11-20-2015

Thornton v. Pandrea Appellant's Brief 2 Dckt. 42332

IN THE SUPREME COURT OF THE STATE OF IDAHO

JOHN F. THORNTON, Plaintiff-Counterdefendant-Appellant, and VAL THORNTON, Intervenor-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 KENNETH J. BARRETT and DEANNA L. BARRETT, husband and wife, Defendants-Counterclaimants-Respondents.	)	Supreme Court Docket No. 42332-2014 Bonner Co. Case No. CV-2013-1334

INTERVENOR'S BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
IN AND FOR THE COUNTY OF BONNER

HONORABLE JOHN T. MITCHELL
DISTRICT JUDGE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

IDAHO CASELAW

FEDERAL CASELAW

RULES AND STATUTES

STATEMENT OF THE CASE

Plaintiff/Appellant's attorney of record, Val Thornton, hereafter "Counsel," appeals from the district court's judgment which erroneously awarded $41,530.17 in Rule 11 sanctions against Counsel, and awarded further post judgment sanctions against Counsel.

STATEMENT OF FACTS

Counsel agrees with the Statement of Facts presented in Appellant's brief.

ISSUES ON APPEAL

1. Was it an abuse of the district court's discretion to award $41,530.17 as a Rule 11 sanction against Counsel?

a) Did the evidence show that Counsel failed to make a proper investigation upon reasonable inquiry?

b) Did the district court abuse its discretion when it awarded attorney fees that were unreasonable, unrelated to the issues before the court, and even unrelated to the litigation?

2. Was it an abuse of the district court's discretion to award post-judgment Rule 11 sanctions?

3. Should the Court award I.A.R. Rule 11.2 sanctions to Counsel on appeal?

STANDARD OF REVIEW

An award of sanctions pursuant to Rule 11 of the Idaho Rules of Civil Procedure is reviewed for abuse of discretion. Sun Valley Shopping Ctr., Inc. v. Idaho Power Co., 119 Idaho 87, 803 P.2d 993 (1991).

ARGUMENT AND AUTHORITY

1. Was it an abuse of the district court's discretion to award $41,000.00 as a Rule 11 sanction against Counsel?

a) Did the evidence show that Counsel failed to make a proper investigation upon reasonable inquiry?

Even if the Supreme Court does not reverse the district court's decision regarding the easement, Counsel should prevail on the issue of attorney fees and sanctions. Rule 11 sanctions are upheld when a party or his attorney failed to make "a proper investigation upon reasonable inquiry," before filing suit. *Hanf v. Syring Realty, Inc.,* 120 Idaho 364, 816 P.2d 320 (1991). *Minich v. Gemstate Developers, Inc.,* 99 Idaho 911, 591 P.2d 1078 (1979). Rule 11 sanctions were upheld when the plaintiff failed to provide a tort claim notice before suing the city, and therefore the complaint was not warranted by existing law. *Stevens v. Fleming,* 116 Idaho523, at 532, 777 P.2d 1196, at 1205 (1989). In this case, there is no evidence that Counsel failed to properly investigate the facts or the law supporting his complaint. Rule 11 sanctions more properly focus on discrete pleading abuses or other types of litigative misconduct within the overall course of a lawsuit. *Kent v. Pierce,* 116 Idaho 22, 23-24, 772 P.2d 290, 291-292. The objection that Thornton did not provide certified copies of the Quitclaim and Warranty Deed does not give rise to Rule 11 sanctions. The court had certified copies of those documents already in the record at summary judgment, *R. Vol. I, p. 127-130, and p. 131-135*, and on reconsideration, *R. Vol. II, p. 389-391, and p. 395-398.* The premise that Thornton should have known that Clark had a right to use the easement because her name is on the Warranty Deed is not the law, and would not be cause for Rule 11 sanctions. There is no allegation that Counsel provided fraudulent documents, or that the facts were not true and correct, only that he failed to prove his facts to the

district court's satisfaction.

b) Did the district court abuse its discretion when it awarded attorney fees that were unreasonable, unrelated to the issues before the court, and even unrelated to the litigation?

Even if Clark had prevailed on all her claims, and if the court did not err in finding that Thornton had pursued the matter frivolously, the district court did not address Thornton's objections as to the amount of attorney fees awarded. *Tr. p. 85, L. 21 to p.86, L. 6.* Although the trial court is not required to make specific findings how it determined the award, it should at a minimum provide a record establishing that it considered the factors under the rule. *Pinnacle Engineers, Inc. v. Heron Book LLC.,* 139 Idaho 756 (2004); *Sun Valley Potato Growers v. Texas Refinery,* 139 Idaho 761, 86 P.3d 475 (2004). In this case, opposing counsel did not limit his request for attorney fees to time expended defending against Thornton's quiet title to the easement. *R. Vol. III, p. 485-495.* Thornton was billed for time expended on Boyd-Davis' and her husband's criminal conduct resulting in his criminal conviction.[1] *R. Vol. III, p. 495, Ll. 1-4.* Thornton was also billed for at least six hours spent on title reports and litigation insurance relating to the Partition Action, wherein Thornton is not a party, and for twenty-six hours spent defending against Pandrea's pleadings. *R. Vol. III, p. 491, Ll. 21-30, 33-36; p. 492, Ll. 1-2, 11-13, 17-19, 21-24, 29-32; p. 493, Ll. 38-49; p. 494, Ll. 12-15, 19-20.* The district court did not reduce the amount requested by a single dollar, although the majority of the time charged had little to do with summary judgment, proving an easement, or even with the case before the court. The district court abused its discretion when it failed to review the amount requested by opposing counsel, and awarded fees that were unreasonable, unrelated to the issues at summary judgment, and even

[1] Bonner County Case Nos. CR-2014-2981 and CR-2014-2984.

unrelated to the litigation.

2. Was it error for the district court to determine that an application for stay and for waiver of supersedeas bond is a pleading for which Rule 11 sanctions are appropriate?

Appellant realizes that the issue of whether the district court should have granted the stay will be moot when the court reaches its decision in this matter. However, the district court further awarded Clark's post-judgment attorney fees as a Rule 11 sanction against Thornton for filing his motion for stay and for a waiver of the supersedeas bond requirement, on the grounds that the district court does not have authority to grant a stay on a money judgment unless the judgment debtor posts a supersedeas bond. This ruling holds that any person pleading with the court for relief from a supersedeas bond requirement is subject to sanctions as a matter of law.

Thornton should not be liable for Rule 11 sanctions where the Supreme Court requires an applicant to file a motion to the district court before applying to the Supreme Court for relief. If the district court is not in error, Thornton has a good faith argument and prays the Court for a change in existing law: In a case where there is no underlying debt or monetary damages, where the money judgment appealed from consists solely of discretionary attorney fees and sanctions, a supersedeas bond should not be required in order to prevent the wrongful enforcement of an abusive miscarriage of justice. Appellant initiated a quiet title action, for which attorney fees are generally not awarded, and should not be subject to such a large sanction without review. Collection proceedings should be stayed unless the Supreme Court determines that the sanctions and awards were not an abuse of discretion.

In the matter of *Utah Power & Light Co. v. Idaho Public Utilities Com'n,* 107 Idaho 47 (Idaho 1984), addressing the question of a district court's jurisdiction to stay PUC orders, the Idaho Court looked to federal case law for guidance as to the factors to be considered in granting or

denying a motion for stay of judgment:

> Four years later this Court in Mountain States Tel. & Tel. Co. v. Jones, 75 Idaho 78, 267 P.2d 634 (1954), in commenting on Joy v. Winstead, observed that it had not therein in any way outlined the procedure or what was necessary to be shown in order to justify a stay order. 75 Idaho at 82, 267 P.2d at 636. After citing Joy v. Winstead for the proposition that a proceeding to obtain a stay "is not a rate hearing, but an extraordinary, emergency proceeding ... pendente lite for the sole and only purpose of considering temporary relief against probable confiscation," 75 Idaho at 83, 267 P.2d at 637, the Court concluded that the issuance of a stay laid in the "sound, considered judicial discretion of the trial court after a full hearing on the single issue of probable confiscation." [3] Giving the guidance which was not contained in Joy v. Winstead, the Court quoted from *Public Service Commission v. Indianapolis Rys,* 225 Ind. 30, 72 N.E.2d 434, 439 (1947), for the rule that: " ' "All that is necessary is that plaintiff show that it is prima facie entitled to an injunction; that the injury to plaintiff will be certain and irreparable if the application for an interlocutory injunction be denied, and, if the injunction be granted, that the injury to the opposing party, even if the final decree be in its favor, may be adequately indemnified by bond." ' " 75 Idaho at 84, 267 P.2d at 637.

Utah Power and Light, supra, at 83. In *Frizzel v. Swafford*, 104 Idaho 823 (Idaho 1983), appellants moved for a stay of the bond requirement contained in the Idaho small claims system, which required a bond to secure payment of judgment, attorney fees and costs before an appeal may be taken. The Court held that the bond statute was an unconstitutional deprivation of the right to review, given the nature of the small claims adjudication. Id. This case is easily distinguishable from those cases, however the judgment in this case was similarly adjudicated summarily, without a jury, and subject to immediate collection without further review.

The recent January 13, 2015, District of Idaho opinion in the matter of *Gibson v. Credit Suisse AG*, 010715 IDDC, 1:10-cv-00001-JLQ, is directly on point. The court had before it a motion for stay of Order on Sanctions pending appeal, and stated as follows:

> In considering a motion to stay pending appeal, the factors regulating the issuance of a stay are: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *see also Nken v. Holder*, 556 U.S. 418, 433

(2009). The first two factors are the "most critical." *Nken*, 556 U.S. at 434. Id. The court in that case noted that "Defendants will not suffer substantial harm," and that "...The probable injury to counsels' professional reputation is irreparable and potentially significant." Although the appeal was not likely to succeed on the merits, the stay was granted. Similarly in this case, the injury to counsel is irreparable. This case is distinguishable in that there was no review of the underlying sanction, and Counsel will prevail on the merits in this case.

The Court should hold that it was an abuse of discretion to award Rule 11 sanctions against Counsel for pleading for a stay and for a waiver of the supersedeas bond requirement.

3. Should the Court award I.A.R. 11.2 sanctions to Counsel on appeal?

Idaho Appellate Rule 11.2 reads in pertinent part as follows: "The signature of an attorney or party constitutes a certificate that the attorney or party has read the notice of appeal, petition, motion, brief or other document, 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 or a good faith argument for the extension, modification, or reversal of 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." In this case, the district court has been misled, and the Barretts continue the deception in the course of their defense of the district court's judgment.

Although attorney fees are not awarded to pro se litigants, I.A.R. Rule 11.2 sanctions would be appropriate where Barretts have participated in the court's misunderstanding and continued to mislead the court since they were permitted to substitute for Kari Clark. Deanna Barrett is Clark's niece, and Clark's witness, Teri Boyd Davis, Barrett's sister, is a paralegal at Lukins Annis, working for the Barretts; it is simply not possible for the opposing party and their attorney not to be aware of the factual errors resulting from Clark's misrepresentations.

Nevertheless, Barretts continue to rely on the same misstatement of the facts and of the law.

Barretts have not corrected or retracted the affidavits of Teri Boyd Davis and of Joel Hazel submitted by Clark in support of her motion for summary judgment, referencing a twenty-acre parcel, and representing that Parcel A was purchased by Wiltses from Clark and Pandrea. Even if Barretts, members of the Clark family, were ignorant of the facts prior to their substitution for Clark as party defendants, the truth becomes immediately evident upon examination of Clark's verified Answer and Counterclaim in the Partition Action. In that document, Clark lays out the history of the land purchases and conveyances exactly as Thornton and Pandrea have attempted to do. Thornton produced that document at the hearing on summary judgment, along with every recorded conveyance referenced by Clark, and along with the survey maps showing the property lines. Clark succeeded in preventing the district court from looking at Thornton's evidence supporting his motion for sanctions and to continue, however it was incumbent upon Clark to withdraw the misleading affidavits, and the truth was deliberately hidden from the court. Barretts continue to allow the Court to believe that the two sisters owned a single, twenty-acre parcel, that the easement was created when Parcel A was severed from that parcel, and that the Partition Action resulted in a partition of the dominant estate.

Barretts continued to deceive the district court when they obtained a writ of execution under said wrongfully obtained judgment, although they and their attorneys are fully aware that the easement was originally part of Parcel B, and that Clark's Parcel C had access to the county road via the Upper Road. Barretts' objections to Thornton's motions for stay and for waiver of supersedeas bond, Barretts' levying on Thornton's land and subjecting the same to a sheriff's sale, are an abuse of court process, where Barretts know that the judgment is in error, and that the attorney fees and sanctions must, in the end, be reversed. It is an ultimate irony that Clark and

Barretts are enriched by sanctions against Thornton and Counsel, when it is Clark and Barretts who have intentionally misled the court and who warranted I.C.R.P. Rule 11 sanctions.

CONCLUSION

The district court's decision awarding I.C.R.P. Rule 11 sanctions is clearly an abuse of discretion. Although Counsel did not provide certified copies of the quit-claim and warranty deeds in his original opposition to summary judgment, there was no allegation that the documents were not in fact true and correct, there was no prejudice to the opposing party, and the court had certified copies of those documents already in the record. Not providing additional certified copies of documents is not a failure to investigate warranting I.C.R.P. Rule 11 sanctions, nor does it support any contention that Counsel failed to properly investigate the law.

Filing misleading affidavits, deliberately creating a false impression upon which the district court has relied, and claiming the right to an easement without title to the dominant estate, constitutes sanctionable litigation, not only without basis in fact or in law, but deliberately deceptive. Barretts, substituted as parties, continue the deceit, although they are in full possession of all the facts. The district court was misled into sanctioning Counsel, for correction of which the Supreme Court should award attorney fees to Counsel as a sanction pursuant to I.A.R. 11.2.

WHEREFORE, IT IS PRAYED, THAT the Court reverse the district court's decision awarding I.R.C.P. Rule 11 sanctions against Counsel, and that the Court award sanctions to Counsel pursuant to Idaho Appellate Rule 11.2 against Barretts for their continued prosecution of their unlawfully obtained judgment, and for their defense of the same against Counsel's appeal.

DATED this 18th of November, 2015.

Val Thornton

Val Thornton
THORNTON LAW OFFICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 18th day of November, 2015, to:

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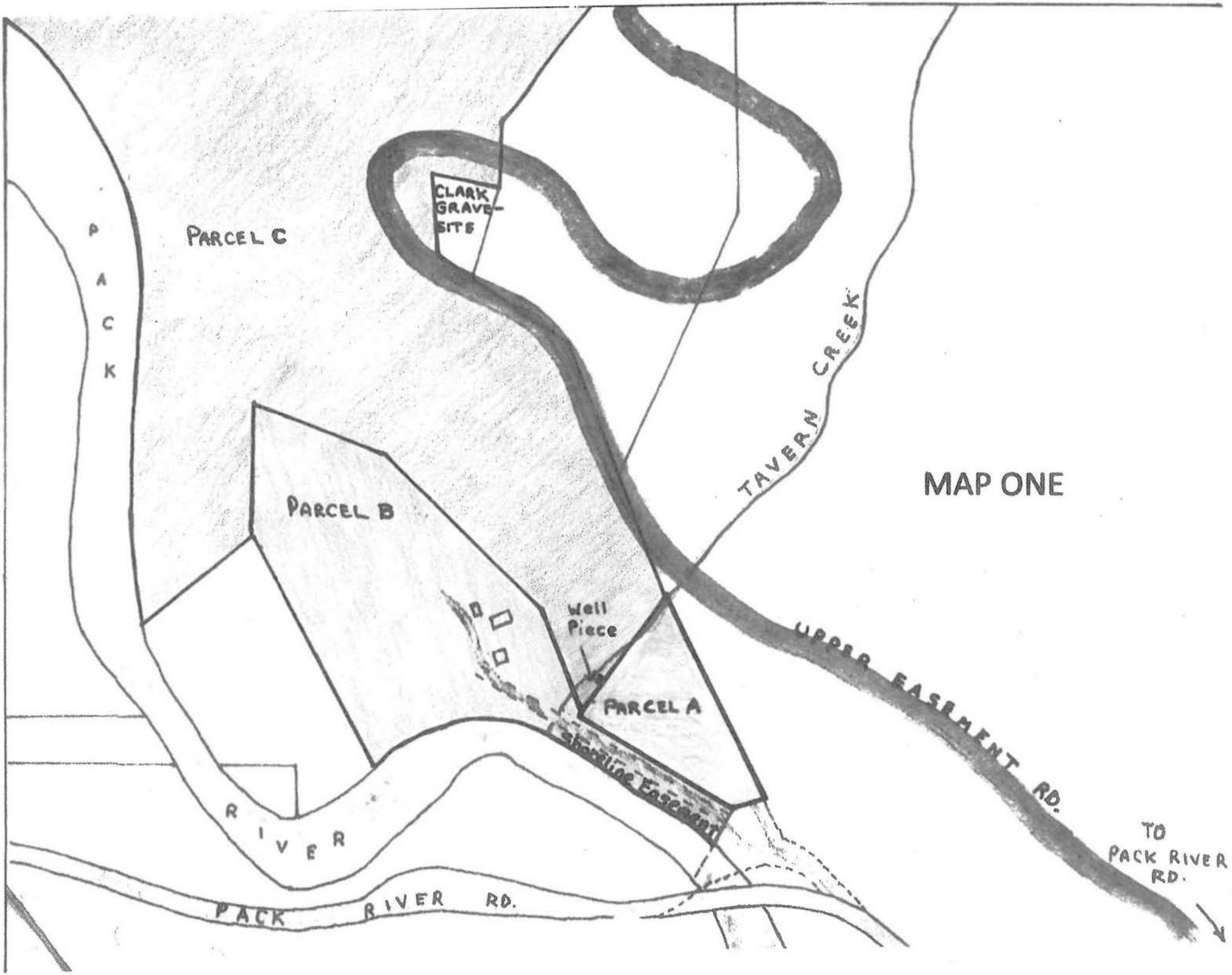
___ hand-delivered

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

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

Val Thornton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TO PACK RIVER RD.
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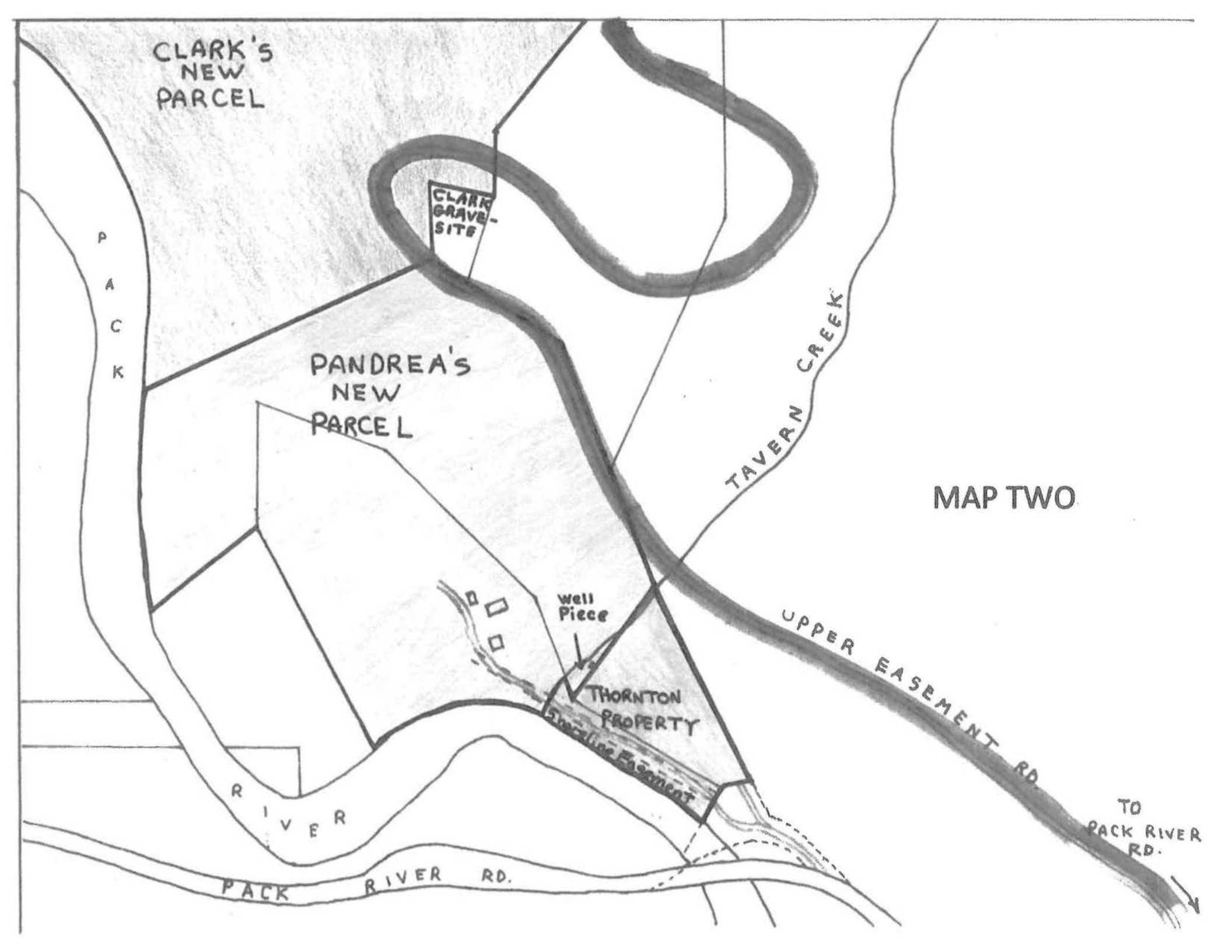
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CLARK GRAVE-SITE
PACK
PANDREA'S NEW PARCEL
TAVERN CREEK
MAP TWO
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THORNTON PROPERTY
Streamline Easement
TO PACK RIVER RD.
RIVER
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