to Amend Findings of Facts and to Alter or Amend Judgment; Motion to Reconsider the Order Granting Clark's Motion to Strike; Denying Pandrea a Hearing; and Granting Partial Summary Judgment in Favor of Clark 04/23/2014
- r. Memorandum in Support of Pandrea's Motion to Amend Findings of Facts and to Alter or Amend Judgment; Motion to Reconsider to Order Granting Clark's Motion to Strike; Denying Pandrea a Hearing; and Granting Partial Summary Judgment in Favor of Clark 04/23/2014
- s. Affidavit of Mary E. Pandrea 04/23/2014
- t. Supplemental (page 12) to the Memorandum in Support of Pandrea's Motion to Amend Findings of Facts and to Alter or Amend Judgment; Motion to Reconsider the Order Granting Clark's Motion to Strike; Denying Pandrea A Hearing; and Granting Partial Summary Judgment in Favor of Clark 04/24/2014
- u. Judgment 04/30/2014
- v. Affidavit of John Thornton in Support of Motion to Reconsider 05/06/2014
- w. Memorandum of Law in Support of Plaintiff's Motion to Reconsider Summary Judgment 05/06/2014
- x. Affidavit of Defendant Mary Pandrea in Support of John Thornton's Motion to Reconsider 05/06/2014
- y. Affidavit of Val Thornton In Support of Plaintiff's Motion to Reconsider Summary Judgment 05/06/2014
- z. Plaintiff's Motion to Reconsider Summary Judgment 05/06/2014
- aa. Pandrea's Motion to Void Judgment 05/08/2014
- bb. Affidavit of Mary E. Pandrea in Support of Her Motion to Void the Clark Judgment 05/08/2014

cc.	Pandrea's Memorandum in Support of Motion to Void Judgment	05/08/2014
dd.	Defendant/Counterclaimant Clark's Objection to Pandrea's Motion to Amend and Motion to Reconsider	05/12/2014
ee.	Defendant/Counterclaimant Clark's Objection to Pandrea's Motion to Void Judgment	05/13/2014
ff.	Defendant/Counterclaimant Clark's Response to Thornton's Motion for Reconsideration and Objection to the Affidavit of Mary Pandrea and John Thornton Filed in Support Thereof	05/13/2014
gg.	Affidavit of Correction to Affidavit of Val Thornton In Support of Plaintiff's Motion to Reconsider Summary Judgment	05/14/2014
hh.	Plaintiff's Reply Brief in Support of His Motion To Reconsider Summary Judgment	05/16/2014
ii.	Affidavit of Defendant Mary Pandrea in Support of John Thornton's Motion to Reconsider	05/16/2014
jj.	Pandrea's Reply Memorandum in Support of Motion to Void Judgment	05/20/2014
kk.	Pandrea's REPLY to Clark's Objection to Pandrea's Motion to Amend Findings of Facts and to Alter or Amend Judgment; Motion to Reconsider the Order Granting Clark's Motion to Strike; Denying Pandrea a Hearing; and Granting Partial Summary Judgment in Favor of Clark	05/20/2014
ll.	Memorandum Decision and Order Denying Plaintiff Thornton's Motion to Reconsider Summary Judgment, and Denying Defendant Pandrea's Motions	06-02-2014
mm.	Amended Judgment	06/30/2014

7. I certify:

(a) that a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Julie Foland
CDA Reporting Court Reporters
Bank of America Building
401 Front Avenue, Suite 215
Coeur d'Alene, ID 83814 ID Ph.208-765-3666 WA Ph.509-703-6600
Fax.208-676-8903 888-894-CDAR (2327)
E-mail: office@cdareporting.com - Web: www.cdareporting.com

Charlotte Crouch
CDA Reporting Court Reporters
Bank of America Building
401 Front Avenue, Suite 215
Coeur d'Alene, ID 83814 ID Ph.208-765-3666 WA Ph.509-703-6600
Fax.208-676-8903 888-894-CDAR (2327)
E-mail: office@cdareporting.com - Web: www.cdareporting.com


(b) (1) That the clerk of the district court or administrative agency will be paid the estimated fee for preparation of the reporter's transcript when due upon receipt.

(c) (1) That the estimated fee for preparation of the clerk's or agency's record will be paid when due upon receipt.

(d) (1) That the appellate filing fee will be paid when due by July 14, 2014.

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

DATED THIS 8th day of July, 2014.


/s/ Signature
Mary E. Pandrea, Pro Se
Attorney for the Appellant

(When certification is made by a party instead of the party's attorney the following affidavit

must be executed pursuant to I.A.R. Rule 17(i)

State of Idaho)
) ss.
County of Bonner)

Mary E. Pandrea, being sworn, deposes and says:

That the party is the appellant in the above-entitled appeal, and that all statements in this notice of appeal are true and correct to the best of his or her knowledge and belief.

Mary E. Pandrea
Signature of Appellant

Subscribed and Sworn to before me this 8 day of JULY, 2014.

(SEAL)

Gott E. Butler EXP 1-30-2020
Title PUBLIC NOTARY
Residence SANDPOINT ID

CERTIFICATE OF SERVICE

I hereby certify that on the ²14 day of July, 2014, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Joel P. Hazel
Witherspoon Kelley
608 Northwest Blvd., Ste. 300
Coeur d'Alene, ID 83814

US Mail
 Overnight Mail
 Hand Delivered
 Facsimile

Courtesy Copy to:
The Honorable
Judge John T. Mitchell
Kootenai County Courthouse
PO Box 9000
Coeur d' Alene, ID 83816-9000

US Mail
 Overnight Mail
 Hand Delivered
 Facsimile

Valerie Thornton
4685 Upper Pack River Road
Sandpoint, ID 83864

US Mail
 Overnight Mail
 Hand Delivered
 Facsimile

Clerk of the Court
Ann Dutsen-Slater
215 South First Avenue
Sandpoint, Idaho 83864

US Mail
 Overnight Mail
 Hand Delivered
 Facsimile

Mary Pandrea
Mary Pandrea
Appellant, *Pro Se*
4687 Upper Pack River Road
Sandpoint, Idaho 83864
(208)263-5494

In the Supreme Court of the State of Idaho

JOHN F. THORNTON,)

Plaintiff-Counterdefendant-Appellant,)

v.)

MARY E. PANDREA, a single woman)
 individually and as Trustee of the Kari A.)
 Clark and Mary E. Pandrea Revocable Trust)
 u/a April 9, 2002,)

Defendant-Respondent,)

and)

KARI A. CLARK, a single woman)
 individually and as Trustee of the Kari A.)
 Clark and Mary E. Pandrea Revocable Trust)
 u/a April 9, 2002, and as Trustee of the Kari A.)
 Clark Trust u/a June 21, 2010.)

Defendant-Counterclaimant-)
 Respondent.)

NOTICE OF DEFECT

Supreme Court Docket No. 42332-2014
 Bonner County No. 2013-1334

CV

STATE OF IDAHO
 County of Bonner
 FILED July 23, 2014
 AT 4:11 O'Clock P M
 CLERK, DISTRICT COURT

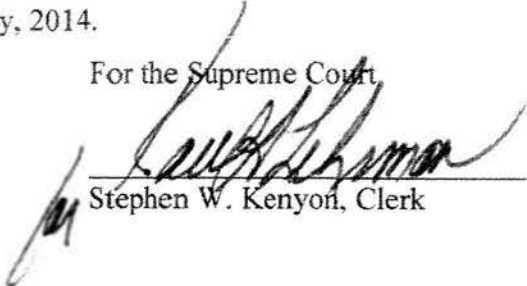
SMH

The Notice of Appeal filed June 30, 2014, in District Court and July 21, 2014, with this Court is not in compliance with Idaho Appellate Rule 17 in that neither the Notice of Appeal nor the Certificate of Service shows service on the reporter of whom a transcript is requested; therefore,

This appeal is SUSPENDED in order for Appellant to file an AMENDED NOTICE OF APPEAL in compliance with Idaho Appellate Rule 17. The Amended Notice of Appeal shall be filed in the District Court within fourteen (14) days from the date of this Order.

DATED this 23rd day of July, 2014.

For the Supreme Court



Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
District Court Reporter

ORIGINAL

RECEIVED
IDAHO SUPREME COURT
COURT OF APPEALS

2014 JUL 23 AM 9:56

IN THE SUPREME COURT OF THE STATE OF IDAHO

JOHN F. THORNTON,
Plaintiff/Counterdefendant/Appellant,

vs.

MARY E. PANDREA, a single woman
individually and as Trustee of the Kari A.
Clark and Mary E. Pandrea Revocable
Trust, u/a April 9, 2002; and

Defendant/Respondent,

KARI A. CLARK, a single woman
individually and as Trustee of the Kari A.
Clark and Mary E. Pandrea Revocable
Trust, u/a April 9, 2002 and as Trustee of
the Kari A. Clark Trust u/a June 21,
2010,

Defendant/Counterclaimant/Respondent.

) Supreme Court Docket No. 42332-2014
) Bonner County No. CV2013-1334

) **NOTICE OF SUBSTITUTION OF**
) **KENNETH J. BARRETT AND**
) **DEANNA L. BARRETT IN THE**
) **STEAD OF RESPONDENT KARI A.**
) **CLARK**

STATE OF IDAHO
County of Bonner
FILED July 28, 2014
AT 10:09 o'clock A M
CLERK, DISTRICT COURT
Dmtl
Deputy

TO: THE ABOVE-NAMED PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that Respondent KARI A. CLARK ("Clark") has transferred title to her real property that is the subject of the instant appeal and the underlying District Court action to Kenneth J. Barrett and Deanna L. Barrett ("Barretts"), husband and wife. Clark has additionally assigned to the Barretts all her legal and equitable right, title and interest to pursue and/or defend claims in the instant appeal and in the underlying District Court action. Attached hereto as **Exhibit "A"** is a copy of the Assignment of Easement Action signed by Kari A. Clark before a Notary Public on May 28, 2014.

FILED - ORIGINAL
JUL 28 2014
Entered on ATS by

NOTICE OF SUBSTITUTION OF KENNETH J. BARRETT AND DEANNA L. BARRETT IN THE STEAD OF RESPONDENT KARI A. CLARK - 1 601

Pursuant to such transfer of title and assignment of rights and interest, Kenneth J. Barrett and Deanna L. Barrett respectfully give notice of their substitution in the stead of Kari A. Clark in the instant appeal.

Respectfully submitted,

DATED this 24 day of July 2014.



MICHAEL G. SCHMIDT, #6911
LUKINS & ANNIS, P.S.

601 E. Front Avenue, Suite 502

Coeur d'Alene, ID 83814-5155

Telephone: (208) 667-0517

Facsimile: (208) 664-4125

*Attorney for proposed substituted parties
Kenneth J. and Deanna L. Barrett*

I, Joel P. Hazel, attorney for Respondent KARI A. CLARK, acknowledge, consent, and stipulate to the substitution of Kenneth J. Barrett and Deanna L. Barrett in the stead of Respondent Kari A. Clark.

DATED this 23 day of July 2014.



JOEL P. HAZEL, #4980

WITHERSPOON KELLEY

The Spokesman-Review Building

608 Northwest Blvd., Ste. 300

Coeur d'Alene, ID 83814-2146

Telephone: (208) 667-4000

Facsimile: (208) 667-8470

Attorney for Respondent Kari A. Clark

**NOTICE OF SUBSTITUTION OF KENNETH J. BARRETT AND DEANNA L. BARRETT IN
THE STEAD OF RESPONDENT KARI A. CLARK - 2**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24 day of July 2014, I caused to be served a true and correct copy of the foregoing in the manner indicated:

Val Thornton 4685 Upper Pack River Road Sandpoint, ID 83864 <i>Attorney for Appellant John F. Thornton</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile:
Mary E. Pandrea 4687 Upper Pack River Road Sandpoint, ID 83864	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile:
Joel P. Hazel Witherspoon Kelley The Spokesman-Review Building 608 Northwest Blvd., Ste. 300 Coeur d'Alene, ID 83814-2146 <i>Attorney for Respondent Kari A. Clark</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile: 208-667-8470



 Michael G. Schmidt

ASSIGNMENT OF EASEMENT ACTION

For good and valuable consideration, the receipt of which is hereby acknowledged, KARI A. CLARK, INDIVIDUALLY AND AS TRUSTEE OF THE KARI A. CLARK REVOCABLE TRUST, U/A JUNE 21, 2010, (hereinafter "Assignor"), does assign all legal and equitable right, title and interest, to pursue and/or defend claims in the litigation in which she is a party entitled *John F. Thornton v. Mary E. Pandrea and Kari A. Clark*, Bonner County District Court Case No. CV-2013-1334 ("Easement Action"), and any other possible claims made by or against JOHN F. THORNTON and/or MARY E. PANDREA to KENNETH J. AND DEANNA L. BARRETT, husband and wife (hereinafter "Assignees").

Said Assignment is subject to all legal and equitable defenses that John F. Thornton and/or Mary Pandrea may later assert and/or any additional claims they may make. Assignor makes no warranties of any kind to the underlying claims, counterclaims, defenses, or any other rights or liabilities between the parties to the dispute and/or action. This assignment shall not act as a release of any rights, obligations, or potential causes of action as between Assignor and Assignees.

Assignor agrees to cooperate fully with Assignees in their pursuit and/or defense of claims related to the Easement Action.

Assignor agrees that Assignees shall be entitled to retain any award for attorney fees or costs incurred as a result of Assignor's defense of claims and pursuit of her counterclaims in this action while it was in the jurisdiction of the District Court.

In the event an appeal is pursued in this matter which Assignees pursue or defend, Assignees shall be entitled to pursue and retain any attorney fee or cost award in such appeal.

Dated: May 28, 2014

KARI A. CLARK, INDIVIDUALLY AND AS TRUSTEE OF THE KARI A. CLARK REVOCABLE TRUST, U/A JUNE 21, 2010

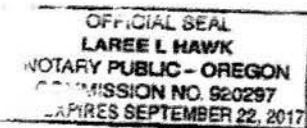
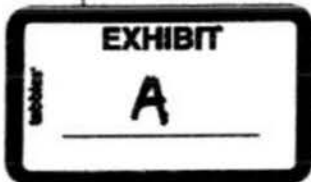
STATE OF OREGON)
) ss.
COUNTY OF Douglas)

Kari A. Clark, Trustee

The foregoing instrument was acknowledged before me this 28 day of May, 2014, by KARI A. CLARK, individually and as Trustee of the KARI A CLARK REVOCABLE TRUST, U/A JUNE 21, 2010.



Laree L Hawk
Notary Public - State of Oregon
Commission expires: September 22, 2017



STATE OF IDAHO
 County of Bonner
 FILED Aug 4 2014
 AT 2:41 o'clock 1 M
 CLERK, DISTRICT COURT
[Signature]
 Deputy

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF IDAHO

JOHN F. THORNTON,	)	Supreme Court Docket No. 42332-2014
	)	Bonner County No. CV2013-1334
Plaintiff/Counterdefendant/Appellant,)	
)	
vs.	)	MOTION TO TEMPORARILY
	)	REMAND CASE TO THE DISTRICT
MARY E. PANDREA, a single woman	)	COURT TO RULE ON
individually and as Trustee of the Kari A.	)	RESPONDENT KARI A. CLARK'S
Clark and Mary E. Pandrea Revocable	)	MOTION TO SUBSTITUTE PARTIES
Trust, u/a April 9, 2002; and)	
)	
Defendant/Respondent,)	
)	
KARI A. CLARK, a single woman)	
individually and as Trustee of the Kari A.)	
Clark and Mary E. Pandrea Revocable)	
Trust, u/a April 9, 2002 and as Trustee of)	
the Kari A. Clark Trust u/a June 21,)	
2010,)	
)	
<u>Defendant/Counterclaimant/Respondent.</u>)	

Respondent Kari A. Clark ("Clark"), by and through her undersigned counsel, brings this Motion under I.A.R. 13.3 requesting this Court temporarily remand this matter to the District Court for the sole purpose of allowing the District Court to rule on Clark's motion to substitute parties.

I. FACTS

1. On August 14, 2013, Appellant John F. Thornton ("Thornton") filed the underlying District Court action in Bonner County (Case No. CV2013-1334) naming Clark and Mary E. Pandrea ("Pandrea") as defendants ("Thornton lawsuit").

FILED - ORIGINAL
 AUG - 4 2014
 Supreme Court
 Clerk of Appellate
 Filing on ATS

MOTION TO TEMPORARILY REMAND CASE TO THE DISTRICT COURT TO RULE ON
 RESPONDENT KARI A. CLARK'S MOTION TO SUBSTITUTE PARTIES - 1

2. Thornton owns real property adjoining property that was jointly owned by Pandrea and Clark at the initiation of Thornton's lawsuit. The Thornton lawsuit concerns the rights of the parties in respect to their adjoining real properties. Thornton's complaint included quiet title and easement claims to the subject properties.

3. On January 24, 2014, judgment was entered in another lawsuit for partition of real property in which both Pandrea and Clark were parties ("Partition lawsuit"). As a result of that judgment, Pandrea's and Clark's previously jointly-owned property was partitioned in kind.

4. Judgment was entered in the Thornton lawsuit on April 30, 2014. An Amended Judgment was entered on June 30, 2014. That same day, Thornton filed a Notice of Appeal.

5. Clark entered into a Purchase and Sale Agreement ("PSA") in which she agreed to sell to Kenneth J. and Deanna L. Barrett ("Barretts") the real property that she had received in the Partition lawsuit. As a part of the PSA, Clark assigned her rights and interests in the Thornton lawsuit to the Barretts, pursuant to an agreement entitled Assignment of Easement Action dated May 28, 2014. See **Exhibit "A."**

6. On June 20, 2014, Clark and the Barretts finalized the sale of Clark's real property. See **Exhibit "B"** – Quitclaim Deed.

II. AUTHORITY

Idaho Appellate Rule 13.3(a) provides that "[a]t any time before the issuance of an opinion, the Supreme Court may . . . on motion of any party showing good cause,

order a case to be remanded to the district court . . . to take further action as designated in the order of remand.”

Clark no longer owns the real property that is the subject of the appeal and the underlying District Court action. Clark assigned her rights, including the rights to pursue and defend claims in the Thornton lawsuit on May 28, 2014 to the Barretts. On June 20, 2014, the sale of Clark’s real property to the Barretts was finalized. On June 30, 2014, the final Amended Judgment was entered in the Thornton lawsuit. Thornton also filed his Notice of Appeal on June 30, 2014.

Pursuant to IAR 13.3(b) “[d]uring a remand to the district court . . . the appeal shall remain pending in the Supreme Court, but the district court . . . shall have jurisdiction to take all actions necessary to fulfill the requirements of the order of remand.”

Allowing the district court to consider and rule upon Clark’s motion to substitute parties has no impact on the action pending in the Supreme Court. The Thornton lawsuit is solely concerned with the real property rights between the parties. Clark no longer has any interest in the real property that is the subject of that lawsuit, and she has assigned her rights to the Barretts. As such, the Barretts are the Real Party in Interest under I.R.C.P. 17(a), and it is reasonable to remand this case to the district court to allow it to rule on Clark’s motion to substitute parties.


III. CONCLUSION

On motion of a party showing good cause, the Supreme Court may remand a case to the district court to take action designated in an order of remand. Clark has shown

good cause in that she no longer owns the real property that is the subject of this action, and she has assigned all her rights and interest in the action to the Barretts. Thus, it is reasonable that this Court remand this case to the district court for the specific purpose of considering and ruling upon Clark's motion for substitution of parties.

Respectfully submitted,

DATED this 31 day of July 2014.



JOEL P. HAZEL, #4980
Witherspoon Kelley
The Spokesman-Review Building
608 Northwest Blvd., Ste. 300
Coeur d'Alene, ID 83814-2146
Telephone: (208) 667-4000
Facsimile: (208) 667-8470
Email: jph@witherspoonkelley.com
Attorney for Respondent Kari A. Clark

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of July 2014, I caused to be served a true and correct copy of the foregoing in the manner indicated:

Val Thornton 4685 Upper Pack River Road Sandpoint, ID 83864 <i>Attorney for Appellant John F. Thornton</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile: <u>208-255-2327</u>
Mary E. Pandrea 4687 Upper Pack River Road Sandpoint, ID 83864	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:
MICHAEL G. SCHMIDT LUKINS & ANNIS, P.S. 601 E. Front Avenue, Suite 502 Coeur d'Alene, ID 83814-5155 <i>Attorney for proposed substituted parties Kenneth J. and Deanna L. Barrett</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile: 208-664-4125

Annette Moorman

ASSIGNMENT OF EASEMENT ACTION

For good and valuable consideration, the receipt of which is hereby acknowledged, KARI A. CLARK, INDIVIDUALLY AND AS TRUSTEE OF THE KARI A. CLARK REVOCABLE TRUST, U/A JUNE 21, 2010, (hereinafter "Assignor"), does assign all legal and equitable right, title and interest, to pursue and/or defend claims in the litigation in which she is a party entitled *John F. Thornton v. Mary E. Pandrea and Kari A. Clark*, Bonner County District Court Case No. CV-2013-1334 ("Easement Action"), and any other possible claims made by or against JOHN F. THORNTON and/or MARY E. PANDREA to KENNETH J. AND DEANNA L. BARRETT, husband and wife (hereinafter "Assignees").

Said Assignment is subject to all legal and equitable defenses that John F. Thornton and/or Mary Pandrea may later assert and/or any additional claims they may make. Assignor makes no warranties of any kind to the underlying claims, counterclaims, defenses, or any other rights or liabilities between the parties to the dispute and/or action. This assignment shall not act as a release of any rights, obligations, or potential causes of action as between Assignor and Assignees.

Assignor agrees to cooperate fully with Assignees in their pursuit and/or defense of claims related to the Easement Action.

Assignor agrees that Assignees shall be entitled to retain any award for attorney fees or costs incurred as a result of Assignor's defense of claims and pursuit of her counterclaims in this action while it was in the jurisdiction of the District Court.

In the event an appeal is pursued in this matter which Assignees pursue or defend, Assignees shall be entitled to pursue and retain any attorney fee or cost award in such appeal.

Dated: May 28, 2014

KARI A. CLARK, INDIVIDUALLY AND AS TRUSTEE OF THE KARI A. CLARK REVOCABLE TRUST, U/A JUNE 21, 2010

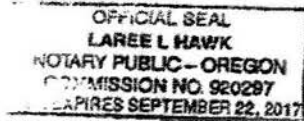
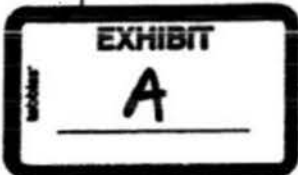
STATE OF OREGON)
)ss.
COUNTY OF Douglas)

Kari A. Clark, Trustee

The foregoing instrument was acknowledged before me this 28 day of May, 2014, by KARI A. CLARK, individually and as Trustee of the KARI A CLARK REVOCABLE TRUST, U/A JUNE 21, 2010.



Laree L Hawk
Notary Public - State of Oregon
Commission expires: September 22, 2017



Filed for Record at Request of:

Lukins & Annis, P.S.
601 E. Front St., Ste. 502
Coeur d'Alene, ID 83814-5155

Instrument # 860871
BONNER COUNTY, SANDPOINT, IDAHO
5-23-2014 03:39:27 No. of Pages: 3
Recorded for : LUKINS & ANNIS
R. ANN DUTSON-SATER Fee: 16.00
Ex-Officio Recorder Deputy *CB*
Index to: QUIT CLAIM DEED

QUITCLAIM DEED

KARI A. CLARK, individually and as Trustee of the Kari A. Clark Revocable Trust, u/a June 21, 2010 ("Grantor"), does hereby convey, release, remise, and forever quitclaim unto KENNETH J. BARRETT, JR. and DEANNA L. BARRETT, husband and wife, of 611 Watkins St., Birmingham, Michigan, 48009, the following described real property located in Bonner County, Idaho, together with all appurtenances, which property is more particularly described on attached Exhibit A, including any after-acquired title.

DATED this 20th day of June, 2014.

Kari A. Clark, Trustee
KARI A. CLARK, individually and as Trustee of the Kari A. Clark Revocable Trust, u/a June 21, 2010

STATE OF OREGON)
) ss.
COUNTY OF Douglas)

On this 20th day of June, in the year of 2014, before me, a Notary Public, personally appeared KARI A. CLARK, known or identified to me, to be the person whose name is subscribed to the within instrument in her personal capacity and in her capacity as Trustee of the KARI A CLARK REVOCABLE TRUST, U/A JUNE 21, 2010, and she acknowledged to me that she executed the same in her personal capacity and as such Trustee.



Larie L. Hawk
Notary Public - State of Oregon
Residing at: Douglas County
Commission expires: September 22, 2017

QUITCLAIM DEED
00875490.DOC

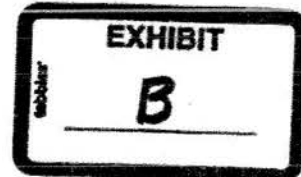


EXHIBIT A - page 1

A tract of land situated in the Southeast Quarter of Section 11, Township 59 North, Range 2 West of the Boise Meridian, Bonner County, Idaho; being a portion of that parcel described in Instrument No. 396781; more particularly described as follows:

Beginning at the Northwest corner of said Southeast Quarter, which is marked on the ground by a 2" brass cap stamped PE 3318;

Thence along the North line of the Southeast Quarter, North 89°58'35" East, 1003.87 feet to the centerline of a creek;

Thence leaving said North line and along said centerline the following three courses:

South 53°38'47" West, 103.74 feet;

Thence South 29°42'32" West, 93.41 feet;

Thence South 46°31'11" West, 41.15 feet;

Thence leaving said centerline South 00°00'13" East, 18.02 feet to a 5/8" rebar;

Thence continuing South 00°00'13" East, 116.74 feet to a 5/8" rebar, which marks on the ground the Northwest corner of that parcel described in Instrument No. 389489;

Thence along the boundary of that parcel described in Instrument No. 389489 the following 2 courses:

North 81°41'17" West, 122.60 feet to the Northwest corner thereof;

Thence South 04°14'29" East, 142.10 feet to the Southwesterly corner of that parcel described in Instrument No. 389489;

Thence South 63°18'22" West 715.77 feet to the thread of Peck River as it was found to exist April 22, 2013;

Thence along the thread of the river the following 5 courses: North 13°48'41" East 183.04 feet;

Thence North 03°30'35" West, 56.67 feet;

Thence North 08°08'32" West, 123.52 feet;

Thence North 21°08'12" West, 73.68 feet;

Thence North 41°11'16" West, 115.48 feet to the intersection with the West Line of the Southeast Quarter of Section 11;

Thence leaving said thread of the river and along said West line North 09°35'33" East, 85.02 feet to a 5/8" rebar and plastic cap stamped T.L.S. 7877;

Thence continuing along said West line North 09°35'33" East, 231.08 feet to the POINT OF BEGINNING.

Together with an easement for ingress and egress through and over the parcel awarded to Pauline Mary E. Paulson by Judgment recorded February 26, 2014 as Instrument No. 856497 records of Bonner County, Idaho, as the servient parcel which easement is described as follows:

As easement for ingress and egress in the Southeast Quarter of Section 11, Township 59 North, Range 2 West of the Boise Meridian, Bonner County, Idaho, being the width of the existing road, ten feet wide in most areas, and 18 feet wide at Taram Creek, the centerline of which being more particularly described as follows:

Commencing at a point on the North line of said Southeast Quarter which is North 89°58'35" East, 192.12 feet from the Northwest corner of the Southeast Quarter;

Thence leaving said North line in a perpendicular direction South 00°01'25" East, 1206.24 feet;

Thence parallel to the North line of the Southeast Quarter, North 89°58'35" East, 735.50 feet to the POINT OF BEGINNING;

EXHIBIT A – page 2

Thence along the centerline of the existing road the following 18 courses: North 53°36'45" West, 14.68 feet;
Thence North 51°45'14" West, 127.78 feet;
Thence North 11°36'34" West, 60.72 feet;
Thence North 27°17'41" West, 46.23 feet;
Thence North 41°06'08" West, 65.01 feet;
Thence North 37°00'58" West, 123.36 feet;
Thence North 48°25'01" West, 39.22 feet;
Thence North 68°04'12" West, 33.29 feet;
Thence South 88°47'17" West, 50.82 feet;
Thence South 72°13'13" West, 61.82 feet;
Thence South 89°01'10" West, 39.41 feet;
Thence North 80°35'06" West, 91.70 feet;
Thence South 45°20'45" West, 62.42 feet;
Thence South 75°06'38" West, 20.35 feet;
Thence North 67°44'51" West, 41.28 feet;
Thence North 45°19'28" West, 56.10 feet;
Thence North 21°58'55" West, 65.10 feet;
Thence North 05°39'16" West, 69.95 feet to the terminus of this easement.

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.
2014 AUG 4 PM 1 38
CLERK DISTRICT COURT
DEPUTY

JOEL P. HAZEL, ISB #4980
WITHERSPOON KELLEY
The Spokesman-Review Building
608 Northwest Blvd., Suite 300
Coeur d'Alene, Idaho 83814-2146
Telephone: (208) 667-4000
Facsimile: (208) 667-8470
Email: jph@wITHERSPOONKELLEY.COM

Attorneys for Defendant/Counterclaimant/Respondent Kari A. Clark and proposed substituted party Kenneth J. Barrett and Deanna L. Barrett

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

JOHN F. THORNTON,	)	Supreme Court Docket No. 42332-2014
	)	Bonner County No. CV2013-1334
Plaintiff/Counterdefendant/Appellant,)	
)	
vs.	)	ORDER SUBSTITUTING KENNETH
	)	J. BARRETT AND DEANNA L.
MARY E. PANDREA, a single woman	)	BARRETT IN THE STEAD OF
individually and as Trustee of the Kari A.	)	DEFENDANT/COUNTERCLAIMANT
Clark and Mary E. Pandrea Revocable	)	KARI A. CLARK
Trust, u/a April 9, 2002; and)	
)	
Defendant/Respondent,)	
)	
KARI A. CLARK, a single woman)	
individually and as Trustee of the Kari A.)	
Clark and Mary E. Pandrea Revocable)	
Trust, u/a April 9, 2002 and as Trustee of)	
the Kari A. Clark Trust u/a June 21,)	
2010,)	
)	
<u>Defendant/Counterclaimant/Respondent.</u>)	

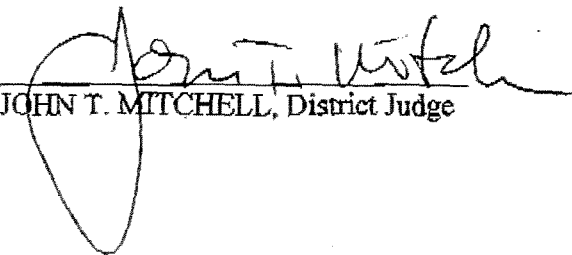
This Court, having reviewed the Motion/Notification of Substitution of Party, the Affidavit of Joel P. Hazel submitted in support thereof, as well as Plaintiff's Objection and

Motion to Strike and Disallow Substitution of Party for Defendant Kari Clark, and the Court finding good cause, NOW THEREFORE,

IT IS HEREBY ORDERED THAT:

KENNETH J. BARRETT and DEANNA L. BARRETT, husband and wife, as assignees of KARI A. CLARK's interests to pursue and/or defend claims and to collect on the Amended Judgment in this action, are hereby substituted for all purposes in the stead of Defendant/Counterclaimant KARI A. CLARK.

DATED this 4th day of August, 2014.


JOHN T. MITCHELL, District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of August, 2014, I caused to be served a true and correct copy of the foregoing in the manner indicated:

Val Thornton 4685 Upper Pack River Road Sandpoint, ID 83864 <i>Attorney for Appellant John F. Thornton</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile: 208-255-2327
Mary E. Pandrea 4687 Upper Pack River Road Sandpoint, ID 83864	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:
Joel P. Hazel Witherspoon Kelley The Spokesman-Review Building 608 Northwest Blvd., Ste. 300 Coeur d'Alene, ID 83814-2146 <i>Attorney for Respondent Kari A. Clark and substituting party Kenneth J. and Deanna L. Barrett</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile: 208-667-8470

R. Alan Watson
CLERK OF THE DISTRICT COURT OF
BONNER COUNTY, IDAHO

By: *[Signature]*
Deputy Clerk

VAL THORNTON
 Attorney for Plaintiff
 4685 Upper Pack River Rd.
 Sandpoint, ID 83864
 (208) 263-5017 phone
 (208) 255-2327 fax
 ISB #6517

STATE OF IDAHO
 COUNTY OF BONNER
 DISTRICT COURT

2014 JUN -6 P 12:08

DMH

CLERK DISTRICT COURT

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

JOHN F. THORNTON,)
)
Appellant,)
 v.)
MARY E. PANDREA, et al,)
Respondents.)

Case No. CV-2013-1334

AMENDED
 NOTICE OF APPEAL

TO: Mary Pandrea, Defendant pro se, to Kari Clark, her attorney Joel P. Hazel, and to the clerk of the above-entitled court:

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant, John Thornton, appeals to the Idaho Supreme Court from the Memorandum Decision and Order Granting Defendant Clarks Motion for Summary Judgment as to Claims of Plaintiff Thornton and Granting Defendant Clark's Motion for Paritons Summary Judgment on Clark's Counter-Claims Against Thornton, entered in the above entitled action on April 9, 2014, the Judgment filed May 1, 2014, the Memorandum Decision Denying Motion to Reconsider, entered in the above entitled action on June 2, 2014, and the order awarding attorney fees and costs, entered in the above entitled action on the 30th day of June, 2014, Honorable Judge John T. Mitchell presiding.
2. The appellant has a right to appeal to the Idaho Supreme Court, and the order described above is an appealable order pursuant to I.A.R. 11(a)(1)
3. Issue on appeal is whether the district court erred in failing to set for hearing Appellant's Motion to Strike and For Sanctions, in granting Kari Clark's motion for summary judgment, in

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denying motion for reconsideration, and in awarding attorney fees and sanctions against appellant and his attorney.

4. No portion of the record has been sealed.
5. Appellant requests the following transcript to be included in the record on appeal:
 - Hearing on Respondent's Motion for Summary Judgment, March 14, 2014.
 - Hearing on Appellant's Motion For Reconsideration, May 20, 2014.
 - Hearing on Respondent's Motion for Attorney Fees, June 30, 2014.
6. Pursuant to Rule 28(a), I.A.R., the appellant requests the clerk's record on his appeal be more limited than the standard record.
7. Appellant requests the following documents be included in the clerk's record:
 - i. Register of actions;
 - ii. Complaint filed August 14, 2013;
 - iii. Mary Pandrea's Answer, filed 9/3/2013;
 - iv. Scheduling Order, Notice of Trial Setting and Intial Pretrial Order, filed 1/14/14;
 - v. Memorandum Decision and Order Granting in Part and Denying in Part Defendant Panreas's Motion to Dismiss (Motion for Summary Judgment), filed 1/14/14;
 - vi. Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial summary Judgment on Clark's Counterclaims, filed 1/29/14;
 - vii. Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counterclaims, filed 01/30/2014;
 - viii. Affidavit of Joel P. Hazel in support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's

Counter Claims, filed 01/30/2014;

ix. Affidavit of Terri Boyd-Davis in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counter Claims, filed 01/30/2014;

x. Answer to Defendant Kari Clark's Counterclaim, filed 01/31/2014;

xi. Plaintiff's Objection to Defendant Kari Clark's Motion for Summary Judgment, filed 02/28/2014;

xii. Affidavit of John Thornton in opposition to Summary Judgment, filed 02/28/2014;

xiii. Plaintiff's Memorandum of Law in Opposition to Summary Judgment, filed 02/28/2014;

xiv. Reply Memorandum in Support of Defendant Clark's Motion For Summary Judgment Of Dismissal Of Thornton's Complaint And Motion For Partial Summary Judgment, filed 03/07/2014;

xv. Plaintiff's Motion to Shorten Time For Hearing, Motion for Sanctions, To Dismiss or to Continue hearing on Defendant's Motion for Summary Judgment and to Vacate Trial Schedule, filed 03/11/2014;

xvi. Affidavit of Counsel in Support of Motion for Sanctions to Shorten Time and to Continue, filed 03/11/2014;

xvii. Withdrawal of Notice of Hearing, filed 03/13/2014;

xviii. Defendant/Counterclaimant Clark's Objection to Plaintiff's Motion to Shorten Time for Hearing Motion for Sanctions to Dismiss or to Continue Hearing on Defendant's Motion for Summary Judgment and to Vacate Trial Schedule and the Affidavit of Counsel in Support Thereof, filed 03/13/2014;

xix. Motion in Limine for Protective Order and for Sanctions, filed 04/08/2014;

- xx. Certification of Counsel in support of Motion in Limine, Motion for Protective Order, and for Sanctions, filed 04/08/2014;
- xxi. Memorandum Decision and Order Granting Defendant Clark's Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Summary Judgment on Clark's Counter-Claims Against Thornton, filed 04/09/2014;
- xxii. Defendant/Counterclaimant's Clark's Motion to Voluntarily Dismiss the Damage Claim of Interference with Easement, filed 04/11/2014;
- xxiii. Notice of No Objection to Defendant Clark's Motion to Dismiss Damage Claim, filed 04/15/2014;
- xxiv. Stipulation for Order of Dismiss of Defendant Clark's Damage Claim for Interference with Easement, filed 04/15/2014;
- xxv. Order of Dismissal of Defendant /Counterclaimant Clark's Damage Claim for Interference with Easement, filed 04/18/2014;
- xxvi. Judgment, filed 04/30/2014;
- xxvii. Plaintiff's Motion to Reconsider Summary Judgment, and Notice of Hearing, filed 05/06/2014;
- xxviii. Affidavit of John Thornton in Support of Motion to Reconsider, filed 05/06/2014;
- xxix. Affidavit of Val Thornton in Support of Motion to Reconsider, filed 05/06/2014;
- xxx. Affidavit of Mary Pandrea in Support of Motion to Reconsider, filed 05/06/2014;
- xxxi. Memorandum of Law in Support of Plaintiff's Motion to Reconsider, filed 05/06/2014;
- xxxii. Defendant/Counterclaimant Clark's Motion for Award of Attorney's Fees and Costs, filed 05/12/2014;
- xxxiii. Brief in Support of Defendant/Counterclaimant Clark's Motion for Award of Attorney's

Fees and Costs, filed 05/12/2014;

xxxiv. Affidavit /Memorandum of Joel P. Hazel in Support of Motion for Award of Motion for Attorney's Fees and Costs, filed 05/12/2014;

xxxv. Plaintiff's Amended Notice of Hearing and Motion to Shorten Time, filed 05/13/2014;

xxxvi. Defendant/Counterclaimant Clark's Response to Thornton's Motion for Reconsideration and Objection to the Affidavit of Mary Pandrea and John Thornton Filed in Support Thereof, filed 05/2013;

xxxvii. Affidavit of Correction Affidavit of Val Thornton in Support of Motion to Reconsider Summary Judgment, filed 05/14/2014;

xxxviii. Plaintiff's Reply Brief in Support of Motion to Reconsider Summary Judgment, filed 05/16/2014;

xxxix. Affidavit of Defendant Mary Pandrea in Support of John Thornton's Motion to Reconsider, filed 05/16/2014;

xl. Order of Dismissal of Plaintiff's Complaint to Quiet Title and For Damages Against Defendant Mary Pandrea, filed 05/21/2014;

xli. Plaintiff's Objection and Motion to Disallow Defendant Kari Clark's Motion for Award of Attorney Fees and Costs, filed 05/27/2014;

xlii. Memorandum Decision and Order Denying Plaintiff Thornton's Motion to Reconsider Summary Judgment and Denying Defendant Pandrea's Motions, filed 06/02/2014;

xliii. Response to Plaintiff's Objection and Motion to Disallow Defendant Kari Clark's Motion for Award of Attorney Fees and Costs, filed 06/19/2014;

xliv. Plaintiff's Notice of Easement Location, filed 06/26/2014;

xlv. Affidavit of John Marquette Re Legal Description of Easement Contained in Proposed

Amended Judgment, filed 06/26/2014;

xlvi. Supplemental Affidavit of Jason M. Gray in Support of Motion for Award of Attorney Fees and Costs, filed 06/27/2014;

xlvii. Amended Judgment, filed 06/30/2014;

7. I hereby certify that:

a) *A copy of the foregoing has been served upon each reporter of whom a transcript has been requested as follows:*

*Julie Foland
CDA Reporting Court Reporters
Bank of America Building
401 Front Avenue, Suite 215
Coeur d'Alene, ID 83814*

*Charlotte Crouch
CDA Reporting Court Reporters
Bank of America Building
401 Front Avenue, Suite 215
Coeur d'Alene, ID 83814*

- b) The estimated fee for preparation of transcripts has been paid;
- c) The estimated fee for preparation of the clerk's record has been paid.
- d) The appellate filing fee has been paid.
- e) Service has been made upon all parties required to be served.

DATED this 5th day of August, 2014.

Val Thornton
Val Thornton, Attorney at Law

CERTIFICATION OF MAILING

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated, on the 5th day of August, 2014, to:

JOEL P. HAZEL
WITHERSPOON KELLEY
608 Northwest Blvd., Ste. 300
Coeur d'Alene, ID 83814

mailed, postage prepaid
 faxed to (208) 667-8470
 hand-delivered

MARY PANDREA
Defendant pro se
4687 Upper Pack River Rd.
Sandpoint, ID 83864

mailed, postage prepaid
 faxed to (208) _____
 hand-delivered

HON. JOHN T. MITCHELL
District Court Judge
P. O. Box 9000
Coeur d'Alene, ID 83816

mailed, postage prepaid
 faxed to (208) 446-1132
 hand-delivered

*Julie Foland
CDA Reporting Court Reporters
Bank of America Building
401 Front Avenue, Suite 215
Coeur d'Alene, ID 83814*

MAILED, POSTAGE PREPAID

*Charlotte Crouch
CDA Reporting Court Reporters
Bank of America Building
401 Front Avenue, Suite 215
Coeur d'Alene, ID 83814*

MAILED, POSTAGE PREPAID

Val Thornton

In the Supreme Court of the State of Idaho

STATE OF IDAHO
 County of Bonner
 FILED Aug 20, 2014
 AT 2:35 O'Clock P M
 CLERK, DISTRICT COURT
DPH

JOHN F. THORNTON,)
)
 Plaintiff-Counterdefendant-Appellant-)
 Cross Respondent,)

v.)
)
 MARY E. PANDREA, a single woman)
 individually and as Trustee of the Kari A. Clark)
 and Mary E. Pandrea Revocable Trust u/a April)
 9, 2002,)
)
 Defendant-Respondent-Cross)
 Appellant,)

and)
)
 KARI A. CLARK, a single woman individually)
 and as Trustee of the Kari A. Clark and Mary E.)
 Pandrea Revocable Trust u/a April 9, 2002, and)
 as Trustee of the Kari A. Clark Trust u/a June)
 21, 2010.)
)
 Defendant-Counterclaimant-)
 Respondent.)

ORDER APPROVING SUBSTITUTION
 Supreme Court Docket No. 42332-2014
 Bonner County No. 2013-1334
 Ref. No. 14-348

1. A NOTICE OF SUBSTITUTION OF KENNETH J. BARRETT AND DEANNA L. BARRETT IN THE STEAD OF RESPONDENT KARI A. CLARK with Exhibit A attached was filed by counsel for Respondent Kari A. Clark and substituting attorney Michael G. Schmidt for Respondents Barrett on July 28, 2014, indicating that Respondent Kari A. Clark has transferred title to her real property that is the subject of the instant appeal and the underlying district court action to Kenneth J. Barrett and Deanna L. Barrett, husband and wife.
2. A MOTION TO TEMPORARILY REMAND CASE TO THE DISTRICT COURT TO RULE ON RESPONDENT KARI A. CLARK'S MOTION TO SUBSTITUTE PARTIES with Exhibits A and B attached was filed by counsel for Respondent Kari A. Clark on August 4, 2014, requesting that this Court temporarily remand this matter to the district court for the sole purpose of allowing the district court to rule on Clark's motion to substitute parties.
3. PLAINTIFF'S OBJECTION TO RESPONDENT CLARK'S MOTION TO REMAND TO DISTRICT COURT AND MOTION TO DISALLOW SUBSTITUTION OF PARTY DEFENDANT, a MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S

OBJECTION TO RESPONDENT CLARK'S MOTION TO REMAND TO DISTRICT COURT AND MOTION TO DISALLOW SUBSTITUTION OF PARTY DEFENDANT and CERTIFICATION OF COUNSEL IN SUPPORT OF PLAINTIFF'S OBJECTION TO RESPONDENT CLARK'S MOTION TO REMAND TO DISTRICT COURT AND MOTION TO DISALLOW SUBSTITUTION OF PARTY DEFENDANT with attachments were filed by counsel for Appellant John F. Thornton on August 13, 2014.

The Court is fully advised; therefore, good cause appearing,

IT HEREBY IS ORDERED that the substitution of the Barretts as parties in place of Clark is APPROVED and the caption in this matter shall be AMENDED as follows:

JOHN F. THORNTON,)
)
Plaintiff-Counterdefendant-Appellant-)
Cross Respondent,)
)
v.)
)
MARY E. PANDREA, a single woman)
individually and as Trustee of the Kari A. Clark)
and Mary E. Pandrea Revocable Trust u/a April)
9, 2002,)
)
Defendant-Respondent-Cross)
Appellant,)
)
and)
)
KENNETH J. BARRETT and DEANNA L.)
BARRETT, husband and wife,)
)
Defendants-Counterclaimants-)
Respondents.)

DATED this 22 day of August, 2014.

By Order of the Supreme Court

Stephen W. Kenyon
Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk

ORDER APPROVING SUBSTITUTION – Docket No. 42332-2014

ORIGINAL

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

RECEIVED
IDAHO SUPREME COURT
COURT OF APPEALS

2014 AUG 27 PM 4 27

IN THE SUPREME COURT OF THE STATE OF IDAHO

JOHN F. THORNTON,	)	Supreme Court Docket No. 42332-2014
	)	Bonner County No. CV2013-1334
Plaintiff-Counterdefendant/Appellant-)	
Cross Respondent,)	
	)	RESPONDENTS KENNETH J. AND
vs.	)	DEANNA L. BARRETT'S
	)	OPPOSITION TO PETITION OF
MARY E. PANDREA, a single woman	)	COUNSEL VAL THORNTON FOR
individually and as Trustee of the Kari A.	)	LEAVE TO INTERVENE ON
Clark and Mary E. Pandrea Revocable	)	APPEAL
Trust, u/a April 9, 2002; and)	
)	
Defendant-Respondent-Cross Appellant,)	
)	
KENNETH J. BARRETT and DEANNA)	
L. BARRETT, husband and wife,)	
)	
Defendants-Counterclaimants-)	
Respondents.)	

Respondents Kenneth J. and Deanna L. Barrett ("Barretts"), by and through their undersigned counsel, herewith file their opposition to the Petition of Counsel Val Thornton for Leave to Intervene on Appeal. Petitioner's request to intervene in this appeal should be denied because her petition does not comply with the Idaho Appellate Rule 7.1 and because her interests in the appeal directly conflict with those of her client in violation of Idaho Rule of Professional Conduct 1.7.

FACTS

1. On August 14, 2013, Appellant John F. Thornton filed the underlying district court action in Bonner County. See Declaration of Michael G. Schmidt, ¶ 3.

FILED - ORIGINAL
AUG 27 2014
IDAHO SUPREME COURT
COURT OF APPEALS

2. Throughout the litigation in the district court action, John Thornton was represented by his wife, Val Thornton, the petitioner herein. See Schmidt Aff., ¶ 4.

3. Upon finding that Val Thornton would be a witness in the damage phase of the trial, on March 14, 2014 during a hearing on Defendant Kari A. Clark's ("Clark") Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counterclaims, the district court admonished Val Thornton to withdraw as counsel for her husband, John Thornton. The court's request that she withdraw was based on its conclusion that she would otherwise be in violation of Idaho Rule of Professional Conduct 3.7 ("A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness..."). Val Thornton refused to withdraw and the district court reported the situation to the Idaho State Bar. See Schmidt Aff., ¶ 5, and Exhibit A thereto.

4. Judgment was entered in Defendant Clark's favor in the district court action on April 30, 2014. See Schmidt Aff., ¶ 6 and Exhibit A thereto.

5. On May 6, 2014, John Thornton filed a motion for reconsideration of the Judgment. See Schmidt Aff., ¶ 8.

6. On May 12, 2014, Clark filed a motion for an award of attorney's fees and costs. In her motion, Clark sought attorney fees against Plaintiff John Thornton under Idaho Code 12-121 and Idaho Rule of Civil Procedure 54(e)(1). Clark additionally requested sanctions against John Thornton's attorney/wife, Val Thornton under Idaho Rule of Civil Procedure 11(a)(1). See Schmidt Aff., ¶ 9 and Exhibit B thereto.

7. On June 30, 2014, the district court heard oral argument on John Thornton's motion for reconsideration and on Clark's request for attorney fees and costs. The district court denied Thornton's motion for reconsideration and granted Clark's request for attorneys fees and costs against John Thornton, as well as against his attorney. An Amended Judgment was entered on June 30, 2014. As to the award of attorney fees and costs, the judgment stated that they "shall be *joint and several* as against John F. Thornton and Valerie Thornton." See Schmidt Aff., ¶ 12 and Exhibit D thereto (emphasis added).

8. The award of fees and costs against John Thornton was based upon I.C. 12-121 and a determination that John Thornton's claim was frivolous and without merit. See Schmidt Aff., ¶ 13.

9. The award of fees and costs against attorney Val Thornton was based upon a violation of I.R.C.P. 11(a)(1) and a determination that the claims put forth were not well grounded in fact or warranted by existing law. The Court's determination was based on a number of factors including Ms. Thornton's attempts to mislead the Court by failing to provide the Court with the deed that expressly reserved a 30' easement through her client's property, and instead presenting only a partial legal description from the deed. See Schmidt Aff., ¶¶ 7 and 13.

10. On June 30, 2014, Thornton filed a Notice of Appeal.

11. On August 4, 2014, the district court entered an Order Substituting Kenneth J. Barrett and Deanna L. Barrett in the Stead of Defendant/Counterclaimant Kari

A. Clark. On August 22, 2014, the Idaho Supreme Court also entered an Order Approving Substitution of the Barretts in the stead of Clark.

I. AUTHORITY

- A. **Petitioner's request for leave to intervene should be denied because the petitioner has not verified the allegations contained in her petition as required by I.A.R. 7.1.**

Idaho Appellate Rule 7.1 provides:

Any person or entity who is a real party in interest to an appeal or proceeding governed by these rules or whose interest would be affected by the outcome of an appeal or proceeding under these rules may file a **verified petition** with the Supreme Court asking for leave to intervene as a party to the appeal or proceeding and serve a copy thereof upon all parties to the appeal or proceeding. The petition shall be processed as a motion in accordance with Rule 32 of these rules, and if the Supreme Court finds that such petitioning person or entity is a real party in interest or would be affected by the outcome of the appeal or proceeding, the Court may, in its discretion, grant leave to the petitioning party to intervene as a party appellant or respondent; and if leave is so granted such petitioning party shall thereafter be a party to the appeal or proceedings for all purposes under these rules.

(Emphasis added.)

The Idaho Appellate Rule providing for intervention of a real party in interest requires that the petitioner file a verified petition.

Idaho Rule of Civil Procedure 11(c) defines the verification process as "a written statement or declaration by a party or the party's attorney of record sworn to or affirmed before an officer authorized to take depositions by Rule 28, that the affiant believes the facts stated to be true, unless verification upon personal knowledge is required."

While the petitioner makes a number of allegations in support of her petition, she has failed to verify the truth of the statements as required under the Rules. Because her petition is procedurally deficient and is not verified, it should be denied.

B. Allowing the petitioner to intervene in this appeal and allowing her to continue to represent her client would create a conflict of interest between the petitioner and her client in violation of the Idaho Rules of Professional Conduct.

The basis under which the district court awarded attorney fees and costs to Clark and under which it awarded Rule 11 sanctions against John Thornton's attorney are separate and distinct. Idaho Code 12-121 focuses on how unreasonable or frivolous the overall lawsuit was, while Rule 11 focuses on attorney conduct and judgment in advancing motions, pleadings or other papers. Because of the different legal theories supporting the award of fees, there will be different facts and standards that will need to be considered. These differences mean that the arguments Mrs. Thornton must advance must also be separate and distinct. Any determination one way or the other as to the correctness of the court's discretion in awarding fees will not be identical. It is foreseeable that the Court could overturn the award against one or the other of the parties but not both. If the Court were to overturn the award of Rule 11 sanctions against John Thornton's counsel but not overturn the award of attorney fees and costs against him, he would be harmed by such ruling particularly because the district court's award states that the attorney fees and costs awarded "shall be joint and several as against John F. Thornton and Valerie Thornton."

As a result, there is an actual and obvious conflict of interest that would be present if the petitioner were permitted to intervene in this appeal and to continue to represent her client in the same appeal. If Valerie Thornton is successful in opposing the Rule 11 Sanctions against herself, but fails in overturning the I.C. 12-121 award against John Thornton, she will have effectively doubled the fee award against her client.

In the event this Court determines intervention would be appropriate, Respondents respectfully request that the Court should condition intervention on John Thornton obtaining separate counsel (or requiring both John Thornton and Val Thornton to obtain other counsel).¹

1. ***Idaho Rule of Professional Conduct 1.7 does not permit a lawyer to represent a client if the representation is materially limited by the client's own interests, as it would be here.***

Idaho Rule of Professional Conduct 1.7(a) provides in pertinent part:

a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
... (2) there is a significant risk that the representation of one or more clients will be materially limited by... the personal interests of the lawyer.

In this matter, the petitioner claims that she seeks to intervene “for the sole purpose of contesting the sanction levied against her.” She additionally acknowledges that her client, the Appellant, “appeals the award of attorney fees in the same amount, awarded pursuant to I.C. 12-121.” While in her unverified petition, she claims that the attorney fee award and the sanction award were based “upon the same set of facts and circumstances,” the fact remains that the standards set forth for such awards are not

¹ Respondents would heartily welcome new counsel on this case, as it appears the Thorntons are so invested in this matter their better judgment has been compromised. A new and more reasoned set of eyes might add some much-needed objectivity to this dispute.

identical and in many cases the award of attorney fees under I.C. 12-121 does not also warrant the award of sanctions against an attorney.

In Clark's Brief filed in support of her motion for an award of attorney's fees and costs, she argued that because she was the prevailing party, she was entitled to fees and costs under I.R.C.P. 54 and I.C. 12-121. Her brief states, "Idaho Courts have held that I.C. § 12-121, read together with I.R.C.P. 54(e)(1), limits attorney's fees to those situations in which the Court finds that the action was 'brought, pursued or defended frivolously, unreasonably or without foundation.'" *Ortiz v. Reamy*, 115 Idaho 1099, 1101, 772 P.2d 737, 739 (Ct. App. 1989)."

I.R.C.P. 54(e)(1) provides:

In any civil action the court may award reasonable attorney fees . . . to the prevailing party or parties as defined in Rule 54(d)(1)(B), when provided for by any statute or contract. Provided, attorney fees under section 12-121, Idaho Code, may be awarded by the court only when it finds, from the facts presented to it, that the case was **brought, pursued or defended frivolously, unreasonably or without foundation.**

(Emphasis added.)

Also in her Brief, Clark requested that the district court award sanctions against John Thornton's attorney, the petitioner herein. Clark stated:

Pursuant to I.R.C.P. 11(a)(1), all pleadings, motions and other papers signed by an attorney must meet certain criteria. Where such motions, pleadings or other papers are not well grounded in fact, warranted by existing law, or are interposed for improper purposes (such as to harass, cause undue delay, or needlessly increase the costs of litigation), imposition of sanctions results.

She specifically noted that "[t]his rule does not duplicate I.C. ¶ 12-121, and circumstances that justify an award of fees under that statute do not necessarily call for

imposition of Rule 11 sanctions.” and she cited to cases in support of that assertion. This statement advances an argument that is detrimental to her client. That directly promotes Valerie Thornton’s interests ahead of Mr. Thornton’s.

I.R.C.P. 11(a)(1) provides in pertinent part:

The signature of an attorney or party constitutes a certificate that the attorney or party has read the pleading, motion or other paper; that to the best of the signer’s knowledge, information, and belief **after reasonable inquiry it is well grounded in fact and is warranted by existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation** . . . If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney’s fee.

(Emphasis added.)

Because the authorities under which the district court awarded attorney fees against the plaintiff John Thornton and sanctions against his attorney, petitioner Val Thornton, provide different standards under which such awards are appropriate, Val Thornton’s interests would necessarily be adverse to her client, John Thornton, if this Court allows her to intervene in this appeal. She would necessarily have to put forth one argument as to why this Court should overturn the attorney fee award against herself under I.R.C.P. 11(a)(1), while advancing a different argument as to why it should overturn the award against her client pursuant to I.R.C.P. 54(e)(1) and I.C. 12-121. By advancing any argument on behalf of herself under I.R.C.P. Rule 11(a)(1), she asks the Court to shift the award to her client. Even if Valerie Thornton asserts that the fee award

is also improper as against John Thornton, she risks burdening him with the entire fee award if her theory under Rule 11 is successful and her theory under I.C. 12-121 fails. Val Thornton's interests and those of her client are in direct conflict.

2. *A recent case in the Washington Court of Appeals that deals with this identical issue provides insight on the issue before the Court in this case.*

In the published opinion from the case of *In re the Marriage of Wixom*, Washington Court of Appeals, Division 3, Case No. 30851-1-III (August 12, 2014),² the trial court had held both the client and attorney were jointly liable for attorney fees and costs.³ The Court found that both the attorney and his client had violated CR 11, which mirrors our Idaho Rule of Professional Conduct 11. In the *Wixom* case the Court, on its own initiative, disqualified the attorney from representing the appellant. In the *Wixom* case, as Thornton attempts to do here, both the client and the attorney appealed the sanctions and both were parties to the appeal.

In its ruling, the Washington Court of Appeals addressed the following four questions:

1. Whether the Robert Caruso's ("The Attorney") request that the court shift any sanctions solely to his client create a conflict of interest;
2. Whether Rick Wixom ("The Client") may waive the conflict of interest, and, if so, what evidence of waiver is required?;

² Available at: <http://www.courts.wa.gov/opinions/pdf/308511.opn.pdf>

³ The attorney fees and cost award in the *Wixom* case was \$55,000, whereas in the case before this Court the award is \$41,530.17.

3. Whether the court, on its own initiative, may remove The Attorney from representing The Client; and
4. Whether any conflict of interest precludes The Attorney from representing himself in further proceedings.

Conflict of Interest question:

In answering the first question, the Court looked to RPC 1.7, which language is identical to IRPC 1.7, which prohibits a lawyer from representing a client if a concurrent conflict of interest exists. RPC 1.7(a) (and IRPC 1.7(a)) state that a concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

In *Wixom*, the Washington Court of Appeals stated:

A lawyer represents conflicting interests when, on behalf **of one client, it is** the lawyer's duty to contend that which the lawyer's duty to another client requires him or her to oppose. *In re Welfare of Schulz*, 17 Wn. App. 134, 142, 561 P.2d 1122 (1977).

Rules of professional conduct should be construed broadly to protect the public from attorney misconduct. *Eriks v. Denver*, 118 Wn.2d 451, 459, 824 P.2d 1207 (1992); *Gustafson v. City of Seattle*, 87 Wn. App. 298, 302-03, 941 P.2d 701 (1997). An attorney should resolve all doubts against undertaking a dual representation. *Eriks*, 118 Wn.2d at 460; *Gustafson*, 87 Wn. App. at 303.

Concurrent conflicts of interest can arise from the lawyer's own interests. RPC 1.7 cmt. 1. A conflict of interest exists when the interests of the attorney and the client are adverse. *State v. Roger I. Fualaau*, 155 Wn. App. 347, 362, 228 P.3d 771 (2010). "The lawyer's interest," within the

context of RPC 1.7, denotes a financial or familial interest or an interest arising from the lawyer's exposure to culpability. *In Re Pers. Restraint of Stenson*, 142 Wn.2d 710, 740, 16 P.3d 1 (2001).

While in *Wixom*, The Attorney contended that no conflict existed because he claimed he had but one client, Rick Wixom, the Court found that he had two clients: Rick Wixom and himself.

The Court further found that "[The Attorney's] interests rest in [The Attorney's] sharing payment of any sanctions," and that, [t]herefore, [The Attorney's] advocacy before this court is directly adverse to [The Client's] interests. In violation of RPC 1.7(a)(1), [The Attorney] takes a position in favor of one client that injures another client. *In violation of RPC 1.7(a)(2), [The Attorney's] personal interests conflict with the interests of his client.*" (Emphasis added.) This is the same situation present in our case.

The Washington Court of Appeals looked to a number of other jurisdictions in reaching its decision and found several cases to be illustrative.

In *Slane v. Rio Grande Water Conservation District*, 115 F.R.D. 61 (D. Colo. 1987), the defendant conservation district, after dismissal of plaintiffs' suit, filed a motion for attorney fees against plaintiffs and their counsel for filing a frivolous suit. The court agreed the suit was frivolous, and, before awarding an amount, the court recommended that plaintiffs' counsel withdraw from his representation of the plaintiffs and **that he obtain counsel** for himself. Counsel withdrew from representation of the plaintiffs **and obtained** his own counsel. Eventually, the trial court imposed all sanctions upon counsel based upon evidence that the clients relied on their attorney in determining whether they had a basis for suit.

In *Anschutz Petroleum Marketing Corporation v. E. W. Saybolt & Co., Inc.*, 112 F.R.D. 355 (S.D.N.Y. 1986), the court granted plaintiff's motion to strike defendants' third-party complaint and granted plaintiffs motion for sanctions under Federal Rules of Civil Procedure Rule (FRCP) 11. The court imposed sanctions only upon defendants' counsel. The court further

noted that, if counsel wished to shift some of the sanctions upon his clients, the client must be represented by separate counsel.

In the *Wixom* case, Wixom's attorney, Robert Caruso, contended that any potential conflict of interest may not materialize because "this appellate court may agree that the trial court erred when it awarded any sanctions, or . . . [because] he will be held liable anyway." The Court stated:

Each argument is speculative. No principle of law excuses an attorney from a conflict with a client because a court may later issue a ruling that renders the conflict moot. Furthermore, Robert Caruso's speculation does not consider the possibility that sanctions should only be imposed upon him and he fails to advocate this possibility on behalf of his client, Rick Wixom.

The Waiver question:

In regards to the waiver issue, The Attorney contended that The Client waived any potential conflict of interest. The Court noted that RPC 1.7(b) (like our IRPC 1.7) allows the client to waive a conflict of interest in limited circumstances.

The Court held that The Client could not waive the conflict, because an actual conflict had now arisen in litigation. The Court stated:

Some conflicts are nonconsentable, meaning that the lawyer cannot properly ask for a waiver or provide representation on the basis of the client's consent. RPC 1.7 cmt. 14. RPC 1.7(b)(3) prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. RPC 1.7 cmt. 23. It is axiomatic that an attorney cannot represent two clients whose interests are actually, as opposed to potentially, conflicting. *U.S. Fid. & Guar. Co. v. Louis A. Roser Co., Inc.*, 585 F.2d 932, 939 (8th Cir. 1978). If a lawyer accepts dual representation and the client's interests thereafter come into actual conflict, the lawyer must withdraw. *In re Disciplinary Proceedings Against Carpenter*, 160 Wn.2d 16, 28, 155 P.3d 937 (2007). . . .

Even if a client waives the conflict, a waiver of a conflict of interest does not necessarily cure a conflict and the court need not necessarily accept

the waiver. *Wheat v. United States*, 486 U.S. 153, 162, 108 S. Ct. 1692, 100 L. Ed. 2d 140 (1988); *State v. Rooks*, 130 Wn. App. 787, 799, 125 P.3d 192 (2005). Under such circumstances, the court can elect to exercise its supervisory authority over members of the bar to enforce the ethical standard requiring an attorney to decline multiple representations. *Wheat*, 486 U.S. at 162; *United States v. Dolan*, 570 F.2d 1177, 1184 (3d Cir. 1978); *Rooks*, 130 Wn. App. at 800.

The Disqualification question:

In regards to the disqualification question, the Court stated:

RPC 1.16 requires withdrawal if the representation will result in violation of the Rules of Professional Conduct or other law. The rule reads, in part:

DECLINING OR TERMINATING REPRESENTATION

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall, notwithstanding RCW 2.44.040, withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law.

The Court noted that The Attorney refused to withdraw (in much the same way that Val Thornton refused to withdraw in our case at the district court level despite the district court judgment's strong admonition and request that she do so). The Wixom Court noted that no decisions in Washington State had addressed disqualification of counsel on the Court's own initiative. The Court therefore looked to other jurisdictions, and held:

Based upon general principles of attorney ethics and decisions from other jurisdictions, we hold we possess authority to disqualify an attorney, whose representation of a client poses an actual conflict with himself or another client.

The court need not wait for one of the parties to raise the conflict or move to disqualify. A court has the authority and duty to inquire on its own

initiative into whether counsel should not serve because of a conflict with another client. *United States v. Coleman*, 997 F.2d 1101, 1104 (5th Cir. 1993); *Estate of Andrews by Andrews v. United States*, 804 F. Supp. 820, 824 (E.D. Va. 1992); *In re Chou-Chen Chems., Inc.*, 31 B.R. 842, 852 (Bankr. W.D. Ky. 1983). In cases where counsel is in violation of professional ethics, the court may act sua sponte to disqualify. *O'Connor v. Jones*, 946 F.2d 1395, 1399 (8th Cir. 1991). A court has not only the right, but also the duty to safeguard ethical practice as part of its inherent power to supervise its own affairs. *In re Mt. Vernon Plaza Cmty. Urban Redevelopment Corp. I*, 85 B.R. 762, 765 (Bankr. S.D. Ohio 1988). In *Yates v. Applied Performance Technologies, Inc.*, 209 F.R.D. 143, 152, 154 (S.D. Ohio 2002) and *Cramer v. Chiles*, 33 F. Supp. 2d 1342, 1346 n.2 (S.D. Fla. 1999), courts on their own initiative disqualified counsel for a conflict of interest.

(Emphasis added.)

The Washington court concluded its decision with citations to federal cases, stating:

We recognize that the authority, upon which we rely, comes from federal courts, but see no reason to distinguish between a state court and a federal court for purposes of enforcing ethical standards. . . .

If an attorney does not heed an admonition to withdraw, he injures his profession, demeans it in the eye of the public, does a disservice to this court, and runs the risk even of subverting the justice system. *Int'l Bus. Machines Corp. v. Levin*, 579 F.2d 271, 283 (3rd Cir. 1978); *Chou-Chen Chems., Inc.*, 31 B.R. at 852. To protect judicial integrity, this court must address conflicts of interest directly when they appear. *MacArthur v. Bank of New York*, 524 F. Supp. 1205, 1209-10 (S.D.N.Y. 1981); *Chou-Chen Chems., Inc.*, 31 B.R. at 852.

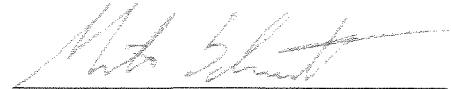
(Emphasis added.)

CONCLUSION

Val Thornton's petition to intervene is procedurally deficient in that she has failed to bring a **verified petition** before this Court to establish that she is a proper party to the appeal. As such, her petition should be denied. In the event the Court allows her to

intervene, Respondents request that this Court require her to withdraw as attorney for John Thornton.

DATED this 25 day of August 2014.



MICHAEL G. SCHMIDT, #6911
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Email: mschmidt@lukins.com
*Attorney for Respondents
Kenneth J. and Deanna L. Barrett*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25 day of August 2014, I caused to be served a true and correct copy of the foregoing in the manner indicated:

Val Thornton 4685 Upper Pack River Road Sandpoint, ID 83864 <i>Attorney for Appellant John F. Thornton</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:
Mary E. Pandrea 4687 Upper Pack River Road Sandpoint, ID 83864	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:


Michael G. Schmidt

ORIGINAL

IDAHO
BONNER
DIST.

RECEIVED
IDAHO SUPREME COURT
COURT OF APPEALS

2014 AUG 27 P 4 35

2014 AUG 27 11 31 53

IN THE SUPREME COURT OF THE STATE OF IDAHO

JOHN F. THORNTON,

Plaintiff-Counterdefendant/Appellant-
Cross Respondent,

vs.

MARY E. PANDREA, a single woman
individually and as Trustee of the Kari A.
Clark and Mary E. Pandrea Revocable
Trust, u/a April 9, 2002; and

Defendant-Respondent-Cross Appellant,

KENNETH J. BARRETT and DEANNA
L. BARRETT, husband and wife,

Defendants-Counterclaimants-
Respondents.

) Supreme Court Docket No. 42332-2014
) Bonner County No. CV2013-1334
)
)
) **DECLARATION OF MICHAEL G.
) SCHMIDT IN SUPPORT OF
) RESPONDENTS KENNETH J. AND
) DEANNA L. BARRETT'S
) OPPOSITION TO PETITION OF
) COUNSEL VAL THORNTON FOR
) LEAVE TO INTERVENE ON
) APPEAL**

FILED ORIGINAL
AUG 27 2014
COURT OF APPEALS

I, MICHAEL G. SCHMIDT, declare:

1. That I am an attorney with Lukins & Annis, P.S., counsel of record for Respondents KENNETH J. BARRETT and DEANNA L. BARRETT ("Barretts"). I am over the age of eighteen (18) years and make this Declaration upon my own personal knowledge and belief, and also from my review of the Idaho Court Repository Register of Actions of Bonner County District Court Case No. CV2013-1334 and of the pleadings, motions, and other court documents filed in that matter and referenced herein.

2. The Respondents, the Barretts, have substituted into this matter in the place of Defendant/Counter Claimant/Respondent Kari A. Clark ("Clark"). I did not

**DECLARATION OF MICHAEL G. SCHMIDT IN SUPPORT OF PROPOSED RESPONDENTS
KENNETH J. AND DEANNA L. BARRETT'S OPPOSITION TO PETITION OF COUNSEL VAL
THORNTON FOR LEAVE TO INTERVENE ON APPEAL - 1**

represent Clark in the underlying district court matter, but I have corresponded with Clark's legal counsel about the litigation, and I reviewed the district court's documents that I refer to in this Declaration as follows:

- a. *Memorandum Decision and Order Granting Defendant Clark's Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Defendant Clark's Motion for Partial Summary Judgment on Clark's Counter-Claims Against Thornton* entered on April 9, 2014 ("MSJ Decision"), a true and correct copy of which is attached hereto and incorporated herein as **Exhibit A**;
- b. *Brief in Support of Defendant/Counterclaimant Clark's Motion for Award of Attorney's Fees and Costs* filed on May 12, 2014 by Kari A. Clark in the underlying district court action ("Brief"), a true and correct copy of which is attached hereto and incorporated herein as **Exhibit B**;
- c. *Memorandum Decision and Order Denying Plaintiff Thornton's Motion to Reconsider Summary Judgment, and Denying Defendant Pandrea's Motions* ("Reconsideration Decision"), a true and correct copy of which is attached hereto and incorporated herein as **Exhibit C**; and
- d. The Court's *Amended Judgment* entered on June 30, 2014 ("Amended Judgment"), a true and correct copy of which is attached hereto and incorporated herein as **Exhibit D**.

3. On August 14, 2013, Appellant John F. Thornton filed the underlying district court action in Bonner County District Court. See **Exhibit C**, p. 1, ¶2.

4. Throughout the litigation in the district court action, John Thornton was represented by his wife, Val Thornton, the petitioner herein. See **Exhibit A**, p. 2, ¶2.

5. Upon finding that Val Thornton would be a witness in the damage phase of the trial, on March 14, 2014 during a hearing on Defendant Kari A. Clark's ("Clark") *Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counterclaims*, the district court admonished Val Thornton to withdraw as counsel for her husband, John Thornton. The court's request that she withdraw was based on its conclusion that she would otherwise be in violation of Idaho Rule of Professional Conduct 3.7 ("A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness..."). Val Thornton refused to withdraw and the district court reported the situation to the Idaho State Bar. See **Exhibit A**, pp. 2-3.

6. Judgment was entered in Defendant Clark's favor in the district court action on April 30, 2014. In its MSJ Decision, the district court indicated that it found "Thornton's actions on July 20, 2013, and opposition to Clark's claims in this lawsuit" frivolous. See **Exhibit A**, p. 20, ¶1.

7. The district court stated the following regarding John Thornton's attorney, Valerie Thornton: "For Thornton's counsel to make the claim that an easement appurtenant depends on 'adjacency' to the burdened land, without any legal support for that claim, is *irresponsible*." (See **Exhibit A**, p. 16); "How Thornton's attorney can make such a statement to the Court, is *not capable of being understood*." (*Id.*, pp. 19-20); "The fact that Thornton refused to submit proof of the fact of the recorded easement in the

earlier motion for summary judgment brought by Pandrea, only illustrates the untenable position Thornton took not only on July 20, 2013, but throughout this litigation, and Thornton, and his attorney, obviously continue to adhere to up to the present time.” (*Id.*, p. 20, emphasis added).

8. On May 6, 2014, John Thornton filed a motion for reconsideration of the Judgment.

9. On May 12, 2014, Clark filed a motion for an award of attorney’s fees and costs. In her motion, Clark sought attorney fees against Plaintiff John Thornton under Idaho Code 12-121 and Idaho Rule of Civil Procedure 54(e)(1). Clark additionally requested sanctions against John Thornton’s attorney/wife, Val Thornton under Idaho Rule of Civil Procedure 11(a)(1). See **Exhibit B**, pp. 3 and 5.

10. In Clark’s Brief filed in support of her motion for an award of attorney’s fees and costs, she argued that because she was the prevailing party, she was entitled to such an award under I.R.C.P. 54 and I.C. 12-121. Her brief provides, “Idaho Courts have held that I.C. § 12-121, read together with I.R.C.P. 54(e)(1), limits attorney’s fees to those situations in which the Court finds that the action was ‘brought, pursued or defended frivolously, unreasonably or without foundation.’ *Ortiz v. Reamy*, 115 Idaho 1099, 1101, 772 P.2d 737, 739 (Ct. App. 1989).” See **Exhibit B**, p. 3, ¶4.

11. In her Brief, Clark also requested that the district court award sanctions against John Thornton’s attorney, Val Thornton. Clark stated:

Pursuant to I.R.C.P. 11(a)(1), all pleadings, motions and other papers signed by an attorney must meet certain criteria. Where such motions, pleadings or other papers are not well grounded in fact, warranted by

existing law, or are interposed for improper purposes (such as to harass, cause undue delay, or needlessly increase the costs of litigation), imposition of sanctions results.

She specifically noted that “[t]his rule does not duplicate I.C. ¶ 12-121, and circumstances that justify an award of fees under that statute do not necessarily call for imposition of Rule 11 sanctions.” and she cited to cases in support of that assertion. See **Exhibit B**, p. 5.

12. On June 30, 2014, the district court heard oral argument on John Thornton’s motion for reconsideration and on Clark’s request for attorney fees and costs. The district court denied Thornton’s motion for reconsideration and granted Clark’s request for attorneys fees and costs against John Thornton, as well as against his attorney. An Amended Judgment was entered on June 30, 2014. As to the award of attorney fees and costs, the judgment stated that they “shall be *joint and several* as against John F. Thornton and Valerie Thornton.” See **Exhibit D**, p. 4 (emphasis added).

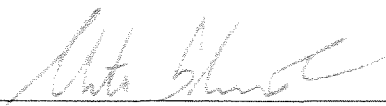
13. In its Reconsideration Decision, the district court noted “Thornton attached to [his] Complaint a typed property description purporting to describe his property, but Thornton attached no copies of any deed, let alone a copy of the recorded deed to his property.” See **Exhibit C**, p 1. The district court found Thornton’s arguments to be audacious (*Id.*, p.13, ¶3), “beyond cavil” (*Id.*, p.14, ¶1), and “absurd” (*Id.*, p.14, ¶2). It found that there was “no factual basis to Thornton’s argument” and “no legal basis to support Thornton’s argument” (*Id.*, p.14, ¶2). It found that Thornton “misapplie[d]” quotes from case law (*Id.*, p.16, ¶2). It found Thornton was “seriously

misguided" (*Id.*, p.16, ¶2), that he "intends to create confusion" (*Id.*, p.16, ¶4), and that he "twists" quotations from cases (*Id.*, p.16, ¶5).

14. On August 4, 2014, the district court entered an Order Substituting Kenneth J. Barrett and Deanna L. Barrett in the Stead of Defendant/Counterclaimant Kari A. Clark.

I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED this 25 day of August 2014.


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*Attorney for Respondents
Kenneth J. and Deanna L. Barrett*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25 day of August 2014, I caused to be served a true and correct copy of the foregoing in the manner indicated:

Val Thornton 4685 Upper Pack River Road Sandpoint, ID 83864 <i>Attorney for Appellant John F. Thornton</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:
Mary E. Pandrea 4687 Upper Pack River Road Sandpoint, ID 83864	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:



Michael G. Schmidt

Affirmative Defenses, Counterclaim and Demand for Jury Trial, pp. 4-7. Clark now seeks "partial" summary judgment on her counterclaims because the issue of the amount of damages, if any, remains to be proven at trial. Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counterclaims, p. 2. The damages are based in part on allegations that John Thornton, on July 20, 2013, kept Clark and several of her family members from travelling along an access road, to spread ashes of a family member upon land they owned. Affidavit of Terri Boyd-Davis in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counterclaims, p. 3, ¶¶ 8-10. Thornton's wife, Valerie Thornton, then allegedly approached Clark and her family members and insisted they sign a document agreeing they could use an easement. *Id.*, pp. 3-4, ¶¶ 11-12.

At the March 14, 2014, hearing, the Court first asked Val Thornton, counsel for John Thornton, and his wife, how it would be possible that Val Thornton would not be a witness at the June 24, 2014, and thus, how Val Thornton would not violate IRPC 3.7 ((a)"A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless: * * * (3) disqualification of the lawyer would work substantial hardship on the client."). Val Thornton answered "I don't see why I would be a witness and still don't." At the hearing, counsel for Kari A. Clark stated that he would be calling Val Thornton as a witness at trial and would be issuing a subpoena for her as a witness. The Court concluded the discussion by informing Val Thornton she "would be a witness in the damage phase of the trial, I can't reach any other conclusion than that." After the March 14, 2014, hearing, on March 20, 2014, the Court sent Val Thornton a letter recapitulating the above, and concluded the letter: "If there is a substitution of counsel

in this case by March 31, 2014, I will consider that I have no obligation to report the situation in which you find yourself to the Idaho State Bar." On March 25, 2014, Vai Thornton sent the Court a letter, which stated "...substitution of counsel would cause great hardship on Mr. Thornton" and concluded: "In the meantime, I have consulted with bar counsel, have verified that I may continue my representation during the pre-trial process, and hope that your honor will understand this due to economic necessity alone." On March 26, 2014, the Court forwarded a copy of that response by facsimile to Brad Andrews, Idaho State Bar Counsel. As of the date of this opinion, no substitution of counsel has occurred.

Also, at the March 14, 2014, hearing, the Court took up the issue of "Clark's Motion to Strike Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment and the Affidavits Filed in Support Thereof." The basis of that motion was Pandrea is not an adverse party to Clark, and Clark's motion for summary judgment only pertained to Thornton's claims against Clark and Clark's counterclaims against Thornton. Defendant/Counterclaimant Clark's Motion to Strike Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment and the Affidavits Filed in Support Thereof, pp. 2, 3. Pandrea (pro se) had no objection to Clark's motion to shorten time to hear this motion, and counsel for Thornton objected, stated her client Thornton was prejudiced, but articulated no actual prejudice. Accordingly, this Court granted Clark's motion to shorten time. The Court then heard argument from the attorneys and Pandrea. At the conclusion of oral argument, the Court granted "Clark's Motion to Strike Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment and the Affidavits Filed in Support Thereof", because Pandrea is not an adverse party to Clark (thus, the Court stated it did not need to reach the untimeliness

of Pandrea's submissions). An order to that effect has not been submitted, so the Court will include such at the end of this decision. Although the motion to strike was granted, the Court will discuss Pandrea's claims and arguments in this memorandum decision, to provide context. The affidavits submitted by Pandrea have been read by the Court, but will not be considered in this motion for summary judgment between Clark and Thornton.

On August 14, 2013, this action was commenced by John F. Thornton (Thornton) against his neighbors Mary E. Pandrea (Pandrea) and Kari A. Clark (Clark) to quiet title to his real property. Thornton and Pandrea own adjacent parcels of real property in Sandpoint, Bonner County, Idaho, near Tavern Creek. Complaint to Quiet Title and for Damages (Complaint) pp. 3-5, ¶¶ 2.7-2.22. Thornton and Pandrea share a common boundary border. Affidavit of Mary E. Pandrea in Support of Defendant Pandrea's Motion to Dismiss Complaint for Quiet Title and for Damages (First Affidavit of Mary E. Pandrea), p. 2, ¶ 3.

In 1993, prior to owning his land, Thornton rented the property from Robert Wiltse (Wiltse) and Wiltse's wife at the time, Mary Pandrea. Complaint, p. 2, ¶ 2.2. This property Thornton now owns is a two-acre parcel of land. Affidavit of Joel P. Hazel in Support of Defendant Clark's Motion for Partial Summary Judgment (Affidavit of Joel P. Hazel), p. 2 ¶ 3. Wiltse and Pandrea had obtained the two-acre parcel of land from Clark and Pandrea, by Bonner County Quitclaim Deed, Instrument No. 416381, on November 10, 1992. Affidavit of Joel P. Hazel in Support of Defendant Clark's Motion for Partial Summary Judgment (Affidavit of Joel P. Hazel), Exhibit A. That Quitclaim Deed conveyed the property to Wiltse and Pandrea "[s]ubject to and reserving a 30.0 foot easement for a road right of way and utilities" *Id.* Wiltse and Pandrea divorced in 1996. First Affidavit of Mary E. Pandrea, p. 2, ¶ 6.

On May 4, 1998, after he was divorced from Pandrea, Wiltse conveyed the two-acre parcel of land to Thornton by Warranty Deed, Bonner County Instrument No. 525386 (Thornton Property). Affidavit of Joel P. Hazel, Exhibit B. The Warranty Deed has a provision for an easement as follows:

EASEMENT AND CONDITIONS THEREOF RESERVED BY
 INSTRUMENT:
 IN FAVOR OF: MARY E. PANDREA WILTSE, A MARRIED
 WOMAN DEALING IN HER SOLE AND SEPARATE PROPERTY;
 AND KARI A. CLARK, A SINGLE WOMAN
 FOR: A 30.0 FOOT EASEMENT FOR A ROAD
 RIGHT OF WAY AND UTILITIES
 RECORDED: DECEMBER 1, 1992
 INSURMENT NO.: 416381

Id. Clark maintains that since the 1940s the road referred to in Warranty Deed, Instrument No. 525386, which goes through the Thornton Property, is the only road her family has used to access approximately twenty acres of land that was jointly owned by Pandrea and Clark. Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counterclaim, p. 3; Affidavit of Terry Boyd-Davis in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counter Claims (Affidavit of Terri Boyd-Davis), p. 2 ¶ 4. Pandrea disputes that Clark and Pandrea jointly owned the twenty-acre parcel of land. Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment, p. 9. However, on May 11, 2011, Pandrea sued Clark to partition the twenty-acre parcel of land in Bonner County case number CV-2011-835. Defendant Clark's Answer Affirmative Defenses and Counterclaim, p. 5 ¶ 6; Affidavit of Joel P. Hazel, Exhibit C. On August 16, 2012, District Judge John P. Luster issued a decision in that case, partitioning the parcel in kind, with Clark receiving 10.423 acres and Pandrea receiving 12.739 acres. *Id.*

According to Clark, in 2013, Thornton erected a locked gate across the easement, interfering with Clark's easement rights. Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counterclaim, p. 2; Affidavit of Terry Boyd-Davis, pp. 2-3 ¶¶ 5-6. A sign dated July 5, 2013, was posted next to the gate, which read as follows:

NOITCE
KARI CLARK
IS PROHIBITED FROM ENTERING UPON THIS PROPERTY FOR ANY
REASON UNDER PENALTY OF CRIMINAL TRESPASS. I.C. § 18-7001.

JOHN F. THORNTON
4685 UPPER PACK RIVER ROAD
SANDPOINT IDAHO 83864

OWNER

Affidavit of Terri Boyd-Davis, Exhibit G. Thornton claims that "[s]ince 1993, when I began renting Thornton property, the easement was used solely by Mary Pandrea and her invitees. Mary Pandrea gated and locked the easement at times, and decided who was to have a key to the gate." Affidavit of John Thornton Opposing Summary Judgment (Second Affidavit of John Thornton), p. 1 ¶ 2.

On August 14, 2013, Thornton brought this present action to quiet title to a parcel of land, approximately one tenth of an acre in size, which contains a well, against Pandrea and Clark. Complaint to Quiet Title and for Damages, pp. 3-5, ¶¶ 2.7-2.22. Thornton contends that in 2012 he had the Thornton Property surveyed, and apparently that survey is how and when Thornton discovered the physical property description on his Deed did not include about one-tenth acre (Well Piece). *Id.* at 3, ¶ 2.6. Thornton attaches as Exhibit 2 to his Complaint to Quiet Title and for Damages, a property description. *Id.*, Exhibit 2. However, that property description is simply printed on a

piece of paper and attached to his Complaint; it is not a certified copy of any recorded document. *Id.* When this Court issued its Memorandum Decision and Order Granting in Part and Denying in Part Defendant Pandrea's Motion to Dismiss (Motion for Summary Judgment) on February 14, 2014, the Court had not at that time been provided a copy of Thornton's deed. Two weeks after that decision was issued, when Clark filed the instant motion for summary judgment, was the first time the Court was provided a copy of Thornton's deed. Affidavit of Joel P. Hazel, Exhibit B. It is now apparent that at all times Thornton was deeded this parcel, the metes and bounds description of which did not include the "Well Piece". However, Thornton claims he only discovered that fact in 2012 through a survey he had performed on his property. Clark maintains that following the Revised Judgment and Decree of Partition issued by Judge Luster on January 24, 2014, in Bonner County case number CV 2011 835, the twenty-acre parcel of land was divided so that Clark no longer has an ownership interest in the Well Piece. Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counterclaim, p. 2.

On January 29, 2014, Clark filed the instant motion for summary judgment, which was accompanied by a "Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counter Claims", the "Affidavit of Joel P. Hazel in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counter Claims", and the "Affidavit of Terri Boyd-Davis in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counter Claims."

In response, on February 27, 2014, Pandrea filed "Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment", which was accompanied by the "Affidavit of Mary Pandrea in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment," the "Affidavit of James Gillette in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment," the "Affidavit of Debbie Gadbow in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment," the "Affidavit of John Pandrea in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment," and the "Affidavit of Nellie Gilbertson in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment." As mentioned above, the Court will not consider those affidavits, but will make mention of Pandrea's claims and arguments.

On February 28, 2014, Thornton filed "Plaintiff's Objection to Defendant Kari Clark's Motion for Summary Judgment," which was accompanied by "Plaintiff's Memorandum of Law in Opposition to Defendant Kari Clark's Motion for Summary Judgment" and the "Affidavit of John Thornton in Opposition to Summary Judgment."

Hearing on Clark's motion for summary judgment was held March 14, 2014. At the conclusion of that hearing, the Court stated the motion for summary judgment was granted and that a written decision would issue as soon as possible. The Court stated it was declaring its decision on the record on March 14, 2014, as it was important for the parties to know that decision as soon as possible, given the upcoming jury trial date of June 24, 2014, and the need for the parties to not prepare for matters that would no longer be an issue at that jury trial.

II. STANDARD OF REVIEW.

"Summary judgment is appropriate if the pleadings, affidavits, and discovery documents on file with the court . . . demonstrate no material issue of fact such that the

moving party is entitled to a judgment as a matter of law.” *Brewer v. Washington RSA No. 8 Ltd. Partnership*, 145 Idaho 735, 738 184 P.3d 860, 863 (2008) (quoting *Badell v. Beeks*, 115 Idaho 101, 102, 765 P.2d 126, 127 (1988) (citing I.R.C.P. 56(c)). The burden of proof is on the moving party to demonstrate the absence of a genuine issue of material fact. *Rouse v. Household Finance Corp.*, 144 Idaho 68, 70, 156 P.3d 569, 571 (2007) (citing *Evans v. Griswold*, 129 Idaho 902, 905, 935 P.2d 165, 168 (1997)). “The burden may be met by establishing the absence of evidence on an element that the nonmoving party will be required to prove at trial.” *Nelson v. Anderson Lumber Co.*, 140 Idaho 702, 707, 99 P.3d 1092, 1097 (2004) (citing *Dunnick v. Elder*, 126 Idaho 308, 311, 882 P.2d 475, 478 (Ct. App. 1994)).

“Once the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving party,” to provide specific facts showing there is a genuine issue for trial. *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 864 (2007) (citing *Hei v. Holzer*, 139 Idaho 81, 85, 73 P.3d 94, 98 (2003)); *Samuel v. Hepworth, Nungester & Lezamiz, Inc.*, 134 Idaho 84, 87, 996 P.2d 303, 306 (2000). “[I]f the nonmoving party fails to provide a sufficient showing to establish the essential elements of his or her case, judgment shall be granted to the moving party.” *Porter v. Bassett*, 146 Idaho 399, 403, 195 P.3d 1212, 1216 (2008) (citing *Atwood v. Smith*, 143 Idaho 110, 113, 138 P.3d 310, 313 (2006)). In construing the facts, the court must draw all reasonable factual inferences in favor of the non-moving party. *Mackay v. Four Rivers Packing Co.*, 145 Idaho 408, 410, 179 P.3d 1064, 1066 (2008). If reasonable people can reach different conclusions as to the facts, then the motion must be denied. *Ashby v. Hubbard*, 100 Idaho 67, 593 P.2d 402 (1979).

The non-moving party's case must be anchored in something more than speculation; a mere scintilla of evidence is not enough to create a genuine issue. *Zimmerman v. Volkswagon of America, Inc.*, 128 Idaho 851, 854, 920 P.2d 67, 69 (1996). The non-moving party may not simply rely upon mere allegations in the pleadings, but must set forth in affidavits specific facts showing there is a genuine issue for trial. I.R.C.P. 56(e); see *Rhodehouse v. Stutts*, 125 Idaho 208, 211, 868 P.2d 1224, 1227 (1994). "[E]vidence presented in support of or in opposition to motions for summary judgment must be admissible evidence" *Hecla Min. Co. v. Star-Morning Min. Co.*, 122 Idaho 778, 784, 839 P.2d 1192, 1198 (1992). "The question of admissibility is a threshold question to be answered before applying the liberal construction and reasonable inferences rule to the admissible evidence." *Id.* If the non-moving party does not provide such a response, summary judgment, if appropriate, shall be entered against the party. See *id.*

III. ANALYSIS.

A. There is No Genuine Issue of Material Fact That Clark Has an Easement Appurtenant to the Thornton Property.

Clark seeks a determination by the Court that she has an easement appurtenant across the Thornton Property according to the language of Warranty Deed, Bonner County Instrument No. 525386 and Quitclaim Deed, Bonner County Instrument No. 416381. Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counterclaim, pp. 5-6.

Pandrea claims the twenty acres of land owned in part by Pandrea and in part by Clark has been divided throughout the years into Tax Lot 40 and Tax Lot 49. See Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for

Summary Judgment, pp. 9-12. Pandrea claims that she is the owner of Tax Lot 40 and Clark is the owner of Tax Lot 49. *Id.* Pandrea claims that Tax Lot 40 and Tax Lot 49 have never been one twenty-acre parcel of land. *Id.* at 9. Specifically Pandrea claims the following:

Pandrea purchased Tax Lot 40 in March of 1980, which consisted of approximately 5 acres, and in 1981 Pandrea quit claimed $\frac{1}{2}$ interest to Clark.

Eleven years later, in August of 1991, Clark purchased Tax Lot 49, which Pandrea co-owned by quitclaim deed in 1992. Tax Lot 49 was 18.72 acres of which Pandrea received 8.297 acres in January 2014, with Clark receiving 10.423 acres. Clark's Tax Lot 49 was ordered to be contiguous to her individually owned Tax Lot 47 which is also accessed by way of the "existing road" easement described by Tucker Engineering (1975) (See map below on next page)...

Id. (original emphasis removed) (internal citations omitted). Pandrea has provided Instrument No. 170365 as evidence she claims grants the "existing road" easement to Tax Lot 49 in the language quoted above. Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment, p. 9; Second Affidavit of Mary Pandrea, Exhibit P-1. Pandrea further maintains that the easement described in Warranty Deed, Instrument No. 525386, conveying property from Wiltse to Thornton reserves an easement for "Tax Lot 40". Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment, pp. 9-12. Pandrea does not describe Tax Lot 40 by a metes and bounds description. Instead, Pandrea mentions that Tax Lot 40 is Instrument No. 226223, a copy of which has not been submitted to the Court, and includes copies of two maps in her memorandum opposing this motion for summary judgment. *Id.*, pp. 6-7, 10. The maps are not very legible, but do contain the language "Tax Lot 40". *Id.*, pp. 7, 10. However, the maps are not supported by affidavit, nor have they been provided to the Court as certified copies of recorded documents. *Id.* It is unclear who created these maps or when they

were created. The maps are inadmissible and will not be considered by the Court. A map was attached as Exhibit A to the Revised Judgment and Decree issued by Judge Luster in Bonner County case CV-2011-835, which depicts parcels of land with instrument numbers. Affidavit of Joel P. Hazel, Exhibit C. This map shows that Instrument No. 226223 is land conveyed to Pandrea. *Id.* That map does not, however, include the language "Tax Lot 40". *Id.*

Regardless, Pandrea claims that as of August 2012 she is the individual owner of Tax Lot 40 pursuant to a court order issued in Bonner County case CV 2011 835. Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment, p. 5. Pandrea claims this conveyance was finalized on January 24, 2014, by Judge Luster in a Revised Judgment and Decree of Partition. *Id.* Pandrea contends any right Clark had to the easement ended when that decision was entered. *Id.* Pandrea further claims the following:

There is no evidence on the record to support Clark's claim that Tax Lot 40 and Tax Lot 49 are a '20 acre parcel' (singular) that had been accessed by way of the driveway to Tax Lot 40. *Id.* at 10. In support of this, she claims Instrument Number 525386, which is the Thornton Warranty Deed, and includes an 'EXHIBIT A' that references Instrument Number 416381. Instrument Number 416381 gives more detailed description of Tax Lot 40 (and the easement through the Thornton 'driveway') and of tax Lot 49 (and the easement by way of the 'existing road').

Id. at 11 (internal citations omitted). Based on this, Pandrea maintains the easement attaches to Tax Lot 40 only, which Clark no longer has an interest in. *Id.*, p.12.

Pandrea also mentions that Clark does not have an easement by implication, easement by necessity, or a prescriptive easement, but in her Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint

and Motion for Partial Summary Judgment on Clark's Counterclaim, Clark only seeks summary judgment on whether she has an easement appurtenant. *Id.* at 12-16.

Thornton claims Clark does not have an easement across the Thornton Property because "[t]he language upon which Kari Clark relies does not describe a dominant estate, and does not pretend to pass on to the heirs and assigns of the grantors." Plaintiff's Memorandum of Law in Opposition to Defendant Kari Clark's Motion for Summary Judgment, p. 2. Thornton claims the language of Warranty Deed, Instrument No. 525386 creating the easement "consists of a reservation by the grantors of the right to use the road on the conveyed portion of Tax Lot 40 in order to access the grantors' remaining portion of Tax Lot 40." *Id.* at 4. Since the Warranty Deed references the easement created by the Quitclaim Deed, it "provides the sole basis for Kari Clark's claim of entitlement to use the easement." *Id.* Thornton argues the Quitclaim Deed conveyed two portions of property, part of Tax Lot 40 and part of Tax Lot 49. *Id.* Thornton maintains the conveyance of Tax Lot 40 was subject to a "thirty (30) foot easement for a road right of way and utilities" and the conveyance of Tax Lot 49 was not subject to any "easement or right of way of any kind". *Id.* at 4-5. Like Pandrea, Thornton does not describe Tax Lot 40 or Tax Lot 49 by a metes and bounds description. Rather, Thornton claims the Quitclaim Deed, Instrument No. 416381 contains a metes and bounds description of both Tax Lot 40 and Tax Lot 49. *Id.* Thornton has provided no admissible evidence supporting that claim.

Thornton further alleges Clark does not have an easement by necessity. *Id.* As stated above, Clark in her Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counterclaim only seeks summary judgment on whether

she has an easement appurtenant. Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counterclaim, pp. 12-16.

"There are two general types of easements: easements appurtenant and easements in gross. An easement appurtenant is a right to use a certain parcel, the servient estate, for the benefit of another parcel, the dominant estate." *Hodgins v. Sales*, 139 Idaho 225, 230, 76 P.3d 969, 974 (2003) (citing *Abbott v. Nampa School Dist. No. 131*, 119 Idaho 544, 550, 808 P.2d 1289, 1295 (1991)). "In contrast, an easement in gross benefits the holder of the easement personally, without connection to the ownership or use of a specific parcel of land." *Id.* (citing *King v. Lang*, 136 Idaho 905, 909, 42 P.3d 698, 702 (2002)). The difference between the easements has been described by the Idaho Supreme Court in the following way:

An easement . . . "appurtenant" is one whose benefits serve a parcel of land. More exactly, it serves the owner of that land in a way that cannot be separated from his rights in the land. It in fact becomes a right in that land and, as we shall see, passes with the title. Typical examples of easements appurtenant are walkways, driveways, and utility lines across Blackacre, leading to adjoining or nearby Whiteacre.

Easements . . . "in gross" are those whose benefits serve their holder only personally, not in connection with his ownership or use of any specific parcel of land. . . . Examples are easements for utilities held by utility companies, street easements, and railroad easements.

Abbott v. Nampa Sch. Dist. No. 131, 119 Idaho 544, 550, 808 P.2d 1289, 1295 (1991).

If there is a doubt as to whether an easement is appurtenant or in gross, Idaho courts presume the easement is appurtenant. *Id.* (citing *Nelson v. Johnson*, 106 Idaho 385, 387-88, 679 P.2d 662, 664-65 (1984)).

In this case, the Warranty Deed conveying the two acre parcel of land to Thornton contained the following language establishing an easement is as follows:

EASEMENT AND CONDITIONS THEREOF RESERVED BY
INSTRUMENT:
IN FAVOR OF: MARY E. PANDREA WILTSE, A MARRIED
WOMAN DEALING IN HER SOLE AND SEPARATE PROPERTY;
AND KARI A. CLARK, A SINGLE WOMAN
FOR: A 30.0 FOOT EASEMENT FOR A ROAD
RIGHT OF WAY AND UTILITIES
RECORDED: DECEMBER 1, 1992
INSURMENT NO.: 416381

Affidavit of Joel P. Hazel, Exhibit B.

Contrary to the contention of Pandrea and Thornton, the above language does not grant an easement specifically to "Tax Lot 40". Neither Pandrea nor Thornton have submitted any admissible evidence depicting Tax Lot 40 or describing Tax Lot 40 by a metes and bounds description. Pandrea claims that she is now the owner of Tax Lot 40 based on a court order issued by Judge Luster in Bonner County case number CV-2011-835. However, this order provides a metes and bounds description and does not refer to "Tax Lot 40". All of the admissible evidence refers to the properties in this case by metes and bounds descriptions. But even if there was admissible evidence describing Tax Lot 40, the *easement* at issue in this case simply does not refer to Tax Lot 40. It grants a thirty-foot easement for a road right of way and utilities to Mary E. Pandrea and Kari Clark for a right of way and use of utilities which serves *their* land, not specifically the land of Tax Lot 40. Both Thornton and Pandrea are very mistaken in their argument linking the easement in favor of Pandrea and Clark to Tax Lot 40. The link simply does not exist. As a result, the partition lawsuit between Pandrea and Clark before Judge Luster has absolutely nothing to do with Pandrea's and Clark's easement rights across Thornton's land. Thornton is grievously mistaken to argue otherwise.

At oral argument, Thornton's attorney echoed the claim made by Thornton in his affidavit that: "At the time the easement was created, the only acreage adjacent to my property was the 5-acre parcel, formerly Mary Pandrea's sole and separate property

also known as Tax Lot 40." Affidavit of John Thornton in Opposition to Summary Judgment, p. 1, ¶ 1. At oral argument, Thornton's attorney argued that an easement appurtenant had to be adjacent to the property burdened. Thornton's attorney stated: "The easement, if any, appertaining to the adjacent parcel only appertains to the adjacent parcel." No legal authority supporting such circular argument has ever been submitted by Thornton. No legal authority for Thornton's argument exists. Clark is named in the easement. The easement exists and is recorded, so for Thornton's attorney to state on March 14, 2014, that "The easement, if any...", ignores the uncontroverted evidence. For Thornton's counsel to make the claim that an easement appurtenant depends on "adjacency" to the burdened land, without any legal support for that claim, is irresponsible. Clark's easement does not depend on adjacency of her property to Thornton's. Clark's easement depends on the fact that her name is on a recorded easement that burdens Thornton's land.

Furthermore, Thornton is completely misguided in restricting Clark, but not Pandrea, from crossing Thornton's land. The easement, quoted immediately above, is in favor of Pandrea and Clark. Thornton's inability to read and understand what is of record, is quite mystifying. As this Court stated in its January 14, 2014, Memorandum Decision and Order Granting in Part and Denying in Part Pandrea's Motion to Dismiss (Motion for Summary Judgment):

[T]here is indisputable evidence that the language provided above created an easement appurtenant. While the language of the easement identifies no dominant or servient estate, it gives a right of access to Pandrea and Clark for a road right of way and for utilities, which serves the land directly as opposed to Pandrea and Clark personally. However, even if the Court finds that there is doubt whether this language creates an easement appurtenant, the presumption in Idaho rests in favor of finding that an easement appurtenant was created.

Memorandum Decision and Order Granting in Part and Denying in Part Pandrea's Motion to Dismiss (Motion for Summary Judgment), p. 25. As such, the Court must now grant partial summary judgment in favor of Clark on this issue. The only reason these issues were not addressed in this Court's earlier decision is Pandrea and Thornton for some reason refused to submit admissible evidence to the Court. Clark has now rectified the failure of the other parties.

B. Thornton Interfered With Clark's Right to Use the Easement When He Erected a Locked Gate Across the Easement.

Clark claims that since she has an easement appurtenant, Thornton wrongfully interfered with her easement rights when he erected a locked gate across the road. Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counterclaim, p. 7. Thornton claims that he:

...has a right to question those who claim to have the right to cross his property, and it is not unreasonable to ask for identification and verification of such claims. . . . When he learned that Kari Clark claimed a right to use the easement, he immediately requested to be informed of the basis thereof, and notified Rickard Kuck, her attorney in the partition matter (CV-2011-835) that she would be trespassed from the property unless she provided a legal basis for her claim.

Plaintiff's Memorandum of Law in Opposition to Summary Judgment, p. 6 (citing Affidavit of John Thornton in Opposition to Summary Judgment).

"An easement is the right to use the land of another for a specific purpose that is not inconsistent with the general use of the property by the owner." *Johnson v. Highway 101 Investments, LLC*, No. 39160, 2014 WL 497442, at *2 (Idaho Feb. 7, 2014) (citing *Capstar Radio Operating Co. v. Lawrence*, 153 Idaho 411, 420, 283 P.3d 728, 737 (2012); quoting *Hughes v. Fisher*, 142 Idaho 474, 480, 129 P.3d 1223, 1229 (2006)).

The law is well settled with respect to the correlative rights of dominant and servient owners of easements. The owner of the servient estate is entitled to use the estate in any manner not inconsistent with, or which does not materially interfere with, the use of the easement by the owner of the dominant estate. In other words, the servient estate owner is entitled to make uses of the property that do not unreasonably interfere with the dominant estate owner's enjoyment of the easement.

Id. (citing *Ruddy–Lamarca v. Dalton Gardens Irrigation Dist.*, 153 Idaho 754, 758, 291 P.3d 437, 441 (2012), quoting *Nampa & Meridian Irrigation Dist. v. Washington Fed. Sav.*, 135 Idaho 518, 522, 20 P.3d 702, 706 (2001)). “An easement owner is entitled to relief upon a showing that he is obstructed from exercising privileges granted by an easement.” *Boydston Beach Ass'n v. Allen*, 111 Idaho 370, 377, 723 P.2d 914, 921 (Ct. App. 1986) (*Connecticut Light and Power Co. v. Holson Co.*, 185 Conn. 436, 440 A.2d 935 (1981)).

As stated above, Clark has an easement appurtenant to the Thornton Property. Thornton claims he was unaware of the easement rights of Clark, yet the Warranty Deed conveying the two acre parcel of land to Thornton contained the following language establishing an easement is as follows:

EASEMENT AND CONDITIONS THEREOF RESERVED BY
INSTRUMENT:
IN FAVOR OF: MARY E. PANDREA WILTSE, A MARRIED
WOMAN DEALING IN HER SOLE AND SEPARATE PROPERTY;
AND KARI A. CLARK, A SINGLE WOMAN
FOR: A 30.0 FOOT EASEMENT FOR A ROAD
RIGHT OF WAY AND UTILITIES
RECORDED: DECEMBER 1, 1992
INSURMENT NO.: 416381

Affidavit of Joel P. Hazel, Exhibit B (emphasis added). The Warranty Deed conveying the Thornton Property to Thornton put Thornton on notice that Clark had an easement. In spite of this, Thornton erected a locked gate across the easement road and posted a sign dated July 5, 2013, next to the gate, which read as follows:

NOTICE
KARI CLARK
IS PROHIBITED FROM ENTERING UPON THIS PROPERTY FOR ANY
REASON UNDER PENALTY OF CRIMINAL TRESPASS. I.C. § 18-7001.

JOHN F. THORNTON
4685 UPPER PACK RIVER ROAD
SANDPOINT IDAHO 83864

OWNER

Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counterclaim, p. 2; Affidavit of Terri Boyd-Davis, pp. 2-3 ¶¶ 5-6, Exhibit G. As mentioned above, Thornton's failure to read and comprehend what is of record (or if he read his deed at the time, his refusal to abide by the language in his deed), the written easement, is troubling to the Court. Nearly a year ago, Thornton's in July 2013 of excluding Clark from using her easement, was simply wrong. Thornton had no legal right to do so. But *today*, Thornton has obviously read his deed. Thornton can no longer claim ignorance. And for Thornton to *today* claim that "John Thornton has a right to question those who claim to have the right to cross his property, and it is not unreasonable to ask for identification and verification of such claims..." (Plaintiff's Memorandum of Law in Opposition to Summary Judgment, p. 6, citing Affidavit of John Thornton in Opposition to Summary Judgment), is absolutely incredible. Even more recently, after Thornton's affidavit and brief were filed, Thornton's attorney, at the March 14, 2014, hearing argued: "Thornton was never on any notice there was a right to use." Such argument completely ignores the purpose of Idaho's recording statutes. I.C. § 55-801 *et. seq.* Once the easement was recorded in 1992, that easement is constructive notice to Thornton and the entire world, of Clark's easement rights. I.C. § 55-811. How Thornton's attorney can make such a statement to the Court, is not capable of being

understood. The fact that Thornton refused to submit proof of the fact of the recorded easement in the earlier motion for summary judgment brought by Pandrea, only illustrates the untenable position Thornton took not only on July 20, 2013, but throughout this litigation, and Thornton, and his attorney, obviously continue to adhere to up to the present time. Thornton cannot make the written recorded easement go away by pretending it does not exist. Thornton's attorney cannot pretend Idaho's recording statutes do not exist. At the March 14, 2014, hearing, Thornton's attorney in concluding her oral argument, that Thornton's actions on July 20, 2013, and opposition to Clark's claims in this lawsuit "...were not frivolous." The Court disagrees. Thornton's attorney also argued at the March 14, 2014, hearing that "A landowner has a right to approach a person that you have never met before." Such argument is disingenuous given the fact that fifteen days before meeting Clark and confronting Clark, Thornton, on July 5, 2013, put up the following sign:

NOITCE
KARI CLARK
IS PROHIBITED FROM ENTERING UPON THIS PROPERTY FOR ANY
REASON UNDER PENALTY OF CRIMINAL TRESPASS. I.C. § 18-7001.

Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counterclaim, p. 2; Affidavit of Terry Boyd-Davis, pp. 2-3 ¶¶ 5-6, Exhibit G. Why would Thornton place such a sign if he had never met Kari Clark or at least knew who Kari Clark was, and *knew Kari Clark claimed some right to cross his property?*

Clark has demonstrated she has a right to the express easement of record and Clark has proven that Thornton interfered with that right when he erected the locked gate. Clark has shifted the burden to Thornton, who has failed to state a lawful basis

for preventing Clark from exercising privileges granted by the easement. As such, Clark is entitled to judgment as a matter of law on this issue.

At the end of the March 14, 2014, hearing, when the Court announced its decision granting Clark's summary judgment motion, the Court ordered Thornton to immediately remove the gate on Thornton's property.

C. Clark no Longer has an Interest in the Well Property.

"The general rule of mootness doctrine is that, to be justiciable, an issue must present a real and substantial controversy that is capable of being concluded through a judicial decree of specific relief." *Freeman v. Idaho Dep't of Correction*, 138 Idaho 872, 875, 71 P.3d 471, 474 (Ct. App. 2003) (citing *Idaho Sch. for Equal Educ. Opportunity v. Idaho State Bd. of Educ.*, 128 Idaho 276, 281-82, 912 P.2d 644, 649-50 (1996)). The controversy must exist at the time of the court hearing and the parties must have a "cognizable interest in the outcome" otherwise the issue is moot. *Id.* "A party lacks a legally cognizable interest in the outcome when even a favorable judicial decision would not result in relief." *Id.* (citing *See Murphy v. Hunt*, 455 U.S. 478, 481-82, 102 S.Ct. 1181, 1183, 71 L.Ed.2d 353, 356-57 (1982)).

On August 14, 2013, Thornton brought this action to quiet title against Pandrea and Clark regarding ownership rights of the Well Piece. Clark claims that pursuant to the Revised Judgment and Decree of Partition issued by Judge Luster on January 24, 2014, in Bonner County case number CV 2011 835, the twenty-acre parcel of land formerly owned by Clark and Pandrea was divided so that Clark no longer has an ownership interest in the Well Piece. Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counterclaim, p. 2. Clark argues any dispute

about the ownership interest of the Well would be solely between Thornton and Pandrea. *Id.* As such, Clark claims that Thornton's claims against her regarding the Well Piece are moot. Thornton claims that the issue is not moot because Bonner County case number CV 2011 835 is under appeal. Plaintiff's Memorandum of Law in Opposition to Defendant Kari Clark's Motion for Summary Judgment, p. 2.

No evidence has been properly put before the court demonstrating that Bonner County case number CV 2011 835 is under appeal or that any appeal affects the Well Piece. The only evidence properly before the Court is the decision by Judge Luster in Bonner County case number CV 2011 835. Affidavit of Joel P. Hazel, Exhibit C. Based on that decision, it is clear that Clark does not have an interest in the Well Piece. As such, there is no controversy between Thornton and Clark regarding an interest in the Well Piece, and the issue between Thornton and Clark is moot.

IV. CONCLUSION AND ORDER.

For the above stated reasons, this Court grants summary judgment in favor of Clark as against Thornton's claims, and grants partial summary judgment in favor of Clark as against Thornton on all of Clark's counterclaims, except for the issue of damages to Clark by Thornton, if any, which will be tried to a jury.

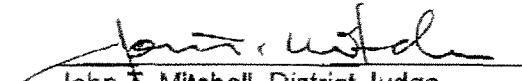
IT IS HEREBY ORDERED Clark's Motion to Shorten Time to hear Clark's Motion to Strike Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment and the Affidavits Filed in Support Thereof is GRANTED.

IT IS FURTHER ORDERED Clark's Motion to Strike Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment and the Affidavits Filed in Support Thereof is GRANTED.

IT IS FURTHER ORDERED Clark's motion for summary judgment in favor of Clark as against Thornton's claims is GRANTED, and partial summary judgment in favor of Clark as against Thornton on all of Clark's counterclaims (except for the issue of damages which will be tried to a jury) is GRANTED.

IT IS FURTHER ORDERED the gate on Thornton's property which obstructs Clark's easement across Thornton's property is to be removed effective March 14, 2014.

Entered this 9th day of April, 2014.



John T. Mitchell, District Judge

Certificate of Service

I certify that on the 9 day of April, 2014, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer Val Thornton
Fax # 208-255-2327
Mary E. Pandrea, Pro Se
4687 Upper Pack River Road
Sandpoint, ID 83864

Lawyer Joel P. Hazel
Fax # 208-667-8470


Linda Oppelt, Deputy Clerk

1
2 JOEL P. HAZEL, ISB # 4980
3 JASON M. GRAY, ISB # 8539
4 WITHERSPOON KELLEY
5 The Spokesman-Review Building
6 608 Northwest Blvd., Suite 300
7 Coeur d'Alene, Idaho 83814-2146
8 Telephone: (208) 667-4000
9 Facsimile: (208) 667-8470
10 Email: jph@witherspoonkelley.com
11 Email: jmg@witherspoonkelley.com

12 *Attorneys for Defendant/Counterclaimant Kari A. Clark*

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

JOHN F. THORNTON,

Plaintiff/Counterdefendant,

vs.

MARY E. PANDREA, a single woman
individually and as Trustee of the Kari A.
Clark and Mary E. Pandrea Revocable Trust,
u/a April 9, 2002; and

Defendant,

KARI A. CLARK, a single woman
individually and as Trustee of the Kari A.
Clark and Mary E. Pandrea Revocable Trust,
u/a April 9, 2002 and as Trustee of the Kari
A. Clark Trust u/a June 21, 2010,

Defendant/Counterclaimant.

Case No. CV 2013-1334

BRIEF IN SUPPORT OF
DEFENDANT/COUNTERCLAIMANT
CLARK'S MOTION FOR AWARD OF
ATTORNEY'S FEES AND COSTS

Defendant/Counterclaimant Kari A. Clark ("Clark") is entitled to an award of attorney's fees and costs against Plaintiff/Counterdefendant John F. Thornton ("Thornton") and Thornton's attorney, Valerie Thornton, because Clark is the prevailing party in this action and

BRIEF IN SUPPORT OF DEFENDANT/COUNTERCLAIMANT
CLARK'S MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS - 1

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EXHIBIT

tabbles
B

1 the Court has already found that this case was brought, pursued and defended frivolously,
2 unreasonably or without foundation by Thornton and his attorney.

3 **I. CLARK IS THE PREVAILING PARTY AGAINST THORNTON AND CLARK IS ENTITLED**
4 **TO ATTORNEY'S FEES AND COSTS.**

5 As this Court knows, in order to determine if a party is entitled to costs and attorney's
6 fees under I.R.C.P. 54(d)(1) and I.R.C.P. 54(e)(1), the Court must first determine which party is
7 the "prevailing party." I.R.C.P. 54(d)(1)(B) provides that:

8 **Prevailing Party.** In determining which party to an action is a prevailing party
9 and entitled to costs, the trial court shall in its sound discretion consider the final
10 judgment or result of the action in relation to the relief sought by the respective
11 parties.

12 This case was initiated by Thornton as an action to quiet title in real property against
13 Clark and Mary E. Pandrea ("Pandrea"). Thornton claimed that Clark did not have the right
14 cross a two acre parcel that Thornton now owns, despite the fact that the Warranty Deed
15 conveying the property to Thornton specifically stated that the conveyance was subject to "A
16 30.0 FOOT EASMENT FOR A ROAD RIGHT OF WAY AND UTILITIES" in favor of
17 "MARY E. PANDREA WILTSE" and "KARI A. CLARK" as set forth in "INSTRUMENT
18 NO. 416381." Thornton also claimed that he was entitled to sole ownership of what has been
19 referred to as the "Well Piece." Clark filed an Answer and counterclaims against Thornton for
20 interference with her easement rights, injunctive relief and to quiet title.

21 Clark moved for summary judgment on Thornton's claims and on Clark's counterclaims
22 regarding the easement because there were no genuine issues of material fact regarding the
23 existence of Clark's easement appurtenant to Thornton's property. Clark's Motion for Summary
24 Judgment was granted, Thornton's Complaint against Clark was dismissed with prejudice, and
25 Clark was successful on her counterclaims to quiet title regarding her appurtenant easement
26 rights, for injunctive relief and establishing that Thornton wrongfully interfered with Clark's
27 easement rights. Clark voluntarily dismissed her claim for damages against Thornton in an
28

1 effort to avoid further wasteful litigation costs, but reserved the right to seek any attorney's fees
2 and costs she is entitled to.

3 Based on this Court's Memorandum Decision and Order Granting Defendant Clark's
4 Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Defendant
5 Clark's Motion for Partial Summary Judgment on Clark's Counterclaims Against Thornton
6 ("Memorandum Decision"), there is no question in this case that Clark is the prevailing party
7 against Thornton.

8 **II. CLARK IS ENTITLED TO ATTORNEY'S FEES AND COSTS UNDER I.R.C.P. 54 AND I.C. §**
9 **12-121.**

10 The district court's decision to award attorney fees is a discretionary decision, subject to
11 the abuse of discretion standard of review. *Bailey v. Sanford*, 139 Idaho 744, 753, 86 P.3d 458,
12 467 (2004). Idaho Code § 12-121 provides in pertinent part:

13 In any civil action, the judge may award reasonable attorney's fees to the
14 prevailing party or parties, provided that this section shall not alter, repeal or
15 amend any statute which otherwise provides for an award of attorney's fees.

16 Idaho Courts have held that I.C. § 12-121, read together with I.R.C.P. 54(e)(1), limits
17 attorney's fees to those situations in which the Court finds that the action was "brought,
18 pursued or defended frivolously, unreasonably or without foundation." *Ortiz v. Reamy*, 115
19 Idaho 1099, 1101, 772 P.2d 737, 739 (Ct. App. 1989).

20 In this case, the frivolity and unreasonableness of Thornton's positions throughout this
21 litigation is unquestionable. Thornton's initial position in this litigation was that Pandrea had
22 an easement in gross across Thornton's property, but Clark had no easement rights. Thornton
23 made this frivolous assertion despite the fact that the Warranty Deed conveying the property to
24 Thornton specifically stated that the conveyance was subject to "A 30.0 FOOT EASMENT
25 FOR A ROAD RIGHT OF WAY AND UTILITIES" in favor of "MARY E. PANDREA
26 WILTSE" and "KARI A. CLARK."

27 After this Court indicated in its ruling on Pandrea's Motion to Dismiss that both Clark
28 and Pandrea had an appurtenant easement across the Thornton Property based on the clear
language of the deeds at issue, Thornton then changed his position and argued that any

1 easement across his property only served "Tax Lot 40." However, like Thornton's other claims
2 in this litigation, there was absolutely no basis to support such an argument and his assertions
3 can only be viewed as an attempt to harass Clark and to increase Clark's costs in this case. As
4 this Court stated previously:

5 Both Thornton and Pandrea are very mistaken in their argument linking the
6 easement in favor of Pandrea and Clark to Tax Lot 40. The link simply does not
7 exist. As a result, the partition lawsuit between Pandrea and Clark before Judge
8 Luster has absolutely nothing to do with Pandrea's and Clark's easement rights
9 across Thornton's land. Thornton is grievously mistaken to argue otherwise.

10 Memorandum Decision, p. 15.

11 In addition, Thornton made the frivolous claim that an appurtenant easement must be
12 adjacent to the property burdened. More specifically, Thornton's attorney stated, "the
13 easement, if any, appertaining to the adjacent parcel only appertains to the adjacent parcel."

14 Memorandum Decision, p.16. However, as this Court noted:

15 No legal authority supporting such a circular argument has ever been submitted
16 by Thornton. No legal authority for Thornton's argument exists. Clark is named
17 in the easement. The easement exists and is recorded, so for Thornton's attorney
18 to state on March 14, 2014, that "The easement, if any . . . ", ignores the
19 uncontroverted evidence. For Thornton's counsel to make the claim that an
20 easement appurtenant depends on "adjacency" to the burdened land, without any
21 legal support for that claim, is irresponsible. Clark's easement does not depend on
22 adjacency of her property to Thornton's. Clark's easement depends on the fact that
23 her name is on a recorded easement that burdens Thornton's land.

24 Memorandum Decision, p.16.

25 As mentioned above, the frivolity of Thornton's arguments regarding the easement is
26 demonstrated by his untenable position that Pandrea had the right to use the easement, but
27 Clark did not without any regard for the undisputed language in the deeds of record specifically
28 providing that the easement "is favor of Pandrea *and Clark*." Memorandum Decision, p. 16
(emphasis original). Clark agrees with the Court that "Thornton's inability to read and
understand what is of record, is quite mystifying." Memorandum Decision, p. 16. However,
Thornton's willful decision to ignore the plain language in the deeds and to wrongfully interfere
with Clark's easement rights goes far beyond mere neglect and constitute a calculated course of

1 conduct designed to harass Clark and wear her down with expenses and wasteful litigation.
2 Thornton's conduct in interfering with Clark's property rights and the frivolous claims that he
3 brought against Clark in this case are inexcusable. Not only was Thornton's conduct in
4 violating Clark's property rights troubling, but his continued pursuit of his unreasonable claims
5 against Clark without any foundation whatsoever is the very definition of frivolousness.
6 Thornton's deleterious tactics should fail and Clark is entitled to an award of all of her attorney's
7 fees costs pursuant to I.R.C.P. 54(d) and I.C. § 12-121.

8 **III. CLARK IS ALSO ENTITLED TO AN AWARD OF ATTORNEY'S FEES AND COSTS AGAINST**
9 **THORNTON AND HIS ATTORNEY, VALERIE THORNTON, AS SANCTIONS PURSUANT TO**
10 **I.R.C.P. 11.**

11 The district court's decision to impose Rule 11 sanctions is reviewed under the abuse of
12 discretion standard. *Chapple v. Madison County Officials*, 132 Idaho 76, 967 P.2d 278 (1998).
13 Pursuant to I.R.C.P. 11(a)(1), all pleadings, motions and other papers signed by an attorney
14 must meet certain criteria. Where such motions, pleadings or other papers are not well
15 grounded in fact, warranted by existing law or a good faith argument for extension,
16 modification, or reversal of existing law, or are interposed for improper purposes (such as to
17 harass, cause undue delay, or needlessly increase the cost of litigation), imposition of sanctions
18 results. I.R.C.P. 11(a)(1); *Slack v. Anderson*, 140 Idaho 38, 39-40, 89 P.3d 878, 879-880 (2004)
19 (citing *Durrant v. Christensen*, 117 Idaho 70, 74, 785 P.2d 634, 638 (1990)). I.R.C.P.11(a)(1)
20 authorizes the court to impose sanctions against an attorney and/or the represented party. This
21 rule does not duplicate I.C. § 12-121, and circumstances that justify an award of fees under that
22 statute do not necessarily call for imposition of Rule 11 sanctions. See *Sun Valley Shopping*
23 *Center, Inc.*, 119 Idaho 87, 96, 803 P.2d 993, 1002 (1991); *Young v. Williams*, 122 Idaho 649,
24 654, 837 P.2d 324, 329 (Ct. App. 1992). An "attorney is required to perform a prefiling inquiry
25 into both the facts and the law involved to satisfy the affirmative duty imposed by Rule 11."
26 *Riggins v. Smith*, 126 Idaho 1017, 1021, 895 P.2d 1210, 1213 (1995). Reasonableness under the
27 circumstances, and a duty to make reasonable inquiry prior to filing a pleading or other paper,
28 is the appropriate standard to apply when evaluating an attorney's conduct. *Durrant v.*

1 *Christensen*, 117 Idaho 70, 74, 785 P.2d 634, 638 (1990). Whether a pleading, motion or other
2 signed document is sanctionable must be based on an assessment of the knowledge of the
3 relevant facts and law that reasonably could have been acquired at the time the document was
4 submitted to the court. *Young*, 122 Idaho at 653, 837 P.2d at 328.

5 The frivolity of the lawsuit filed by Thornton and his attorney has already been
6 established. The claims Thornton brought against Clark were not well grounded in fact, nor
7 were they a good faith argument for the extension, modification, or reversal of existing law.
8 However, the course of conduct of Thornton and his attorney both prior to, and throughout this
9 litigation has demonstrated that Thornton and his attorney have intentionally brought and
10 pursued this litigation in an attempt to harass Clark and unnecessarily delay Clark's lawful right
11 to use the easement across Thornton's property. Despite having actual and constructive notice
12 of Clark's right to use the easement across Thornton's property, Thornton chose to block Clark's
13 access and he posted a sign directly threatening Clark with criminal prosecution. When Clark
14 attempted to use the easement to access her property, Thornton and Thornton's attorney
15 confronted Clark and told her that she had no legal right to cross the Thornton property.

16 The lawsuit that was brought by Thornton and his attorney against Clark goes above
17 and beyond frivolous and constitutes vexatious litigation. Throughout the entirety of this case,
18 Thornton and his attorney have purposefully driven up Clark's costs of litigation by completely
19 ignoring the plain language contained in two deeds of record describing Clark's easement rights
20 and by seemingly working in concert with Pandrea to harass Clark. In addition, Thornton has
21 attempted to utilize affidavits and documents provided by Pandrea in an effort to support
22 Thornton's meritless claims even though Thornton is the Plaintiff and Pandrea is a co-defendant
23 with Clark.

24 Sanctions should be imposed against Thornton and his attorney because Thornton's
25 attorney was required to perform a reasonable pre-filing inquiry into both the facts and the law
26 before initiating this lawsuit against Clark. Thornton's attorney did not conduct a reasonable
27 inquiry as demonstrated by her complete failure to recognize the plain meaning of the language
28 contained in two deeds that specifically granted Clark an easement over Thornton's property.

1 As this Court discussed in its Memorandum Decision on Clark's Motion for Partial
2 Summary Judgment:

3 Thornton's attorney, at the March 14, 2014, hearing argued: "Thornton was never
4 on any notice there was a right to use." Such argument completely ignores the
5 purpose of Idaho's recording statutes. I.C. § 55-801 et.seq. Once the easement
6 was recorded in 1992, that easement is constructive notice to Thornton and the
7 entire world, of Clark's easement rights. I.C. § 55-811. How Thornton's attorney
8 can make such a statement to the Court, is not capable of being understood. The
9 fact that Thornton refused to submit proof of the fact of the recorded easement in
10 the earlier motion for summary judgment brought by Pandrea, only illustrates the
11 untenable position Thornton took not only on July 20, 2013, but throughout this
12 litigation, and Thornton, and his attorney, obviously continue to adhere to up to
13 the present time. Thornton cannot make the written recorded easement go away
14 by pretending it does not exist. Thornton's attorney cannot pretend Idaho's
15 recording statutes do not exist.

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18 Thornton's attorney also argued at the March 14, 2014, hearing that "A landowner
19 has a right to approach a person that you have never met before." Such argument
20 is disingenuous given the fact that fifteen days before meeting Clark and
21 confronting Clark, Thornton, on July 5, 2013, put up the following sign:

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NOTICE
KARI CLARK
IS PROHIBITED FROM ENTERING UPON THIS PROPERTY FOR ANY
REASON UNDER PENALTY OF CRIMINAL TRESPASS. I.C. § 18-7001.

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Memorandum Decision, pp. 19-20.

Thornton and his attorney chose to ignore the facts and ignore the law in bringing this action against Clark. The only conclusion that can be drawn from the actions of Thornton and his attorney is that this lawsuit was brought and pursued in an effort to harass Clark and to force Clark to incur needless costs of litigation defending against a frivolous two-pronged attack from Thornton and Pandrea. Thornton and Pandrea have litigated this case in bad faith

BRIEF IN SUPPORT OF DEFENDANT/COUNTERCLAIMANT
CLARK'S MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS - 7

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1 in the cynical hope that Clark would abandon her property in order to avoid the expense of
2 defending her legal rights. Under these circumstances, an award of attorney's fees and costs
3 should be awarded to Clark as sanctions against Thornton and his attorney pursuant to I.R.C.P.
4 11.

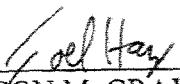
5 **V. CONCLUSION**

6 Clark is the prevailing party in this matter and is entitled to an award of
7 attorney's fees under Idaho Code § 12-121 and an award of costs under I.R.C.P. 54(d). In
8 addition, an award of attorney's fees and costs should be awarded to Clark as sanctions against
9 Thornton and his attorney pursuant to I.R.C.P. 11 in the amount set forth in the Affidavit filed
10 herewith.

11 Clark reserves the right to file supplemental affidavits for attorney's fees incurred
12 responding to Thornton's continued motions in this case.

13 DATED this 12th day of May, 2014.

14 WITHERSPOON KELLEY

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18 _____
19 JASON M. GRAY
20 JOEL P. HAZEL
21 *Attorneys for Defendant/Counterclaimant Clark*
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CERTIFICATE OF SERVICE

I certify that on this the 12th day of May, 2014, I caused a true and correct copy of the within *BRIEF IN SUPPORT OF DEFENDANT/COUNTERCLAIMANT CLARK'S MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS* to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Val Thornton	<input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid
4685 Upper Pack River Rd.	<input type="checkbox"/>	Hand Delivered
Sandpoint, ID 83864	<input type="checkbox"/>	Overnight Mail
	<input checked="" type="checkbox"/>	Facsimile: 208-255-2327
Mary E. Pandrea	<input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid
4672 Upper Pack River Rd.	<input type="checkbox"/>	Hand Delivered
Sandpoint, ID 83864	<input type="checkbox"/>	Overnight Mail
	<input type="checkbox"/>	Facsimile:

Annette Moormann
Annette Moormann

On September 3, 2013, Pandrea filed *pro se* "Defendant Pandrea's Answer to Complaint to Quiet Title and for Damages." At no time in this litigation has Pandrea filed a counterclaim against Thornton nor has Pandrea filed a cross-claim against Clark.

On December 5, 2013, Clark filed "Defendant Clark's Answer, Affirmative Defenses, Counterclaim and Demand for Jury Trial." At no time in this litigation did Clark file a cross-claim against Pandrea.

On January 29, 2014, Clark filed a "Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counterclaims". Oral argument on that motion was held on March 14, 2014. At the March 14, 2014, hearing, the Court also took up the issue of "Clark's Motion to Strike Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment and the Affidavits Filed in Support Thereof." The basis of that motion was Pandrea is not an adverse party to Clark, and Clark's Motion for Summary Judgment only pertained to Thornton's claims against Clark and Clark's counterclaims against Thornton. Defendant/Counterclaimant Clark's Motion to Strike Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment and the Affidavits Filed in Support Thereof, pp. 2, 3. At the conclusion of oral argument, the Court granted "Clark's Motion to Strike Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment and the Affidavits Filed in Support Thereof", because Pandrea is not an adverse party to Clark, and also granted Clark's Motion for Summary Judgment.

At the March 14, 2014, hearing on Clark's motion for summary judgment, this Court granted summary judgment on all of Clark's counterclaims against Thornton, and dismissing all of Thornton's claims against Clark. On April 9, 2014, this Court entered its "Memorandum Decision and Order Granting Defendant Clark's Motion for Summary

Judgment as to Claims of Plaintiff Thornton, and Granting Defendant Clark's Motion for Partial Summary Judgment on Clark's Counter-Claims Against Thornton." In that decision and order, this Court held:

For the above stated reasons, this Court grants summary judgment in favor of Clark as against Thornton's claims, and grants partial summary judgment in favor of Clark as against Thornton on all of Clark's counterclaims, except for the issue of damages to Clark by Thornton, if any, which will be tried to a jury.

Memorandum Decision and Order Granting Defendant Clark's Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Defendant Clark's Motion for Partial Summary Judgment on Clark's Counter-Claims Against Thornton, p. 22. On April 30, 2014, this Court entered its Judgment consistent with that written decision.

This matter is now before the Court because on May 6, 2014, Thornton timely filed "Plaintiff's Motion to Reconsider Summary Judgment and Notice of Hearing", a "Memorandum of Law in Support of Plaintiff's Motion to Reconsider Summary Judgment", an "Affidavit of John Thornton in Support of Motion to Reconsider" attached to which are twelve "illustrative maps" he feels "create a fair and accurate depiction of the properties and easements involved in this case." Affidavit of John Thornton in Support of Motion to Reconsider, p. 1. Thornton also submitted an "Affidavit of Mary Pandrea in Support of Plaintiff's Motion to Reconsider", in which Pandrea stated Thornton's "illustrative maps" "appear to be fair and accurate depictions of the history of the property boundaries and ownership of the three parcels owned by the parties." Affidavit of Mary Pandrea in Support of Motion to Reconsider, p. 1. On May 6, 2014, Val Thornton, the attorney for John Thornton, filed an "Affidavit of Val Thornton in Support of Plaintiff's Motion to Reconsider Summary Judgment" (and on May 14, 2014, Thornton filed "Affidavit of Correction Affidavit of Val Thornton in Support of Plaintiff's Motion to Reconsider Summary Judgment"). On May 13, 2014, Clark filed

"Defendant/Counterclaimant Clark's Response to Thornton's Motion for Reconsideration and Objection to the Affidavits of Mary Pandrea and John Thornton Filed in Support Thereof." On May 16, 2014, Thornton, four days before oral argument, untimely filed "Plaintiff's Reply Brief in Support of His Motion to Reconsider Summary Judgment." Also on May 16, 2014, Pandrea filed another affidavit in support of Thornton's Motion to Reconsider Summary Judgment. Oral argument on these motions by Thornton was held on May 20, 2014. At oral argument, counsel for Clark objected to the untimely filing of Thornton's "reply brief", but did not demonstrate any prejudice. The Court finds that because Thornton's arguments are specious, there is no prejudice to Clark due to Thornton's untimely filing of Thornton's reply brief.

This matter is also now before the Court on Pandrea's motions. On April 23, 2014, Pandrea, *pro se* filed "Defendant Pandrea's Motion to Amend Findings of Fact and to Alter or Amend Judgment; Motions to Reconsider the Order Granting Clark's Motion to Strike; Denying Pandrea a Hearing; and Granting Partial Summary Judgment in Favor of Clark", a "Memorandum in Support of Pandrea's Motion to Amend Findings of Fact and to Alter or Amend Judgment; Motions to Reconsider the Order Granting Clark's Motion to Strike; Denying Pandrea a Hearing; and Granting Partial Summary Judgment in Favor of Clark", and "Supplemental (Page 12) to the Memorandum in Support of Pandrea's Motion to Amend Findings of Fact and to Alter or Amend Judgment; Motions to Reconsider the Order Granting Clark's Motion to Strike; Denying Pandrea a Hearing; and Granting Partial Summary Judgment in Favor of Clark." On May 8, 2014, Pandrea *pro se* filed "Pandrea's Motion to Void Judgment", an "Affidavit of Mary E. Pandrea in Support of Her Motion to Void the Clark Judgment" and "Pandrea's Memorandum in Support of Motion to Void Judgment." On May 12, 2014, Clark filed "Defendant/Counterclaimant Clark's Objection to Pandrea's Motion to Amend and

Motion to Reconsider. On May 3, 2014, Pandrea signed a "Stipulation for Order of Dismissal of Plaintiff's Complaint to Quiet Title and for Damages Against Defendant Mary Pandrea." On May 6, 2014, Val Thornton signed that document on behalf of John Thornton. On May 14, 2014, that stipulation was filed with the Court. That stipulation, in its entirety, reads: "JOHN THORNTON AND MARY PANDREA hereby stipulate to move the court to enter an order dismissing John Thornton's Complaint to Quiet Title and for Damages against Defendant Mary Pandrea, with prejudice, and that each party shall pay his or her own attorney fees and costs." Oral argument on Pandrea's motions was held on May 22, 2014. At that hearing, the Court found Pandrea had no standing to bring her claim for reconsideration of this Court's decision as to the relationship between plaintiff Thornton and defendant Clark. The reasons for that decision are discussed below.

On May 12, 2014, Clark filed "Defendant/Counterclaimant Clark's Motion for Award of Attorney's fees and Costs", a "Brief in Support of Defendant/Counterclaimant Clark's Motion for Award of Attorney's fees and Costs", and an "Affidavit/Memorandum of Joel Hazel in Support of Motion for Award of Attorney's fees and Costs." On May 27, 2014, Thornton timely filed "Plaintiff's Objection and Motion to Disallow Defendant Kari Clark's Motion for Attorney Fees and Costs."

As set forth in the April 9, 2014, Memorandum Decision and Order, the factual background of this case is as follows:

On August 14, 2013, this action was commenced by Thornton against his neighbors Pandrea and Clark to quiet title to his real property. Thornton and Pandrea own adjacent parcels of real property in Sandpoint, Bonner County, Idaho, near Tavern Creek. Complaint to Quiet Title and for Damages (Complaint) pp. 3-5, ¶¶ 2.7-2.22. Thornton and Pandrea share a common boundary border. Affidavit of Mary E. Pandrea in Support of Defendant Pandrea's Motion to Dismiss Complaint for Quiet Title and for Damages (First Affidavit of Mary E. Pandrea), p. 2, ¶ 3.

In 1993, prior to owning his land, Thornton rented the property from Robert Wiltse (Wiltse) and Wiltse's wife at the time, Mary Pandrea. Complaint, p. 2, ¶ 2.2. This property Thornton now owns is a two-acre parcel of land. Affidavit of Joel P. Hazel in Support of Defendant Clark's Motion for Partial Summary Judgment (Affidavit of Joel P. Hazel), p. 2 ¶ 3. Wiltse and Pandrea had obtained the two-acre parcel of land from Clark and Pandrea, by Bonner County Quitclaim Deed, Instrument No. 416381, on November 10, 1992. Affidavit of Joel P. Hazel in Support of Defendant Clark's Motion for Partial Summary Judgment (Affidavit of Joel P. Hazel), Exhibit A. That Quitclaim Deed conveyed the property to Wiltse and Pandrea "[s]ubject to and reserving a 30.0 foot easement for a road right of way and utilities" *Id.* Wiltse and Pandrea divorced in 1996. First Affidavit of Mary E. Pandrea, p. 2, ¶ 6.

On May 4, 1998, after he was divorced from Pandrea, Wiltse conveyed the two-acre parcel of land to Thornton by Warranty Deed, Bonner County Instrument No. 525386 (Thornton Property). Affidavit of Joel P. Hazel, Exhibit B. The Warranty Deed has a provision for an easement as follows:

EASEMENT AND CONDITIONS THEREOF RESERVED BY
INSTRUMENT:
IN FAVOR OF: MARY E. PANDREA WILTSE, A MARRIED
WOMAN DEALING IN HER SOLE AND SEPARATE PROPERTY;
AND KARI A. CLARK, A SINGLE WOMAN
FOR: A 30.0 FOOT EASEMENT FOR A ROAD
RIGHT OF WAY AND UTILITIES
RECORDED: DECEMBER 1, 1992
INSURMENT NO.: 416381

Id. Clark maintains that since the 1940s the road referred to in Warranty Deed, Instrument No. 525386, which goes through the Thornton Property, is the only road her family has used to access approximately twenty acres of land that was jointly owned by Pandrea and Clark. Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counterclaim, p. 3; Affidavit of Terry Boyd-Davis in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counter Claims (Affidavit of Terri Boyd-Davis), p. 2 ¶ 4. Pandrea disputes that Clark and Pandrea jointly owned the twenty-acre parcel of land. Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment, p. 9. However, on May 11, 2011, Pandrea sued Clark to partition the twenty-acre parcel of land in Bonner County case number CV-2011-835. Defendant Clark's Answer Affirmative Defenses and Counterclaim, p. 5 ¶ 6; Affidavit of Joel P. Hazel, Exhibit C. On August 16, 2012, District Judge John P. Luster issued a decision in that case, partitioning the parcel in kind, with Clark receiving 10.423 acres and Pandrea receiving 12.739 acres. *Id.* [On January 24, 2014, Judge Luster issued a Revised Judgment and Decree

of Partition, which awarded Clark 10.423 acres of real property "subject to an easement appurtenant to the land for ingress through and over the parcel awarded to Plaintiff Mary E. Pandrea as the servient parcel and estate" Affidavit of Joel P. Hazel, Exhibit C.]

According to Clark, in 2013, Thornton erected a locked gate across the easement, interfering with Clark's easement rights. Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counterclaim, p. 2; Affidavit of Terry Boyd-Davis, pp. 2-3 ¶¶ 5-6. A sign dated July 5, 2013, was posted next to the gate, which read as follows:

NOITCE
KARI CLARK
IS PROHIBITED FROM ENTERING UPON THIS PROPERTY FOR ANY
REASON UNDER PENALTY OF CRIMINAL TRESPASS. I.C. § 18-7001.

JOHN F. THORNTON
4685 UPPER PACK RIVER ROAD
SANDPOINT IDAHO 83864

OWNER

Affidavit of Terri Boyd-Davis, Exhibit G. Thornton claims that "[s]ince 1993, when I began renting Thornton property, the easement was used solely by Mary Pandrea and her invitees. Mary Pandrea gated and locked the easement at times, and decided who was to have a key to the gate." Affidavit of John Thornton Opposing Summary Judgment (Second Affidavit of John Thornton), p. 1 ¶ 2.

On August 14, 2013, Thornton brought this present action to quiet title to a parcel of land, approximately one tenth of an acre in size, which contains a well, against Pandrea and Clark. Complaint to Quiet Title and for Damages, pp. 3-5, ¶¶ 2.7-2.22. Thornton contends that in 2012 he had the Thornton Property surveyed, and apparently that survey is how and when Thornton discovered the physical property description on his Deed did not include about one-tenth acre (Well Piece). *Id.* at 3, ¶ 2.6. Thornton attaches as Exhibit 2 to his Complaint to Quiet Title and for Damages, a property description. *Id.*, Exhibit 2. **However, that property description is simply printed on a piece of paper and attached to his Complaint; it is not a certified copy of any recorded document. *Id.* When this Court issued its Memorandum Decision and Order Granting in Part and Denying in Part Defendant Pandrea's Motion to Dismiss (Motion for Summary Judgment) on February 14, 2014, the Court had not at that time been provided a copy of Thornton's deed. Two weeks after that decision was issued, when Clark filed the instant motion for summary judgment, was the first time the Court was provided a copy of Thornton's deed.** Affidavit of Joel P. Hazel, Exhibit B. It is now apparent that at all times Thornton was deeded this parcel, the metes and bounds description of which did not include the "Well Piece". However, Thornton claims he only discovered that fact in 2012 through a survey he had performed on his

property. Clark maintains that following the Revised Judgment and Decree of Partition issued by Judge Luster on January 24, 2014, in Bonner County case number CV 2011 835, the twenty- acre parcel of land was divided so that Clark no longer has an ownership interest in the Well Piece. Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counterclaim, p. 2.

Memorandum Decision and Order Granting Defendant Clark's Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Defendant Clark's Motion for Partial Summary Judgment on Clark's Counter-claims Against Thornton, pp. 4-7. The Judgment was entered on April 30, 2014. In that decision and in that Judgment, the Court granted Clark partial summary judgment in favor of Clark as against Thornton on all of Clark's counterclaims, except for the issue of damages which were to be tried to a jury, the trial scheduled to begin June 23, 2014. On April 18, 2014, Val Thornton, attorney for John Thornton, signed, as did the attorney for Clark, a "Stipulation for Order of Dismissal of Defendant/Counterclaimant Clark's Damage Claim for Interference with Easement." In this stipulation Clark reserved her right to seek attorney fees against Thornton, but Clark gave up her right to seek damages for Thornton's interference with Clark's easement rights. Thus, nothing remains for trial.

II. STANDARD OF REVIEW.

"A motion to amend findings of fact, pursuant to Idaho Rule of Civil Procedure 52, is addressed to the discretion of the trial court." *McGregor v. Phillips*, 96 Idaho 779, 781, 537 P.2d 59, 61 (1975). A trial court's decision to deny the motion "will not be disturbed on appeal where the court's findings are supported by competent and substantial evidence." *Johnson v. Edwards*, 113 Idaho 660, 662, 747 P.2d 69, 71 (1987) (citing I.R.C.P. 52(a)).

A trial court's decision to grant or deny a motion for reconsideration is reviewed for an abuse of discretion. *Jordan v. Beeks*, 135 Idaho 586, 592, 21 P.3d 908, 914

(2001). A motion for reconsideration of an interlocutory order of the trial court may be made at any time before entry of the final judgment, but not later than fourteen days after entry of the final judgment. I.R.C.P. 11(a)(2)(B). A party making a motion for reconsideration is permitted to present new evidence, but is not required to do so. *Johnson v. Lambros*, 143 Idaho 468, 147 P.3d 100 (Ct. App. 2006). A district court must consider new evidence or authority bearing on the correctness of a summary judgment order if the motion to reconsider is timely filed under Idaho Rule of Civil Procedure 11(a)(2)(B). *Kepler-Fleenor v. Fremont County*, 152 Idaho 207, 210-11, 268 P.3d 1159, 1162-63 (2012).

When deciding a motion for reconsideration, the district court must apply the same standard of review that it applied when deciding the original order being reconsidered. *Fragnella v. Petrovich*, 153 Idaho 266, 276, 281 P.3d 103, 113 (2012). Since the motion sought to be reconsidered in the present case is Clark's Motion for Partial Summary Judgment, the standard of review under Idaho Rule of Civil Procedure 56(c) applies. In considering a motion for summary judgment, the Court is mindful that summary judgment may properly be granted only where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. I.R.C.P. 56(c). In determining whether any issue of material fact exists, this court must construe all facts and inferences contained in the pleadings, depositions, and admissions, together with the affidavits, if any, in the light most favorable to the non-moving party. I.R.C.P. 56(c); *Sewell v. Neilson, Monroe Inc.*, 109 Idaho 192, 194, 706 P.2d 81, 83 (Ct. App. 1985). A mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue for purposes of summary judgment. *Samuel v. Hepworth, Nungester & Lezamiz, Inc.*, 134, Idaho 84, 87, 996 P.2d 303, 306 (2002).

Summary judgment must be denied if reasonable persons could reach differing conclusions or draw conflicting inferences from the evidence. *Smith v. Meridian Joint School District No. 2*, 128 Idaho 714, 718, 918 P.2d 583, 587 (1996).

III. ANALYSIS OF THORNTON'S MOTION TO RECONSIDER SUMMARY JUDGMENT.

Thornton objects to the Court's reliance on the Affidavit of Joel P. Hazel in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counterclaims because he claims "Joel P. Hazel has no personal knowledge of the property boundaries subject of the quitclaim deeds to which he testifies in his affidavit and his statements are untrue." Memorandum of Law in Support of Plaintiff's Motion to Reconsider, p. 11. This is but one more illustration of the ill-thought out positions Thornton has taken throughout the litigation he has wrought upon Clark. What Thornton ignores is that the Court cited to the *attachments* to the Affidavit of Joel P. Hazel, not the statements of Hazel within the affidavit. The attachments to the Affidavit of Joel P. Hazel were certified documents and were properly before the Court for its consideration.

Thornton further objects to the Court's reliance on Defendant Clark's Answer, Affirmative Defenses, Counterclaim and Demand for Jury Trial, and the Affidavit of Joel P. Hazel in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counterclaims, "for the proposition that the two parcels comprise one big twenty-acre parcel of land." *Id.* Thornton's argument completely ignores the fact that District Judge John P. Luster, in Bonner County Case No. CV 2011 835, found that Clark and Pandrea owned twenty acres of land as tenants in common. Affidavit of Mary Pandrea,

Exhibit 1. That evidence is before the Court and that evidence is uncontroverted. Thornton's stubborn insistence to the contrary is unavailing.

Thornton argues, "The court further considered Joel P. Hazel's allegations concerning the property boundaries, and what easements were described in the documents, which he could not possibly know. The court did not consider John Thornton's affidavit, showing disputed facts." *Id.*, p. 12. Again, the Court cited to the documents attached to the Affidavit of Joel P. Hazel, not the statements contained within the affidavit, when making its ruling.

Thornton claims that since he attested that "Kari Clark had excellent access to her property via the Upper Road", the Court thus has sufficient facts to deny summary judgment. *Id.*, p. 11. Thornton steadfastly refuses to recognize Clark has a written express easement of record across his land. As such, whether or not Clark has access via another means is entirely irrelevant to the inquiry before the Court. In an "easement by necessity", the quality of another route by which to access property is relevant, as the person seeking the easement must prove "reasonable necessity", which can be disproved by an alternative access, the quality of which is relevant. *MacCaskill v. Ebbert*, 112 Idaho 1115, 1121, 739 P.2d 414, 419 (Ct.App. 1987). But in this case, Clark has a written express easement of record. Thornton's irrelevant discussion of implied easement theory will not change that fact.

Finally, Thornton maintains "where Kari Clark seeks to use the easement conveyed from Parcel B, in order to serve Parcel C, it is impermissible as a matter of law. If the easement attaches to land, it attaches to Parcel B, the land from which the portion of land containing the easement was conveyed, and to no other." Memorandum of Law in Support of Motion to Reconsider, p. 16. However, as the Court stated in its written decision:

At oral argument, Thornton's attorney echoed the claim made by Thornton in his affidavit that: "At the time the easement was created, the only acreage adjacent to my property was the 5-acre parcel, formerly Mary Pandrea's sole and separate property also known as Tax Lot 40." Affidavit of John Thornton in Opposition to Summary Judgment, p. 1, ¶ 1. At oral argument, Thornton's attorney argued that an easement appurtenant had to be adjacent to the property burdened. Thornton's attorney stated: "The easement, if any, appertaining to the adjacent parcel only appertains to the adjacent parcel." No legal authority supporting such circular argument has ever been submitted by Thornton. No legal authority for Thornton's argument exists. Clark is named in the easement. The easement exists and is recorded, so for Thornton's attorney to state on March 14, 2014, that "The easement, if any...", ignores the uncontroverted evidence. For Thornton's counsel to make the claim that an easement appurtenant depends on "adjacency" to the burdened land, without any legal support for that claim, is irresponsible. Clark's easement does not depend on adjacency of her property to Thornton's. **Clark's easement depends on the fact that her name is on a recorded easement that burdens Thornton's land.**

Memorandum Decision and Order Granting Defendant Clark's Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Defendant Clark's Motion for Partial Summary Judgment on Clark's Counter-claims Against Thornton, pp. 15-16 (emphasis added).

In response, Clark maintains the language of Warranty Deed, Bonner County Instrument No. 525386, and Quitclaim Deed, Bonner County Instrument No. 416381, grant Clark an easement appurtenant to the Thornton Property. Defendant/Counterclaimant Clark's Response to Thornton's Motion for Reconsideration and Objection to the Affidavits of Mary Pandera and John Thornton Filed in Support Thereof, p. 2. Clark further requests that this Court strike the Affidavits of Pandrea and Thornton in support of the Motion for Reconsideration, as she claims they are irrelevant to whether Clark has an easement appurtenant to the Thornton Property, the maps hand-drawn by Thornton are without foundation, and the legal descriptions contained within deeds speak for themselves. *Id.*, pp. 3, 4. The Court will not strike Thornton's affidavit. While Thornton's affidavit provides no relevant evidence to rebut the express

easement of record Clark has across Thornton's land, Thornton's affidavit is relevant to show the absurd lengths he is willing to travel to try and trump Clark's easement. Drawing twelve maps with colored pencils in an attempt to show what happened at various times in history, does nothing to change the fact that Clark has a written express easement across Thornton's land.

In the underlying motion, Clark sought a determination by the Court that she had an easement appurtenant across the Thornton Property according to the language of Warranty Deed, Bonner County Instrument No. 525386, and Quitclaim Deed, Bonner County Instrument No. 416381. Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counterclaim, pp. 5-6. At no time in this litigation, from its inception by Thornton to the current time, does Thornton address the actual language of these documents. When Thornton filed his Complaint to Quiet Title and for Damages, he breathed not a word about Clark's recorded express easement. Throughout summary judgment, Thornton refused to discuss that easement, instead he chose to make irrelevant arguments to the Court. Now, Thornton supplies the Court with additional documents that do nothing to dispute the language of Warranty Deed, Bonner County Instrument No. 525386, and Quitclaim Deed, Bonner County Instrument No. 41638. The hand-illustrated maps made by John Thornton alleging to depict the properties and easements involved in this case are of no relevance. Clark shifted the burden to Thornton to show that there is a genuine issue of material fact and Thornton has failed to meet his burden via admissible and relevant evidence.

Thornton's audacity has continued through oral argument. At the beginning of oral argument on Thornton's Motion to Reconsider, attorney Val Thornton, counsel for her husband John Thornton, acknowledged that Clark had a "colorable claim" to an

easement. This is simply untenable. Clark has an *express written easement* which has been recorded. That language in that easement is unambiguous. That easement gives Clark an unequivocal thirty foot wide easement right to cross Thornton's land. From Clark's point of view, the only way her easement rights could be stronger would be if she owned fee simple title to that thirty foot wide strip of land. "Color" is defined as "An apparent, but legally insufficient, ground of action, admitted in a defendant's pleading to exist for the plaintiff; especially, a plaintiff's apparent (and usually false) right or title to property..." Black's Law Dictionary, 7th Ed., p. 259 (1999). "Color of title" is defined as "A written instrument or other evidence that appears to give title, but does not do so." *Id.*, p. 260. "Color of law" is defined as "The appearance or semblance, without the substance, of a legal right." *Id.* There is nothing "apparent" about Clark's easement. Clark's express, recorded, unambiguous easement she has over Thornton's land is "legally sufficient", it has "the substance of a legal right." This Court made all of this quite clear in its April 9, 2014, Memorandum Decision and Order Granting Defendant Clark's Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Defendant Thornton's Motion for Partial Summary Judgment on Clark's Counter-claims Against Thornton. Following that decision, for Thornton's attorney to claim at oral argument that Clark simply has a "colorable claim" to an easement is **beyond cavil.**

Thornton further makes an **absurd argument** that Clark no longer owns the dominant estate. Memorandum of Law in Support of Plaintiff's Motion to Reconsider, pp. 14-15. **There is no factual basis** to Thornton's argument. Clark and Pandrea owned property as tenants in common which was adjacent to Thornton's property. That property which Clark and Pandrea owned as tenants in common has now been partitioned by Judge Luster. However, in no way have Pandrea or Thornton been divested of the dominant estate. **There is no legal basis** to support Thornton's

argument. Thornton cites to *Hodgins v. Sales*, 139 Idaho 225, 76 P.3d 969 (2003); *Christensen v. City of Pocatello*, 142 Idaho 132, 124 P.3d. 1008 (2005); *Coward v. Hadley*, 150 Idaho 282, 246 P.3d 391 (2010) and *Tungsten Holdings, Inc. v. Drake*, 143 Idaho 69, 137 P.3d 456 (2006).

Hodgins contains the very quote which is the undoing of Thornton's argument. The Idaho Supreme Court in *Hodgins* wrote: "*When an appurtenant easement is created, it becomes fixed as an appurtenance to the real property, which is subject to the prescriptive use and may be claimed by a successor in interest.*" 139 Idaho 225, 230, 76 P.3d 969, 974 (citing *Marshall v. Blair*, 130 Idaho 675, 680, 946 P.2d 975, 980). (italics added). This tells us that as a matter of law, to determine what the dominant estate is, the pertinent time to make that determination is *when the easement was created*. The easement appurtenant in the present case was created on December 1, 1992, when Wiltse expressly and specifically signed it in favor of Pandrea and Clark. At that moment "it becomes fixed as an appurtenance to the real property." At that moment, Pandrea and Clark owned adjacent property as tenants in common. "The real property" in this case is the property held as tenants in common (until earlier this year) by Pandrea and Clark. All Judge Luster did on January 14, 2014, in a different lawsuit, was to partition that property between Pandrea and Clark, but Pandrea and Clark still own the dominant estate. But more importantly, *Hodgins* tells us January 14, 2014, is not the pertinent time period to determine the dominant estate...December 1, 1992, is the pertinent date. And *Hodgins* tells us that anyone to whom either Pandrea or Clark chose to transfer their property in the future, will receive the benefit of the easement across Thornton's land. If a subsequent transferee of either Pandrea or Clark would

receive the benefit of the express appurtenant easement across Thornton's land, then certainly Pandrea and Clark post-apportionment retain that same benefit.

While Thornton correctly quotes *Christensen* he misapplies that quote. The quote is "Thus, where one seeks to use an easement appurtenant to an identified dominant estate to serve a parcel other than that dominant estate, it is impermissible as a matter of law and the factual inquiry regarding increased use is not conducted." Memorandum of Law in Support of Plaintiff's Motion to Reconsider, p. 16 (citing *Christensen*, 142 Idaho 132, 137, 124 P.3d 1008, 1013). However, Thornton is seriously misguided when, immediately following the above quote, he argues:

Thus, in this case, where Kari Clark seeks to use the easement conveyed from Parcel B, in order to serve as access to Parcel C, it is impermissible as a matter of law. If the easement attaches to land, it attaches to Parcel B, the land from which the portion of the land containing the easement was conveyed, and to no other.

Id. This phenomenon of Parcel A, B and C, was not before the Court on summary judgment, and there is no admissible evidence before the Court at this time on reconsideration. In any event, the Court must look at what Pandrea and Clark owned on December 1, 1992, not colored pencil drawings with new alphabet designations ascribed by John Thornton. There is no doubt what Pandrea and Clark owned on December 1, 1992; there is no doubt Wiltse intended that property to be the dominant property. By taking quotes from case law out of context, and then applying that to facts not in evidence, Thornton simply intends to create confusion in what is a clear issue.

Likewise Thornton twists the quotation from *Coward*. Thornton correctly quotes "unless the terms of the servitude... provide otherwise, and appurtenant easement or profit may not be used for the benefit of property other than the dominant estate." *Id.* (citing *Coward*, 250 [sic 150] Idaho 282, 287, 246 P.3d 391, 396). All this means is

Pandrea and Clark cannot extend to *additional* landowners further down the road, the ability to use this easement across Thornton's property. Additionally, the Idaho Supreme Court in *Coward* determined Cowards did not have an express easement, which is certainly not the situation in the present case.

Finally, *Tungsten* is not on point as the Idaho Supreme Court reversed because Tungsten failed to put on any evidence that he had bought the Siemsens' (the grantees of the easement) property. 143 Idaho 69, 71, 137 P.3d 456, 459. In the present case, there is no doubt Thornton is the successor in interest to Wiltse, the grantee of the easement. Thornton's predecessor Wiltse specifically stated Clark and Pandrea held the easement over what is now Thornton's property.

Thornton's argument that Clark no longer owns the dominant estate is really just a repackaged version of the argument Thornton floated past this Court at summary judgment. That argument was that the owner of the appurtenant property had to be an *adjacent* owner. Thornton's argument was that since Judge Luster apportioned the property between Pandrea and Clark, Clark's property no longer touched (no longer was adjacent to) Thornton's land, Clark's easement was no longer in effect. The problem is such argument finds no basis in the law, as this Court previously found:

At oral argument, Thornton's attorney argued that an easement appurtenant had to be adjacent to the property burdened. Thornton's attorney stated: "The easement, if any, appertaining to the adjacent parcel only appertains to the adjacent parcel." No legal authority supporting such circular argument has ever been submitted by Thornton.

Memorandum Decision and Order Granting Defendant Clark's Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Defendant Clark's Motion for Partial Summary Judgment on Clark's Counter-Claims Against Thornton, p. 6. As such, Thornton's Motion to Reconsider Summary Judgment is denied.

IV. ANALYSIS OF PANDREA'S MOTION TO AMEND FINDINGS OF FACT.

Pandrea requests this Court amend the findings of fact contained within its April, 9, 2014, Memorandum Decision and Order Granting Clark's Motion for Summary Judgment, which she believes were made in error. Memorandum in Support of Pandrea's Motion to Amend Findings of Facts and to Alter or Amend Judgment; Motion to Reconsider the Order Granting Clark's Motion to Strike; Denying Pandrea a Hearing; and Granting Partial Summary Judgment in Favor of Clark, pp. 11-22. Specifically, she claims the Court erred in making findings of fact when it summarized the following in the Procedural History and Factual Background section of the Memorandum Decision and Order: 1) Pandrea and Clark jointly owned a twenty-acre parcel of land (the specific language used by the Court reads "on May 11, 2011, Pandrea sued Clark to partition the twenty-acre parcel of land in Bonner County case number CV-2011-835."); 2) "Pandrea and Clark are sisters who still own land bordering Thornton's land"; 3) "Wiltse and Pandrea had obtained the two-acre parcel of land from Clark and Pandrea, by Bonner County Quitclaim Deed, Instrument No. 416381, on November 10, 1992"; and 4) "Clark maintains that since the 1940s the road referred to in Warranty Deed, Instrument No. 525386, which goes through the Thornton Property, is the only road her family has used to access approximately twenty acres of land that was jointly owned by Pandrea and Clark." *Id.* (citing April, 9, 2014, Memorandum Decision and Order Granting Clark's Motion for Summary Judgment, pp. 1, 4, 5).

The Court did not make findings of fact in its April, 9, 2014, Memorandum Decision and Order Granting Clark's Motion for Summary Judgment. The Court is not the finder of fact in this case. A demand for jury trial was filed by Clark on December 9, 2013. Defendant Clark's Answer, Affirmative Defenses, Counterclaim and Demand for Jury Trial, p. 7. The above quoted language is contained in the Procedural History and

Factual Background section of the Memorandum Decision and Order. The factual background set forth by the Court was based on the evidence submitted by the parties. In granting summary judgment in favor of Clark, the Court found that Clark established the absence of a genuine issue of material fact through the evidence it submitted to the Court in support of its Motion for Partial Summary Judgment. That shifted the burden to Thornton to provide a sufficient showing to establish the essential elements of his case. Thornton failed to do so. The Court construed the admissible facts presented to it, drawing all reasonable factual inferences in favor of Thornton, the non-moving party. After doing so, it found Thornton failed to meet his burden and establish a genuine issue of material fact on the issues. At no time did this Court make findings of facts. Because no findings were made, Pandrea's motion to amend findings of fact is denied.

V. ANALYSIS OF PANDREA'S MOTION TO RECONSIDER.

Pandrea moves this Court to "reconsider" its April 9, 2014, Order granting Clark's Motion for Partial Summary Judgment "...whereby Pandrea was denied her inclusion as a necessary party and her Memorandum and Affidavits in Support of Thornton's Response to Clark's Motion for Summary Judgment was allowed to be stricken." Defendant Pandrea's Motion to Amend Findings of Facts and to Alter or Amend Judgment; Motion to Reconsider the Order Granting Clark's Motion to Strike; Denying Pandrea a Hearing; and Granting Partial Summary Judgment in Favor of Clark, pp. 1-2. The Court, in its April 9, 2014, decision, wrote, in its entirety:

Also, at the March 14, 2014, hearing, the Court took up the issue of "Clark's Motion to Strike Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment and the Affidavits Filed in Support Thereof." The basis of that motion was Pandrea is not an adverse party to Clark, and Clark's motion for summary judgment only pertained to Thornton's claims against Clark and Clark's counterclaims against Thornton. Defendant/Counterclaimant Clark's Motion to Strike Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment and the

Affidavits Filed in Support Thereof, pp. 2, 3. Pandrea (pro se) had no objection to Clark's motion to shorten time to hear this motion, and counsel for Thornton objected, stated her client Thornton was prejudiced, but articulated no actual prejudice. Accordingly, this Court granted Clark's motion to shorten time. The Court then heard argument from the attorneys and Pandrea. At the conclusion of oral argument, the Court granted "Clark's Motion to Strike Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment and the Affidavits Filed in Support Thereof", because Pandrea is not an adverse party to Clark (thus, the Court stated it did not need to reach the untimeliness of Pandrea's submissions). An order to that effect has not been submitted, so the Court will include such at the end of this decision. Although the motion to strike was granted, the Court will discuss Pandrea's claims and arguments in this memorandum decision, to provide context. The affidavits submitted by Pandrea have been read by the Court, but will not be considered in this motion for summary judgment between Clark and Thornton.

Memorandum Decision and Order Granting Defendant Clark's Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Defendant Clark's Motion for Partial Summary Judgment on Clark's Counter-Claims Against Thornton, pp. 3-4.

Pandrea now seeks a reconsideration of the Court decision on the Motion to Strike.

Memorandum in Support of Pandrea's Motion to Amend Findings of Facts and to Alter or Amend Judgment; Motion to Reconsider the Order Granting Clark's Motion to Strike; Denying Pandrea a Hearing; and Granting Partial Summary Judgment in Favor of Clark, p. 22. Specifically, Pandrea claims "Clark was required to include Pandrea as a party to her counterclaim against Thornton for quiet title in Thornton's Property and quiet title in Pandrea's interest in the same property." *Id.* Pandrea cites I.R.C.P. 3(a) for this proposition, but such is inapt. At any point in time, Pandrea could have filed her own counterclaim against Thornton, but Pandrea chose not to.

Moreover, Pandrea claims she is adversely affected by the judgment granting Clark an easement across the Thornton Property because for Clark to reach the Clark Property via the easement she must also cross the Pandrea Property. *Id.*, p. 23. By failing to include Pandrea as a necessary party, Pandrea claims she "was not given her

right to due process as she was not included in a judicial process that resulted in depriving her of [the] right to protect her property." *Id.*, p. 27. Pandrea maintains that she "is undoubtedly a party to this action as Clark can only reach her property by crossing Pandrea's Property, **not** just the Thornton Property." *Id.*, p. 28 (emphasis in original). As such, she claims it was error for the Court to strike her memorandum and affidavits. *Id.*

Pandrea also challenges the Court's decision granting partial summary judgment to Clark. Memorandum in Support of Pandrea's Motion to Amend Findings of Facts and to Alter or Amend Judgment; Motion to Reconsider the Order Granting Clark's Motion to Strike; Denying Pandrea a Hearing; and Granting Partial Summary Judgment in Favor of Clark, p. 29. She contends "the Court determined that there was a '20-acre Parcel' held in co-tenancy between Clark/Pandrea; [yet] there is no substantial competent evidence on record to support this fact." *Id.* She maintains this creates a genuine issue of material fact. *Id.*

In response, Clark contends Pandrea is not an adverse party to Clark's Motion for Summary Judgment against Thornton. Defendant/Counterclaimant Clark's Objection to Pandrea's Motion to Amend and Motion to Reconsider, p. 3. Moreover, Clark maintains "Pandrea does not have any standing to challenge the Judgment that was entered regarding Clark's legal rights as they pertain to Thornton's property." *Id.*

The Court agrees with Clark that Pandrea does not have standing to challenge the Judgment. "[T]he doctrine of standing focuses on the party seeking relief and not on the issues the party wishes to have adjudicated." *Idaho Branch Inc. of Associated Gen. Contractors of Am. v. Nampa Hwy. Dist. No. 1*, 123 Idaho 237, 240, 846 P.2d 239, 242 (Ct. App. 1993) (citing I.C. §§ 10-1205 –1206). "To satisfy the requirement of

standing litigants must allege an injury in fact, a fairly traceable causal connection between the claimed injury and the challenged conduct, and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury." *Doe v. Doe*, 155 Idaho 660, 315 P.3d 848, 850 (2013) (citing *Bagley*, 149 Idaho 806, 807, 241 P.3d 979, 980 (2012)). The claimed injury must be against the party whose standing is in question. *Id.* (citing *Abolafia v. Reeves*, 152 Idaho 898, 902, 277 P.3d 345, 349 (2012)).

The lack of standing was made even more clear on May 6, 2014, when Pandrea signed the "Stipulation for Order of Dismissal of Plaintiff's Complaint to Quiet Title and for Damages Against Defendant Mary Pandrea." On May 20, 2014, this Court signed the Order of Dismissal of Plaintiff's Complaint to Quiet Title and for Damages Against Defendant Mary Pandrea. The filing of Thornton's complaint in this case naming Pandrea as defendant was the only pleading which made Pandrea a party. Now, Thornton's complaint against Pandrea has been dismissed, at Pandrea's stipulation upon Pandrea's signature. At all times, Pandrea has completely lacked standing to request this Court to reconsider its opinion or its Judgment. At present, due to her own stipulation, she is not even a party.

While it may be true that Clark can only reach her property by crossing the Pandrea property after crossing the Thornton property, the Judgment in this case did not grant Clark an easement across the Pandrea property, nor could the Court have done so *in this litigation*. But in *other litigation*, Clark was granted an easement across the Pandrea Property on January 24, 2014, when District Judge John P. Luster issued a Revised Judgment and Decree of Partition in Bonner County case number CV 2011 835, awarding Clark 10.423 acres of real property and Pandrea 12.739 acres of real property "subject to an easement appurtenant to the land for ingress through and over

the parcel awarded to Plaintiff Mary E. Pandrea as the servient parcel and estate"
Affidavit of Joel P. Hazel, Exhibit C.

The Judgment in this case does not alter or change the easement rights awarded to Clark in Bonner County case number CV 2011 835. Rather, the Judgment in this case grants Clark an easement across the Thornton Property, which leads to the easement on the Pandrea Property. The only property rights affected by the Judgment in this case are those of Clark and Thornton. Pandrea is attempting to make the easement granted to Clark in Bonner County case number CV 2011 835 ineffective, and circumvent the Judgment entered by Judge Luster. Pandrea does not have an interest in the Thornton Property, as it pertains to the easement.

Moreover, the evidence before the Court is that Bonner County case number CV 2011 835 was initiated by Pandrea on May 11, 2011, when Pandrea sued Clark to partition land owned by Clark and Pandrea as tenants in common. Defendant Clark's Answer Affirmative Defenses and Counterclaim, p. 5 ¶ 6; Affidavit of Joel P. Hazel, Exhibit C; Affidavit of Mary E. Pandrea, Exhibit 1. Pandrea now claims that somehow a genuine issue of material fact exists about the parcel, such that summary judgment should not have been awarded in this case. It is unclear, given the evidence provided to this Court, how she could make that claim if she had standing to do so.

As such, the Court denies Pandrea's motion to reconsider.

VI. PANDREA'S MOTION TO VOID JUDGMENT.

A motion for relief from a final judgment, pursuant to I.R.C.P. 60(b), is committed to the sound discretion of the trial court. *Clear Springs Trout Co. v. Anthony*, 123 Idaho 141, 143, 845 P.2d 559, 561 (1992); *Johnston v. Pascoe*, 100 Idaho 414, 599 P.2d 985 (1979). "Although courts have broad discretion to grant a motion for relief from judgment, that discretion is bounded by the requirement that the party seeking relief

demonstrate 'unique and compelling circumstances' which justify relief." *McLean v. Cheyovich Family Trust*, 153 Idaho 425, 429, 283 P.3d 742, 746 (2012) (quoting *Miller v. Haller*, 129 Idaho 345, 349, 924 P.2d 607, 611 (1996)). "It is incumbent upon a party seeking relief from a judgment not only to meet the requirements of I.R.C.P. 60(b), but also to show, plead or present evidence of facts which, if established, would constitute a meritorious defense to the action." *Maynard v. Nguyen*, 152 Idaho 724, 726, 274 P.3d 589, 591 (2011) (citing *Ponderosa Paint Mfg., Inc. v. Yack*, 125 Idaho 310, 317, 870 P.2d 663, 670 (Ct. App.1994)).

Idaho Rule of Civil Procedure 60(b) provides in pertinent part:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

I.R.C.P. 60(b). "Idaho's Rule 60(b) is similar to that found in the Federal Rules of Civil Procedure. I.R.C.P. 60(b), *Federal Rules Comparison*. Several federal circuits have held that a non-party has standing to bring a Rule 60(b) motion so long as the non-party was directly affected by the judgment sought to be set aside." *Campbell v. Kildew*, 141 Idaho 640, 646, 115 P.3d 731, 737 (2005) (citing *Eyak Native Vill. v. Exxon Corp.*, 25 F.3d 773, 777 (9th Cir.1994); *Houck v. Folding Carton Admin.*, 881 F.2d 494, 505 (7th Cir.1989); *Kem Mfg. Corp. v. Wilder*, 817 F.2d 1517, 1521 (11th Cir.1987); *Southerland v. Irons*, 628 F.2d 978, 980 (6th Cir.1980); *Root Refining Co. v. Universal Oil Products*

Co., 169 F.2d 514, 522-25 (3d Cir.1948); *U.S. v. Buck*, 281 F.3d 1336, 1341-42 (10th Cir.2002)).

Pandrea seeks to void the Judgment which was entered in favor of Clark on April 30, 2014, pursuant to I.R.C.P. 60(b), alleging Clark lacks standing to quiet title to an easement now solely belonging to the Pandrea Property, as determined by Bonner County case number CV 2011 835. Pandrea's Motion to Void Judgment, pp. 1, 2; Pandrea's Memorandum in Support of Motion to Void Judgment, pp. 6-7. In support of this position, Pandrea relies upon *Tungsten Holdings, Inc. v. Drake*, 143 Idaho 69, 137 P.3d 456 (2006). In that case, the Idaho Supreme Court found that "close examination of the record, exhibits, and trial transcripts reveals no evidence to support the district court's finding that the Tungsten property was previously owned by the Siemsens" and as such a successor in interest of the grantees of the easement in question. 143 Idaho 69, 72, 137 P.3d 456, 459. Pandrea maintains that there is no evidence that Pandrea and Clark jointly twenty acres of land with Clark (Pandrea's Memorandum in Support of Motion to Void Judgment, p. 9), despite the fact that she submits as evidence to this Court a decision issued by District Judge John P. Luster in Bonner County case number CV 2011 835, where a twenty acres of land owned by Clark and Pandrea as tenants in common was partitioned, with Clark receiving 10.423 acres and Pandrea receiving 12.739 acres. Affidavit of Mary Pandrea, Exhibit 1. Unlike *Tungsten Holdings*, this is evidence that Clark previously owned the entire parcel as tenants in common with Pandrea. As such, Clark does have standing to seek quiet title of the easement.

In turn, Clark requests that this Court strike Pandrea's Motion to Void Judgment and the memorandum and affidavit filed in support of the motion because Pandrea is not an adverse party to Clark and, as such, has no standing to challenge the judgment. Defendant/Counterclaimant Clark's Objection to Pandera's Motion to Void Judgment, p.

2. She also objects under Idaho Rule of Civil Procedure 7(b)(3), as the notice of hearing for Pandrea's motion was untimely. *Id.*

The Court finds Pandrea does not have standing to challenge the Judgment since she was not directly affected by it. As stated above, "the doctrine of standing focuses on the party seeking relief and not on the issues the party wishes to have adjudicated." *Idaho Branch Inc. of Associated Gen. Contractors of Am. v. Nampa Hwy. Dist. No. 1*, 123 Idaho 237, 240, 846 P.2d 239, 242 (Ct. App. 1993) (citing I.C. §§ 10-1205 –1206). "To satisfy the requirement of standing litigants must allege an injury in fact, a fairly traceable causal connection between the claimed injury and the challenged conduct, and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury." *Doe v. Doe*, 155 Idaho 660, 315 P.3d 848, 850 (2013) (citing *Bagley*, 149 Idaho 806, 807, 241 P.3d 979, 980 (2012)). The claimed injury must be against the party whose standing is in question. *Id.* (citing *Abolafia v. Reeves*, 152 Idaho 898, 902, 277 P.3d 345, 349 (2012)).

Pandrea claims that she is damaged by the Judgment in this case because her "property value would be diminished by up to 30%", "she [will] not be able to further develop her property, and the property would be greatly burdened if it were ever sold." Pandrea's Memorandum in Support of Motion to Void Judgment, pp. 10, 11.

The Judgment in this case grants Clark an easement across the Thornton Property only, and not the Pandrea Property. While it may be true that once Clark crosses the Thornton Property, she must then cross the Pandrea Property to access the Clark Property, the Judgment in the present case does not give Clark any right to cross the Pandrea Property. However, Clark was granted an easement across the Pandrea Property on January 24, 2014, when District Judge John P. Luster issued a

Revised Judgment and Decree of Partition in Bonner County case number CV 2011 835, awarding Clark 10.423 acres of real property and awarding Pandrea 12.739 acres of real property "subject to an easement appurtenant to the land for ingress through and over the parcel awarded to Plaintiff Mary E. Pandrea as the servient parcel and estate" Affidavit of Joel P. Hazel, Exhibit C. That easement right exists whether or not a Judgment was awarded to Clark in this case. The Judgment in this case does not alter or change the easement rights awarded to Clark in Bonner County case number CV 2011 835. The only property rights affected by the Judgment in this case are those of Clark and Thornton. Pandrea does not have an interest in the Thornton Property, as it pertains to the easement granted to Clark.

For the above stated reasons, Pandera's Motion to Void the Judgment is denied.

VII. ANALYSIS OF CLARK'S MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS.

On May 12, 2014, Clark filed "Defendant/Counterclaimant Clark's Motion for Award of Attorney's Fees and Costs", a "Brief in Support of Defendant/Counterclaimant Clark's Motion for Award of Attorney's Fees and Costs", and an "Affidavit/Memorandum of Joel P. Hazel in Support of Motion for Attorney's Fees and Costs." This was timely, as the Judgment was entered by this Court on April 30, 2014. I.R.C.P. 54(d)(5). On May 16, 2014, Thornton filed "Plaintiff's Reply Brief in Support of His Motion to Reconsider Summary Judgment." In that reply, Thornton did not address Clark's claim for attorney fees against Thornton. Instead, Thornton obliquely stated: "The court should reconsider its order granting summary judgment, and John Thornton should be awarded attorney fees and costs for having to defend against baseless claims that are not supported by fact or law." Plaintiff's Reply Brief in Support of His Motion to

Reconsider Summary Judgment, p. 4. This court finds that cannot be construed as an objection under I.R.C.P. 54(e)(6).

On May 27, 2014, Thornton timely filed "Plaintiff's Objection and Motion to Disallow Defendant Kari Clark's Motion for Attorney Fees and Costs." Under I.R.C.P. 54(e)(5), attorney fees are to be processed in the same manner as costs, and under I.R.C.P. 54(e)(6), objections to attorney fees are to be made in the same manner as an objection to costs as provided by I.R.C.P. 54(d)(6). Idaho Rule of Civil Procedure 54(d)(6) provides, "Any party may object to the claimed costs of another party set forth in a memorandum of costs by filing and serving on adverse parties a motion to disallow part or all of such costs within fourteen (14) days of service of the memorandum of cost." Because the "day of the act", in this case the day of filing of Clark's motion for attorney fees (May 12, 2014) is not to be included in computing the amount of time passed for Thornton's "objection", said objection was timely filed.

Under I.R.C.P. 54(d)(7), the Court is required to hold a hearing if there has been an objection to costs.

VIII. CONCLUSION AND ORDER.

For the reasons stated above,

IT IS HEREBY ORDERED Thornton's "Plaintiff's Motion to Reconsider Summary Judgment and Notice of Hearing" is DENIED.

IT IS FURTHER ORDERED Pandrea's motion to amend findings of fact is DENIED.

IT IS FURTHER ORDERED Pandrea's motion to reconsider Clark's motion for partial summary judgment is DENIED.

IT IS FURTHER ORDERED Pandrea's motion to void judgment is DENIED.

IT IS FURTHER ORDERED counsel for Clark must prepare an adequate survey

of Clark's easement across Thornton's land, file such with the Court, cause such to be recorded, and prepare a final judgment which includes that description.

IT IS FURTHER ORDERED the jury trial scheduled for June 23, 2014, is VACATED.

Entered this 2nd day of June, 2014.

John T. Mitchell
John T. Mitchell, District Judge

Certificate of Service

I certify that on the 3rd day of June, 2014, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer
Val Thornton
Mary E. Pandrea, Pro Se

Fax #
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Lawyer
Joel P. Hazel

Fax #
208-667-8470

Mailed

Linda Appell
Jeanne Clausen, Deputy Clerk
Linda Appell

STATE OF IDAHO
COURT OF APPEALS
FILED: Bonner

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Instrument # 861194
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R. ANN DUTSON-SATER
Ex-Officio Recorder Deputy Fee: 25.00
Index to JUDGMENT

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12 Attorneys for Defendant/Counterclaimant Kari A. Clark

13
14 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF
15 IDAHO, IN AND FOR THE COUNTY OF BONNER

16 JOHN F. THORNTON,

17 Plaintiff/Counterdefendant,

18 vs.

19 MARY E. PANDREA, a single woman
20 individually and as Trustee of the Kari A.
21 Clark and Mary E. Pandrea Revocable Trust,
22 u/a April 9, 2002; and

23 Defendant,

24 KARI A. CLARK, a single woman
25 individually and as Trustee of the Kari A.
26 Clark and Mary E. Pandrea Revocable Trust,
27 u/a April 9, 2002 and as Trustee of the Kari A.
28 Clark Trust u/a June 21, 2010,

Defendant/Counterclaimant.

Case No. CV 2013-1334

AMENDED JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
Plaintiff/Counterdefendant JOHN F. THORNTON's Complaint against



1 Defendant/Counterclaimant KARI A. CLARK is dismissed with prejudice and JOHN F.
2 THORNTON shall take nothing thereby.

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as set forth in
4 Warranty Deed, Bonner County Instrument No. 525386 and Quitclaim Deed, Bonner County
5 Instrument No. 416381, KARI A. CLARK and KARI A. CLARK's heirs, successors and
6 assigns have a 30.0 foot appurtenant easement for road right of way and utilities across the
7 following described Tract lying Southeasterly of the Centerline of Tavern Creek:

8 A tract of land located in Section 11, Township 59 North, Range 2 West, Boise
9 meridian, Bonner County, Idaho, more fully described as follows:

10 Commencing at the Southeast corner of said Section 11; thence North 0 degrees
11 58'55" East along the East line of said Section a distance of 1325.42 feet; thence
12 West a distance of 1978.63 feet to the point of beginning; thence North 27
13 degrees 57'08" West a distance of 448.04 feet; thence North 0 degrees 01'23"
14 West a distance of 225.00 feet; thence South 70 degrees 01'23" East a distance of
15 245.00 feet; thence South 46 degrees 01'23" East a distance of 375.00 feet; thence
16 South 18 degrees 32'25" East a distance of 195.54 feet; thence South 59 degrees
17 26'55" East a distance of 302.20 feet to the Westerly right-of-way of the County
18 Road; thence Southwesterly along the right-of-way of the County Road to the
19 thread of Pack River; thence Northwesterly along the thread of Pack River to a
20 point that is South 27 degrees 57'08" East of the point of beginning; thence North
21 27 degrees 57'08" West to the point of beginning.

22 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the appurtenant
23 easement across the above described tract of land is situated in the Southeast Quarter (SE1/4)
24 of Section Eleven (11), Township Fifty-nine (59) North, Range Two (2) West of the Boise
25 Meridian, Bonner County, Idaho, being a portion of that easement previously described in
26 Instrument No. 226223, which is Thirty (30) feet in width and lying Fifteen (15) feet on each
27 side of the following described centerline:

28 Commencing at a point on the north line of said SE1/4 which is N 89°58'35" E,
192.12 feet from the northwest corner of the SE1/4; thence, leaving said north line
in a perpendicular direction S 00°01'25" E, 1206.24 feet to a point; thence,
parallel to the north line of the SE1/4, N 89°58'35" E, 735.50 feet to the
intersection of the centerline of that easement described in Instrument No. 226223
and the northwesterly line of that parcel described in Instrument No. 525386
which is the TRUE POINT OF BEGINNING; thence, leaving said northwesterly
line and along said centerline the following Two (2) courses: S 59°07'07" E,
62.68 feet; thence S 58°07'12" E, 297.92 feet to the intersection with the

1 northwesterly right of way of the Pack River Road and the terminus of this
2 easement, with the sidelines extended or shortened to intersect adjacent
3 boundaries.

4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the above described
5 appurtenant easement grants KARI A. CLARK and KARI A. CLARK's heirs, successors and
6 assigns the right to use said easement for right of way and utilities to the following described
7 ten and 423/1000s (10.423) acres of real property that were awarded to KARI A. CLARK
8 pursuant to the Revised Judgment and Decree of Partition entered in Bonner County Case No.
9 CV-2011-835:

10 A tract of land situated in the Southeast Quarter (SE1/4) of Section Eleven (11),
11 Township Fifty-nine (59) North, Range Two (2) West of the Boise Meridian,
12 Bonner County, Idaho; being a portion of that parcel described in Instrument No.
13 396781; more particularly described as follows:

14 Beginning at the northwest corner of said SE1/4, which is marked on the ground
15 by a 2" brass cap stamped PE 3318; thence, along the north line of the SE1/4, N
16 89°58'35" E, 1003.87 feet to the centerline of a creek; thence, leaving said north
17 line and along said centerline the following Three (3) courses: S 53°38'47" W,
18 103.74 feet; thence S 29°42'32" W, 93.41 feet; thence S 46°31'11" W, 41.15 feet;
19 thence, leaving said centerline S 00°00'13" E, 18.02 feet to a 5/8" rebar; thence,
20 continuing S 00°00'13" E, 116.74 feet to a 5/8" rebar, which marks on the ground
21 the northeast corner of that parcel described in Instrument No. 389489; thence,
22 along the boundary of that parcel described in Instrument No. 389489 the
23 following Two (2) courses: N 81°41'17" W, 122.60 feet to the northwest corner
24 thereof; thence S 04°14'29" E, 142.10 feet to the southwesterly corner of that
25 parcel described in Instrument No. 389489; thence S 63°18'32" W, 715.77 feet to
26 the thread of Pack River as it was found to exist April 22, 2013; thence, along the
27 thread of the river the following Five (5) courses: N 13°48'51" E, 103.04 feet,
28 thence N 03°30'35" W, 56.87 feet; thence N 08°08'32" W, 123.52 feet; thence N
21°08'12" W, 73.68 feet; thence N 41°11'16" W, 115.48 feet to the intersection
with the west line of the SE1/4 of Section 11; thence, leaving said thread of the
river and along said west line N 00°55'33" E, 85.02 feet to a 5/8" rebar and plastic
cap stamped PLS 7877; thence, continuing along said west line N 00°55'33" E,
231.08 feet to the POINT OF BEGINNING, encompassing an area of 10.423
acres.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that JOHN F.
THORNTON wrongfully interfered with KARI A. CLARK's easement rights.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that JOHN F.
THORNTON is permanently enjoined from interfering with the easement rights of KARI A.

1 CLARK and KARI A. CLARK's heirs, successors and assigns.

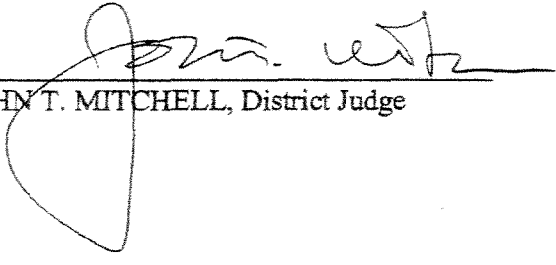
2 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that JOHN F.
3 THORNTON must, as of March 14, 2014, remove any gate blocking the easement established
4 by this Amended Judgment.

5 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that KARI A. CLARK's
6 counterclaim for damages related to the wrongful interference claim against JOHN F.
7 THORNTON is dismissed with prejudice.

8 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that KARI A. CLARK is
9 awarded reasonable attorney's fees and costs in the total sum of \$ 41,530.17 against
10 JOHN F. THORNTON.

11 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that KARI A. CLARK
12 is awarded reasonable attorney's fees and costs in the total sum of \$ 41,530.17
13 against JOHN F. THORNTON's attorney, VALERIE THORNTON, as a sanction pursuant to
14 I.R.C.P. 11(a)(1), which amount shall be joint and several as against JOHN F. THORNTON
15 and VALERIE THORNTON.

16 DATED this 30th day of June, 2014

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19 JOHN T. MITCHELL, District Judge
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CLERK'S CERTIFICATE OF SERVICE

I certify that on this the ___ day of June, 2014, I caused a true and correct copy of the *AMENDED JUDGMENT* to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Val Thornton	<input type="checkbox"/>	U.S. Mail, Postage Prepaid
4685 Upper Pack River Rd.	<input type="checkbox"/>	Hand Delivered
Sandpoint, ID 83864	<input type="checkbox"/>	Overnight Mail
	<input type="checkbox"/>	Facsimile: 208-255-2327
Mary E. Pandrea	<input type="checkbox"/>	U.S. Mail, Postage Prepaid
4672 Upper Pack River Rd.	<input type="checkbox"/>	Hand Delivered
Sandpoint, ID 83864	<input type="checkbox"/>	Overnight Mail
	<input type="checkbox"/>	Facsimile:
Joel P. Hazel	<input type="checkbox"/>	U.S. Mail, Postage Prepaid
Jason M. Gray	<input type="checkbox"/>	Hand Delivered
Witherspoon • Kelley	<input type="checkbox"/>	Overnight Mail
The Spokesman Review Building	<input type="checkbox"/>	Facsimile: 208-667-8470
608 Northwest Blvd., Suite 300		
Coeur d'Alene, Idaho 83814-2146		

CLERK OF THE DISTRICT COURT
OF BONNER COUNTY, IDAHO

By: _____
Deputy Clerk

STATE OF IDAHO
COURT OF KOOTENAI SS
FILED: Bonner

2014 JUN 30 AM 9:41

CLERK OF COURT
(S)

1
2 JOEL P. HAZEL, ISB # 4980
3 JASON M. GRAY, ISB # 8539
4 WITHERSPOON KELLEY
5 The Spokesman-Review Building
6 608 Northwest Blvd., Suite 300
7 Coeur d'Alene, Idaho 83814-2146
8 Telephone: (208) 667-4000
9 Facsimile: (208) 667-8470
10 Email: jph@witherspoonkelley.com
11 Email: jmg@witherspoonkelley.com

Instrument # 861194
BONNER COUNTY, SANDPOINT, IDAHO
6-30-2014 12:38:18 No. of Pages: 6
Recorded for: RHONDA CARLE
R. ANN DUTSON-SATER Fee: 25.00
Ex-Officio Recorder Deputy
Index to: JUDGMENT

12 Attorneys for Defendant/Counterclaimant Kari A. Clark

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

15 JOHN F. THORNTON,
16
17 Plaintiff/Counterdefendant,

Case No. CV 2013-1334

18 vs.

AMENDED JUDGMENT

19 MARY E. PANDREA, a single woman
20 individually and as Trustee of the Kari A.
21 Clark and Mary E. Pandrea Revocable Trust,
22 u/a April 9, 2002; and

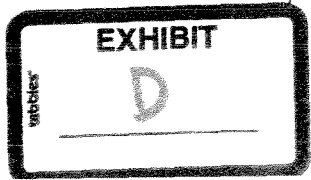
23 Defendant,

24 KARI A. CLARK, a single woman
25 individually and as Trustee of the Kari A.
26 Clark and Mary E. Pandrea Revocable Trust,
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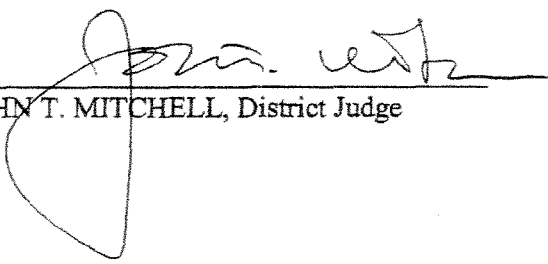
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7 THORNTON is dismissed with prejudice.

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13 against JOHN F. THORNTON's attorney, VALERIE THORNTON, as a sanction pursuant to
14 I.R.C.P. 11(a)(1), which amount shall be joint and several as against JOHN F. THORNTON
15 and VALERIE THORNTON.

16 DATED this 30th day of June, 2014

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20 JOHN T. MITCHELL, District Judge
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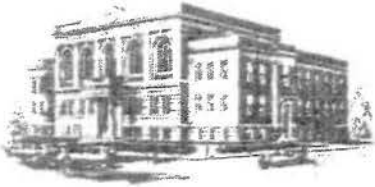
CLERK'S CERTIFICATE OF SERVICE

I certify that on this the ___ day of June, 2014, I caused a true and correct copy of the *AMENDED JUDGMENT* to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

- | | | |
|---------------------------------|--------------------------|----------------------------|
| Val Thornton | <input type="checkbox"/> | U.S. Mail, Postage Prepaid |
| 4685 Upper Pack River Rd. | <input type="checkbox"/> | Hand Delivered |
| Sandpoint, ID 83864 | <input type="checkbox"/> | Overnight Mail |
| | <input type="checkbox"/> | Facsimile: 208-255-2327 |
| Mary E. Pandrea | <input type="checkbox"/> | U.S. Mail, Postage Prepaid |
| 4672 Upper Pack River Rd. | <input type="checkbox"/> | Hand Delivered |
| Sandpoint, ID 83864 | <input type="checkbox"/> | Overnight Mail |
| | <input type="checkbox"/> | Facsimile: |
| Joel P. Hazel | <input type="checkbox"/> | U.S. Mail, Postage Prepaid |
| Jason M. Gray | <input type="checkbox"/> | Hand Delivered |
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| The Spokesman Review Building | <input type="checkbox"/> | Facsimile: 208-667-8470 |
| 608 Northwest Blvd., Suite 300 | | |
| Coeur d'Alene, Idaho 83814-2146 | | |

CLERK OF THE DISTRICT COURT
OF BONNER COUNTY, IDAHO

By: _____
Deputy Clerk



Julie K. Foland

Official Court Reporter - ID CSR No. 639

324 West Garden Avenue • P.O. Box 9000

Coeur d'Alene, Idaho 83816-9000

Phone: (208) 446-1130

Email: jfoland@kcgov.us

SEP 11 2014
CLERK OF DISTRICT COURT
D.M.H.

TO: Clerk of the Court
Idaho Supreme Court
451 West State Street
Boise, Idaho 83720

DOCKET NO. 42332

(JOHN F. THORNTON,
(
(vs.
(
(MARY PANDREA, et al

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on September 4, 2014, I lodged a transcript of 87 pages in length, including the March 14, 2014, Motion for Summary Judgment, the May 20, 2014, Motion for Reconsideration, the May 22, 2014, Motion to Void Judgment, and the June 30, 2014, Motion for Attorney's Fees and Costs, in the above-referenced appeal with the District Court Clerk of the County of Bonner in the First Judicial District.

JULIE K. FOLAND
September 4, 2014

ORIGINAL

STATE OF IDAHO
County of Bonner
FILED SEP 15 2014
AT 4:19 O'Clock P M
CLERK, DISTRICT COURT
AmH

RECEIVED
IDAHO SUPREME COURT
COURT OF APPEALS

SEP 15 2014 8:53

Deputy

IN THE SUPREME COURT OF THE STATE OF IDAHO

JOHN F. THORNTON,	)	Supreme Court Docket No. 42332-2014
	)	Bonner County No. CV2013-1334
Plaintiff-Counterdefendant-Appellant,)	
)	
vs.	)	MOTION TO DISMISS APPEAL OF
	)	MARY E. PANDREA
MARY E. PANDREA, a single woman)	
individually and as Trustee of the Kari A.)	
Clark and Mary E. Pandrea Revocable)	
Trust, w/a April 9, 2002;)	
)	
Defendant-Respondent-Cross Appellant,)	
)	
and)	
)	
KENNETH J. BARRETT and DEANNA)	
L. BARRETT, husband and wife,)	
)	
Defendants-Counterclaimants-)	
Respondents.)	

Respondents Kenneth A. and Deanna L. Barrett ("Barretts" or "Respondents"), substituted in the stead of Kari A. Clark ("Clark"), by and through their undersigned counsel, bring this *Motion to Dismiss Appeal of Mary E. Pandrea* ("Pandrea") under I.A.R. 32 because (1) Pandrea has no right to appeal this matter, and (2) she appeals from orders and decisions that are not appealable as a matter of right. Respondents therefore request that this Court dismiss Pandrea's appeal.

MOTION TO DISMISS APPEAL OF MARY E. PANDREA

FILED - ORIGINAL
SEP 15 2014
Supreme Court Court of Appeals
Entered on ATS by

I. INTRODUCTION

Pandrea was a defendant in the underlying district court action and she was voluntarily dismissed with prejudice by voluntary stipulation from that action prior to the entry of final judgment. None of the claims adjudicated in the judgment concern Pandrea, her property, or her rights. In addition, Pandrea purports to appeal under I.A.R. 11(a)(1) from a number of orders and decisions entered in the district court action when the final judgment is the only appealable judgment under I.A.R. 11.

Pandrea was not aggrieved by the judgment and, thus, has no right to appeal.

II. FACTS

1. Appellant John F. Thornton, the plaintiff in the underlying district court action, filed his complaint on August 14, 2013 naming Mary E. Pandrea and Kari A. Clark as co-defendants. Pandrea filed an answer to Thornton's complaint on September 3, 2013. On December 9, 2013, Clark filed an answer to Thornton's complaint as well as a counterclaim against Thornton. Clark did not file a cross-claim against Pandrea.

2. Throughout the course of this lawsuit, Pandrea represented herself *pro se*. During the lawsuit, she never filed a counterclaim against Thornton nor did she file a cross-claim against Clark. At no time were Pandrea and Clark adverse parties in this lawsuit. Pandrea and Clark were co-defendants only.

3. On January 30, 2014, Clark filed a motion for partial summary judgment against Thornton. On March 14, 2014, the District Court heard arguments on Clark's motion for summary judgment, and on April 9, 2014, the District Court entered its *Memorandum Decision*

MOTION TO DISMISS APPEAL OF MARY E. PANDREA

and Order Granting Defendant Clark's Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Defendant Clark's Motion for Partial Summary Judgment on Clark's Counterclaims Against Thornton.

4. Following summary judgment, the only issue remaining between Thornton and Clark was the issue of damages for Thornton's wrongful interference with Clark's easement rights. On April 18, 2014 Clark and Thornton stipulated to dismiss Clark's remaining claim against Thornton, and the District Court entered an *Order of Dismissal of Defendant/Counterclaimant Clark's Damage Claim for Interference with Easement* that same day.

5. On May 6, 2014 Pandrea and Thornton stipulated to dismiss with prejudice all of Thornton's claims against Pandrea, and on May 20, 2014, the District Court entered its *Order of Dismissal of Plaintiff's Complaint to Quiet Title and for Damages Against Defendant Mary Pandrea*. After that point, Pandrea was no longer a party to the action.

6. On June 30, 2014, the District Court entered an *Amended Judgment* wherein it entered judgment on the following issues only:

- It determined that Clark has an express appurtenant easement for road right of way and utilities across the Thornton property;
- It determined that said easement grants Clark the right to use the easement across the Thornton property for right of way and utilities to access Clark's real property;
- It determined that Thornton wrongfully interfered with Clark's easement rights;
- It determined that Thornton was permanently enjoined from interfering with Clark's easement rights;

MOTION TO DISMISS APPEAL OF MARY E. PANDREA

- It determined that Thornton had to remove the gate blocking the easement;
- It dismissed with prejudice (pursuant to stipulation between Clark and Thornton) Clark's counterclaim for damages related to the wrongful interference claim against Thornton; and
- It awarded Clark attorneys fees and costs against Thornton, as well as against Thornton's attorney as a sanction pursuant to I.R.C.P. 11(a)(1).

7. On June 30, 2014, Thornton filed a *Notice of Appeal*.

8. On July 14, 2014, Pandrea filed a *Notice of Appeal*.

9. On August 22, 2014, Pandrea filed a *Verified Petition for Writ of Prohibition/Mandamus* and a *Brief in Support of Verified Petition for Writ of Prohibition/Mandamus* against the Honorable John T. Mitchell (Supreme Court Docket No. 42457-2014), the judge in the underlying district court action (Bonner County No. 2013-1334). In her Brief, Pandrea acknowledges that "although [she] has filed her Notice of Appeal in this case, it is uncertain whether or not the Supreme Court will consider [her] a real party of interest" in this appeal. She states that "Clark will undoubtedly challenge [her] right to appeal, and should Clark succeed, [her] only prayer for relief will lie with the writ filed here within."

10. On September 3, 2014, this Court entered its *Order Denying Verified Petition for Writ of Prohibition/Mandamus* in Pandrea's action against Judge Mitchell.

11. In the underlying district court action, Clark prevailed on all of her claims and defeated all of Thornton's claims against her. Having prevailed on all issues, Clark has nothing

MOTION TO DISMISS APPEAL OF MARY E. PANDREA

to appeal and accordingly the Barretts, substituted in her stead, have not filed a Notice of Cross Appeal.

III. ARGUMENT

The Judgment entered by the District Court in this case does not adjudicate any of the rights of Pandrea. Indeed, Pandrea had no claims in the case, her co-defendant Clark brought no claims against her, and Thornton dismissed all of his claims against her with prejudice pursuant to a voluntary stipulation with Pandrea prior to the entry of final judgment. The Judgment solely adjudicates the rights of Thornton and Clark.

For Pandrea to now appeal a judgment that adjudicates only the rights of others, in a case in which she never brought any claims of her own and in which she stipulated to dismiss with prejudice the only claims in the case that were brought against her interests is illogical, and her appeal should be dismissed.

A. Only the final Judgment is appealable under I.A.R. 11(a) yet Pandrea purports to appeal from other orders and decisions of the District Court.

I.A.R. 11(a) defines which judgments and orders are appealable as a matter of right in civil actions. Of the nine types of judgments/orders that are appealable under this Rule, the only one which applies to the instant case is (1), which provides that “[f]inal judgments, as defined in Rule 54(a) of the Idaho Rules of Civil Procedure, including judgments of the district court granting or denying peremptory writs of mandate and prohibition” are appealable.

In paragraph 2 of Pandrea’s *Notice of Appeal* she claims that she has a right to appeal to the Idaho Supreme Court and that the judgments or orders described in paragraph 1 are

MOTION TO DISMISS APPEAL OF MARY E. PANDREA

appealable orders pursuant to I.A.R. 11(a)(1). This is not correct. Only the final judgment, the *Amended Judgment* entered on June 30, 2014 is appealable under I.A.R. 11(a)(1). The two Memorandum Decisions entered on April 9, 2014 and June 2, 2014 from which Pandrea attempts to appeal are not appealable under Rule 11. The appealable *Amended Judgment* only adjudicates the rights of Thornton and Clark – not Pandrea’s.

B. Pandrea’s “issues on appeal” were not adjudicated in the final Judgment.

The issues on appeal listed by Pandrea in her *Notice of Appeal* are not addressed in the final Judgment – the only judgment appealable under Rule 11 – entered by the District Court on June 30, 2014. Pandrea lists the following as her issues on appeal:

- Did the district court err in determining that Clark had standing?
- Did the district court have jurisdiction?
- Did the district court violate Pandrea’s right to due process by denying her request to be added as a real party of interest?
- Did the district court err in striking Pandrea’s memorandum and supporting affidavits in opposition to Clark’s summary judgment?
- Did the district court err in denying Pandrea’s Motion to Amend Findings of Fact and to Alter or Amend Judgment?
- Did the district court err in denying Pandrea’s Motion to Void Judgment?

The final Judgment only adjudicated the rights of Thornton and Clark pursuant to the claims made by those two parties in the lawsuit. Pandrea’s list of “issues on appeal” are not among the adjudicated issues.

MOTION TO DISMISS APPEAL OF MARY E. PANDREA

It is nonsensical for Pandrea to assert that she is aggrieved by the judgment in a case in which she was a party but chose not to bring any claims and voluntarily stipulated to a dismissal with prejudice of the claims against her.

C. Pandrea is not a “person who may appeal” pursuant to I.A.R. 4.

I.A.R. 4 defines who may appeal as follows: “Any *party aggrieved* by an *appealable* judgment, order or decree, as defined in these rules, of a district court . . . may appeal such decision to the Supreme Court as provided in these rules.” (Emphasis added.) Pandrea was voluntarily dismissed as a party in the district court action, and she was not aggrieved by an appealable judgment, order or decree of the district court. In fact, Pandrea was likely benefitted by the success of her co-defendant Clark in prevailing against claims Thornton had brought against both Clark and Pandrea. Under I.A.R. 4, Pandrea is not a “person who may appeal” in this matter.

IV. CONCLUSION

Pandrea brought no claims against either her co-defendant Clark nor against the plaintiff Thornton in the underlying district court action. Pandrea was voluntarily dismissed with prejudice by voluntary stipulation from that action prior to the entry of final judgment. None of the claims adjudicated in the judgment concern Pandrea, her property, or her rights. She does not seek to rescind the voluntary dismissal. Pandrea was not aggrieved by the judgment of the district court. The other orders Pandrea purports to appeal from are not appealable as a matter of right under the Idaho Appellate Rules. Pandrea is an unrelated third-party who seeks to interject herself into a dispute she voluntarily and prejudicially abandoned.

MOTION TO DISMISS APPEAL OF MARY E. PANDREA

Pandrea's "issues on appeal" were not adjudicated in the district court action and Pandrea is not a "person who may appeal" under I.A.R. 4.

Pandrea is not a party to this appeal and her appeal should, thus, be dismissed with prejudice.

DATED this 17 day of September 2014.

LUKINS & ANNIS, P.S.



MICHAEL G. SCHMIDT, #6911

601 E. Front Avenue, Suite 502

Coeur d'Alene, ID 83814-5155

Telephone: (208) 667-0517

Facsimile: (208) 664-4125

Email: mschmidt@lukins.com

Attorney for Respondents Kenneth J. and Deanna L. Barrett

MOTION TO DISMISS APPEAL OF MARY E. PANDREA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11 day of September 2014, I caused to be served a true and correct copy of the foregoing in the manner indicated:

Val Thornton 4685 Upper Pack River Road Sandpoint, ID 83864 <i>Attorney for Appellant John F. Thornton</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile:
Mary E. Pandrea 4687 Upper Pack River Road Sandpoint, ID 83864	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile:



Michael G. Schmidt

MOTION TO DISMISS APPEAL OF MARY E. PANDREA

RECEIVED
IDAHO SUPREME COURT
COURT OF APPEALS

2014 SEP 17 PM 3: 57

CLERK DISTRICT COURT
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2014 SEP 17 P 4: 50

CLERK DISTRICT COURT

DMH

IN THE SUPREME COURT OF THE STATE OF IDAHO

JOHN F. THORNTON,	)	Supreme Court Docket No. 42332-2014
	)	Bonner County No. CV2013-1334
Plaintiff/Counterdefendant/Appellant,)	
)	
vs.	)	NOTICE OF SUBSTITUTION OF
	)	COUNSEL FOR DEFENDANTS
MARY E. PANDREA, a single woman	)	KENNETH J. BARRETT AND
individually and as Trustee of the Kari A.	)	DEANNA L. BARRETT ONLY AS
Clark and Mary E. Pandrea Revocable	)	TO THE APPEAL OF PANDREA
Trust, u/a April 9, 2002;)	
)	
Defendant-Respondent-Cross Appellant,)	
)	
and)	
)	
KENNETH J. BARRETT and DEANNA)	
L. BARRETT, husband and wife,)	
)	
Defendants/Counterclaimants/Respondents.)	

NOTICE IS HEREBY GIVEN that JOEL P. HAZEL, of the firm Witherspoon Kelley, is hereby substituting as attorney of record in the place of Michael G. Schmidt, Lukins & Annis, for the Defendants, KENNETH J. BARRETT and DEANNA L. BARRETT ONLY as to the Appeal of Mary Pandrea. This Substitution is being made pursuant to IAR 45. Michael Schmidt remains counsel for the Barrett's as to all other matters on appeal.

NOTICE OF SUBSTITUTION OF COUNSEL FOR DEFENDANTS KENNETH J. BARRETT AND DEANNA L. BARRETT ONLY AS TO APPEAL OF PANDREA - Page 1

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FILED - ORIGINAL

SEP 17 2014

Supreme Court _____ Court of Appeals _____
Entered on ATS by *DB*

Request is hereby made that all further pleadings in this matter be served upon JOEL P.

HAZEL, at the address below.

DATED this 17th day of September, 2014.

LUKINS & ANNIS, P.S.
Attorney for Defendants

WITHERSPOON KELLEY
Substituting Attorney for Defendants

Mr. M. G. Schmidt
for MICHAEL G. SCHMIDT

Joel P. Hazel
JOEL P. HAZEL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of September, 2014, I caused to be served a true and correct copy of the foregoing in the manner indicated:

Val Thornton 4685 Upper Pack River Road Sandpoint, ID 83864 <i>Attorney for Appellant John F. Thornton</i>	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail Facsimile:
Mary E. Pandrea 4687 Upper Pack River Road Sandpoint, ID 83864	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail Facsimile:
Michael G. Schmidt Lukins & Annis, P.S. 601 E. Front Ave., Ste. 502 Coeur d'Alene, ID 83814 <i>Attorney for Kenneth J. & Deanna L. Barrett</i>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail Facsimile: 208-664-4125
Joel P. Hazel Witherspoon Kelley The Spokesman-Review Building 608 Northwest Boulevard, Ste. 300 Coeur d'Alene, ID 83814	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail Facsimile: 208-667-8470


Annette Moormann

ORIGINAL

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IDAHO SUPREME COURT
COURT OF APPEALS

2014 SEP 19 PM 9:07

STATE OF IDAHO
County of Bonner
FILED Sept. 22 2014
AT 11:03 O'Clock A M
CLERK, DISTRICT COURT
DMH
Deputy

IN THE SUPREME COURT OF THE STATE OF IDAHO

JOHN F. THORNTON,
Plaintiff-Counterdefendant-Appellant,
vs.
MARY E. PANDREA, a single woman
individually and as Trustee of the Kari A.
Clark and Mary E. Pandrea Revocable
Trust, u/a April 9, 2002;
Defendant-Respondent-Cross Appellant,
and
KENNETH J. BARRETT and DEANNA
L. BARRETT, husband and wife,
Defendants-Counterclaimants-
Respondents.

) Supreme Court Docket No. 42332-2014
) Bonner County No. CV2013-1334
)
) **NOTICE OF WITHDRAWAL OF:**
) **1) MOTION TO DISMISS APPEAL**
) **OF MARY E. PANDREA and**
) **2) NOTICE OF ERRORS TO**
) **CLERK'S CERTIFICATE OF**
) **APPEAL**

FILED - ORIGINAL
SEP 19 2014
Supreme Court Court of Appeals
Entered on ATS by [Signature]

Respondents Kenneth A. and Deanna L. Barrett ("Respondents Barrett"), substituted in the stead of Kari A. Clark ("Clark"), by and through their undersigned counsel, file this *Notice of Withdrawal of: 1) Motion to Dismiss Appeal of Mary E. Pandrea ("Pandrea") and 2) Notice of Errors to Clerk's Certificate of Appeal.*

Respondents Barrett request that this Court not consider the Motion to Dismiss and the Notice of Errors both filed on September 11, 2014 by the undersigned. Counsel for Respondents Barrett have filed, contemporaneously with the present motion, a Motion for Substitution of

NOTICE OF WITHDRAWAL OF: 1) MOTION TO DISMISS APPEAL OF MARY E. PANDREA AND 2) NOTICE OF ERRORS TO CLERK'S CERTIFICATE OF APPEAL -

Counsel with respect to matters between Barrett and Pandrea. The undersigned counsel will continue to represent Barrett in opposing Thorntons' appeal.

DATED this 17 day of September 2014.

LUKINS & ANNIS, P.S.



MICHAEL G. SCHMIDT, #6911
 601 E. Front Avenue, Suite 502
 Coeur d'Alene, ID 83814-5155
 Telephone: (208) 667-0517
 Facsimile: (208) 664-4125
 Email: mschmidt@lukins.com

Attorney for Respondents Kenneth J. and Deanna L. Barrett

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17 day of September 2014, I caused to be served a true and correct copy of the foregoing in the manner indicated:

Val Thornton 4685 Upper Pack River Road Sandpoint, ID 83864 <i>Attorney for Appellant John F. Thornton</i>	<input checked="" type="checkbox"/> [] [] [] []	U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail Facsimile:
Mary E. Pandrea 4687 Upper Pack River Road Sandpoint, ID 83864	<input checked="" type="checkbox"/> [] [] [] []	U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail Facsimile:
Joel P. Hazel Witherspoon Kelley The Spokesman-Review Building 608 Northwest Blvd., Ste. 300 Coeur d'Alene, ID 83814-2146	[] [] [] <input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail Facsimile: 208-667-8470



Michael G. Schmidt

NOTICE OF WITHDRAWAL OF: 1) MOTION TO DISMISS APPEAL OF MARY E. PANDREA AND 2) NOTICE OF ERRORS TO CLERK'S CERTIFICATE OF APPEAL -

IN THE SUPREME COURT OF THE STATE OF IDAHO

JOHN F. THORNTON,)
 Plaintiff, Counter defendant and)
 Appellant,)
 vs.)
 Mary E. Pandrea,)
 Defendant and Respondent,)
 and)
 KENNETH J. BARRETT and)
 DEANNA L. BARRETT,)
 Defendants, Counterclaimants and)
 Respondents)
 and)
 VAL THORNTON,)
 Intervenor and Appellant.)

SUPREME COURT NO. 42332-2014
BONNER COUNTY CASE CV2013-1334

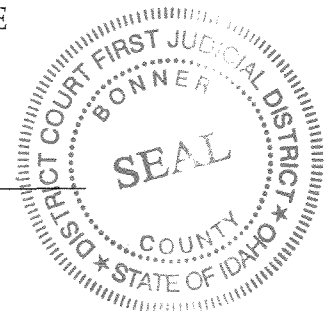
CLERK'S CERTIFICATE

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 9th day of June, 2015.

MICHAEL W. ROSEDALE
Clerk of the District Court

Darance H
Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF IDAHO

JOHN F. THORNTON,)
Plaintiff, Counter defendant and)
Appellant,)
vs.)
Mary E. Pandrea,)
Defendant and Respondent,)
and)
KENNETH J. BARRETT and)
DEANNA L. BARRETT,)
Defendants, Counterclaimants and)
Respondents)
and)
VAL THORNTON,)
Intervenor and Appellant.)
_____)

SUPREME COURT NO. 42332-2014
BONNER COUNTY CASE CV2013-1334

CLERK'S CERTIFICATE OF EXHIBITS

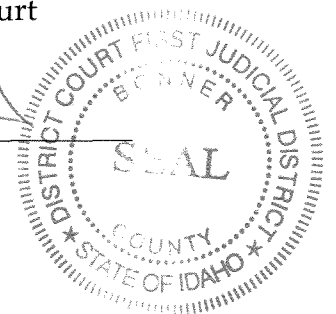
I, Michael W. Rosedale, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do hereby certify that the following is offered as the Clerk's exhibit on appeal:

NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 9th day of June, 2015.

MICHAEL W. ROSEDALE
Clerk of the District Court

Baranee H
Deputy Clerk



CLERK'S CERTIFICATE OF EXHIBITS 1

IN THE SUPREME COURT OF THE STATE OF IDAHO

JOHN F. THORNTON,)
Plaintiff, Counter defendant and)
Appellant,)
vs.)
Mary E. Pandrea,)
Defendant and Respondent,)
and)
KENNETH J. BARRETT and)
DEANNA L. BARRETT,)
Defendants, Counterclaimants and)
Respondents)
and)
VAL THORNTON,)
Intervenor and Appellant.)

SUPREME COURT NO. 42332-2014
BONNER COUNTY CASE CV2013-1334

CLERK'S CERTIFICATE OF SERVICE

I, Michael W. Rosedale, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do hereby certify that I have personally served or mailed, by U.S. Postal Service, one copy of the CLERK'S RECORD to each of the Attorneys of Record in this cause as follows:

VAL THORNTON
4685 UPPER PACK RIVER RD
SANDPOINT, ID 83864

~~MARY E. PANDREA
4687 UPPER PACK RIVER RD
SANDPOINT, ID 83864~~

MICHAEL G. SCHMIDT
601 E. FRONT AVENUE
SUITE #502
COEUR D'ALENE, ID 83814

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 9th day of June, 2015.

Michael W. Rosedale
Clerk of the District Court
Darance
Deputy Clerk

