

3-18-2018

Regan v. Owen Clerk's Record Dckt. 43848

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LI
CLERK

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

BRENT REGAN and MOURA REGAN,
husband and wife,

Plaintiffs-Appellants,

v.

JEFF D. OWEN and KAREN A. OWEN,
husband and wife,

Defendant-Respondent,

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

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Attorney for Appellants

Attorney for Respondent

43848

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MAR 18 2016
Supreme Court Court of Appeals
Entered on ATS by _____

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Filed August 21, 201545

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Filed October 9, 201569

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REGISTER OF ACTION6

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Date	Code	User	Judge
3/11/2011	NCOC	RICKARD	New Case Filed - Other Claims Benjamin R. Simpson
		RICKARD	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Poorman, Scott L. (attorney for Regan, Brent Ford) Receipt number: 0010498 Dated: 3/11/2011 Amount: \$88.00 (Check) For: Regan, Brent Ford (plaintiff) and Regan, Moura (plaintiff) Benjamin R. Simpson
	SUMI	HUFFMAN	Summons Issued Benjamin R. Simpson
3/29/2011	AFSV	ROSENBUSCH	Affidavit Of Service/Jeff Owen/03-12-11 Benjamin R. Simpson
	AFSV	ROSENBUSCH	Affidavit Of Service/Jeff Owen obo Karen Owen/03-12-11 Benjamin R. Simpson
4/1/2011		LISONBEE	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Weeks, Susan P. (attorney for Owen, Jeff D) Receipt number: 0014441 Dated: 4/1/2011 Amount: \$58.00 (Check) For: Owen, Jeff D (defendant) and Owen, Karen A (defendant) Benjamin R. Simpson
	NOAP	LISONBEE	Notice Of Appearance Benjamin R. Simpson
	MOTN	LISONBEE	Motion for Extension of Time Benjamin R. Simpson
4/4/2011	MNDQ	LISONBEE	Motion To Disqualify Benjamin R. Simpson
	MNDQ	LISONBEE	Amended Motion To Disqualify Benjamin R. Simpson
4/5/2011	ORDR	LARSEN	Order Granting Defendants' Motion For Extension Of Time Benjamin R. Simpson
4/18/2011	ORDR	LARSEN	Order Granting Motion To Disqualify Benjamin R. Simpson
	DISA	LARSEN	Disqualification Of Judge Simpson - Automatic Benjamin R. Simpson
	ORDR	CLAUSEN	Order Assigning District Judge on Disqualification Without Cause - John P. Luster John T. Mitchell
4/19/2011	ANSW	SREED	Defendants Owenses' Answer to Plaintiffs' Complaint - Susan Weeks OBO Defendants John P. Luster
7/12/2011	HRSC	BOOTH	Hearing Scheduled (Motion for Summary Judgment 09/29/2011 03:00 PM) Set by Scott Poorman John P. Luster
7/19/2011	NTSV	ZOOK	Notice Of Service - Plaintiffs' First Request for Admissions, Interrogatories and Requests for Production to Defendants John P. Luster
7/22/2011	HRSC	BOOTH	Hearing Scheduled (Status Conference 09/08/2011 03:00 PM) John P. Luster
		BOOTH	Notice of Hearing John P. Luster
8/25/2011	NTSV	BAXLEY	Notice Of Service Of Defendants' Response To Plaintiffs' First Request For Admissions, Interrogatories And Requests For Production To Defendants John P. Luster

Brent Ford Regan, Moura Regan vs. Jeff D Owen, Karen A Owen

Date	Code	User	Judge
9/1/2011	MNSJ	BAXLEY	Plaintiffs' Motion For Partial Summary Judgment And Notice Of Hearing on 09/29/11 at 3:00 pm
	MEMS	BAXLEY	Memorandum In Support Of Plaintiffs' Motion For Partial Summary Judgment
	AFIS	BAXLEY	Affidavit Of Brent Regan In Support of Plaintiffs' Motion For Partial Summary Judgment
	AFIS	BAXLEY	Affidavit Of Scott L Poorman In Support of Plaintiffs' Motion For Partial Summary Judgment
9/9/2011	DCHH	BOOTH	Hearing result for Status Conference scheduled on 09/08/2011 03:00 PM: District Court Hearing Held Court Reporter: NONE Number of Transcript Pages for this hearing estimated: NONE - status conference was held informally in chambers
	HRSC	BOOTH	Hearing Scheduled (Court Trial Scheduled 06/04/2012 09:00 AM)
		BOOTH	Notice of Trial
9/15/2011	MISC	CRUMPACKER	Defendants Response to Plaintiffs Motion for Summary Judgment
	AFFD	CRUMPACKER	Affidavit of Weeks in Response to Plaintiffs Motion for Summary Judgment
9/20/2011	HRSC	BOOTH	Hearing Scheduled (Motion for Summary Judgment 01/25/2012 03:00 PM) set by Susan Weeks
9/29/2011	DCHH	BOOTH	Hearing result for Motion for Summary Judgment scheduled on 09/29/2011 03:00 PM: District Court Hearing Held Court Reporter: Anne MacManus Brownell Number of Transcript Pages for this hearing estimated: Set by Scott Poorman under 100 pages
	ORDR	BOOTH	Order Granting Plaintiffs' Motion for Partial Summary Judgment
10/19/2011	HRSC	BOOTH	Hearing Scheduled (Motion 11/10/2011 04:00 PM) for preliminary injunction - set by Scott Poorman
10/20/2011	MERN	BAXLEY	Mediation Results-Case NOT Resolved by Mediation
10/27/2011	MNCT	BAXLEY	Plaintiffs' Motion For Preliminary Injunction And Motion For Contempt And Notice Of Hearing on 11/10/11 at 3:00 pm
	MEMS	BAXLEY	Memorandum In Support Of Plaintiffs' Motion For Preliminary Injunction And Contempt

Brent Ford Regan, Moura Regan vs. Jeff D Owen, Karen A Owen

Date	Code	User	Judge
10/27/2011	AFIS	BAXLEY	Affidavit Of Jonathon Verkist In Support Of Plaintiffs' Motion For Preliminary Injunction And Contempt John P. Luster
	AFIS	BAXLEY	Affidavit Of Scott Poorman In Support Of Plaintiffs' Motion For Preliminary Injunction And Contempt John P. Luster
	AFIS	BAXLEY	Affidavit Of Brent Regan In Support Of Motion For Preliminary Injunction And Contempt John P. Luster
11/2/2011	FILE	BAXLEY	*****New File #2 Created***** John P. Luster
11/3/2011	MNET	BAXLEY	Motion For Enlargement Of Time To File Objection To Preliminary Injunction John P. Luster
11/4/2011	OBJT	CRUMPACKER	Defendants Opposition to Plaintiffs Motion for Preliminary Injunction John P. Luster
	AFFD	CRUMPACKER	Affidavit of Jeff D Owen in Response to Plaintiffs Motion for Preliminary Injunction John P. Luster
	AFFD	CRUMPACKER	Affidavit of Karen Owen in Response to Plaintiffs Motion for Preliminary Injunction John P. Luster
	AFFD	CRUMPACKER	Affidavit of Weeks in Response to Plaintiffs Motion for Preliminary Injunction John P. Luster
11/9/2011	NOTH	GAVIN	Amended Notice Of Hearing John P. Luster
	HRVC	BOOTH	Hearing result for Motion scheduled on 11/10/2011 03:00 PM: Hearing Vacated for preliminary injunction - set by Scott Poorman John P. Luster
	HRSC	BOOTH	Hearing Scheduled (Motion 12/14/2011 03:00 PM) preliminary injunction - Scott Poorman John P. Luster
12/7/2011	AFFD	CRUMPACKER	Supplemental Affidavit of Scott Poorman in Support of Plaintiffs Motion for Preliminary Injunction & Contempt John P. Luster
	AFFD	CRUMPACKER	Supplemental Affidavit of Brent Regan in Support of Motion for Preliminary Injunction & Contempt John P. Luster
	PBRF	CRUMPACKER	Plaintiff's Reply Brief in Support of Motion for Preliminary Injunction & Contempt John P. Luster
12/8/2011	AFFD	BAXLEY	Affidavit Of Bruce Anderson, Kootenai County Surveyor John P. Luster
12/13/2011	NOTC	BAXLEY	Notice Of Election To Cross Examine The Adverse Party's Affiants John P. Luster
	MOTN	BAXLEY	Motion To Strike Hearing and Motion to Strike Rebuttal Affidavits John P. Luster
	MOTN	BAXLEY	Motion To Shorten Time To Hear Motion To Strike Hearing and Motion to Strike Rebuttal Affidavits John P. Luster
12/14/2011	NTSV	CRUMPACKER	Notice Of Service of Defendants 1st Set Interrogatories & Requests for Production of Documents to Plaintiff John P. Luster

Brent Ford Regan, Moura Regan vs. Jeff D Owen, Karen A Owen

Date	Code	User	Judge
12/14/2011	MISC	CRUMPACKER	Enrty of Not Guilty Plea & Acknowledgment of Rights & Demand for Jury Trial
12/15/2011	DCHH	BOOTH	Hearing result for Motion scheduled on 12/14/2011 03:00 PM: District Court Hearing Hel Court Reporter: Anne MacManus Brownell Number of Transcript Pages for this hearing estimated: preliminary injunction - Scott Poorman under 100 pages
1/3/2012	ORDR	BOOTH	Notice and Order vacating Hearing
1/5/2012	PLWL	CRUMPACKER	Plaintiff's Expert Witness Disclosure
1/9/2012	NTSV	LEU	Notice Of Service
1/25/2012	HRVC	BOOTH	Hearing result for Motion for Summary Judgment scheduled on 01/25/2012 04:00 PM: Hearing Vacated set by Susan Weeks
2/21/2012	HRSC	BOOTH	Hearing Scheduled (Motion 04/30/2012 01:30 PM) 1/2 day - set by Scot Poorman
3/1/2012	HRSC	BOOTH	Hearing Scheduled (Motion for Summary Judgment 04/25/2012 04:00 PM)
	HRSC	BOOTH	Hearing Scheduled (Motion 03/29/2012 04:00 PM) for relief from pretrial order
3/6/2012	DFWL	CRUMPACKER	Defendant's Expert Witness Disclosure
3/16/2012	CNTR	DEGLMAN	Counterclaim
	NOHG	DEGLMAN	Notice Of Hearing
	MOTN	DEGLMAN	Defendants' Motion for Leave to Amend Pleadings to Add a Counterclaim for Trespass
	MOTN	DEGLMAN	Defendants' Motion for Relief from Uniform Pretrial Order
3/20/2012	NOHG	LEU	Notice Of Hearing
	MOTN	BAXLEY	Motion To Shorten Time
3/26/2012	OBJT	ZOOK	Plaintiff's Objection to Defendants' Motion for Relief from Pretrial Order
3/27/2012	FILE	VICTORIN	*****FILE #3 CREATED*****
3/28/2012	MNSJ	ROBBINS	Defendants' Motion For Summary Judgment
	MEMO	ROBBINS	Defendants' Memorandum in Support of Motion for Summary Judgment
	AFFD	ROBBINS	Affidavit of Weeks in Support of Defendants' Motion for Summary Judgment
	AFFD	ROBBINS	Affidavit of David Johnson in Support of Plaintiffs' Motion for Summary Judgment
	NOTH	ROBBINS	Notice Of Hearing
3/29/2012	ORDR	BOOTH	Order granting motion to shorten time

Brent Ford Regan, Moura Regan vs. Jeff D Owen, Karen A Owen

Date	Code	User	Judge
3/29/2012	DCHH	BOOTH	Hearing result for Motion scheduled on 03/29/2012 04:00 PM: District Court Hearing Hel Court Reporter: Kerri Veare Number of Transcript Pages for this hearing estimated: for relief from pretrial order under 100 pages
	DENI	BOOTH	Hearing result for Motion scheduled on 03/29/2012 04:00 PM: Denied for relief from pretrial order
	HRVC	BOOTH	Hearing result for Motion for Summary Judgment scheduled on 04/25/2012 04:00 PM: Hearing Vacated
3/30/2012	HRSC	BOOTH	Hearing Scheduled (Motion to Compel 04/25/2012 04:00 PM) and motion in limine (20 minutes)
4/5/2012	NOTC	BOOTH	Notice of Trial - 4/30/12 1:30 pm
	HRSC	BOOTH	Hearing Scheduled (Court Trial Scheduled 04/30/2012 01:30 PM) re: contempt
4/6/2012	OSCI	BOOTH	Order To Show Cause for Preliminary Injunction - 4/30/12 1:30 pm
4/11/2012	NOHG	CRUMPACKER	Notice Of Hearing
	MNCT	CRUMPACKER	Motion to Continue Contempt Trial
	MNLI	CRUMPACKER	Motion In Limine Regarding Prescriptive Period
4/12/2012	MOTN	BAXLEY	Motion To Srike Affidavit Of Bruce Anderson
4/16/2012	SUBI	BAXLEY	Subpoena Issued To Daron Neet
	SDTI	BAXLEY	Subpoena Duces Tecum Issued To Deputy P Meehan K-2349
	SDTI	BAXLEY	Subpoena Duces Tecum Issued To Jon Verkist
	SDTI	BAXLEY	Subpoena Duces Tecum Issued to Deputy H Case
	SDTI	CRUMPACKER	Amended Subpoena Duces Tecum to JV
4/20/2012	AFSV	LEU	Affidavit Of Service-P.M.-4/19/12
	AFSV	LEU	Affidavit Of Service-H.C.-4/17/12
	AFSV	LEU	Affidavit Of Service-J.V.-4/13/12
	AFSV	LEU	Affidavit Of Service-D.N.-4/16/12
	SUBI	LEU	Subpoena Duces Tecum
	NOTC	LEU	Plaintiffs' Notice Of Intent To Present Testimony And Evidence, And To Cross Examine Witnesses
4/24/2012	OBJT	CLEVELAND	Plaintiffs' Objection to Defendants' Motion to Continue Hearing and Motion to Strike Affidavit of Bruce Anderson
	OBJT	BAXLEY	Plaintiffs' Objection To Defendants' Motion In Limine

Brent Ford Regan, Moura Regan vs. Jeff D Owen, Karen A Owen

Date	Code	User		Judge
4/24/2012	MEMS	BAXLEY	Reply Memorandum In Support Of Motion In Limine Regarding Prescriptive Period	John P. Luster
4/25/2012	DCHH	BOOTH	Hearing result for Motion to Compel scheduled on 04/25/2012 04:00 PM: District Court Hearing Held Court Reporter: Valerie Nunemacher Number of Transcript Pages for this hearing estimated: under 100 pages	John P. Luster
4/26/2012	HRVC	BOOTH	Hearing result for Court Trial Scheduled scheduled on 04/30/2012 01:30 PM: Hearing Vacated re: contempt	John P. Luster
	HRSC	BOOTH	Hearing Scheduled (Court Trial Scheduled 05/31/2012 09:00 AM)	John P. Luster
		BOOTH	Notice of Trial	John P. Luster
	HRVC	BOOTH	Hearing result for Motion scheduled on 04/30/2012 01:30 PM: Hearing Vacated plaintiffs' motion for preliminary injunction and motion for contempt 1/2 day - set by Scot Poorman	John P. Luster
5/8/2012	NOTR	BAXLEY	Notice Of Transcript Delivery - Deponent Jonathan Verkist	John P. Luster
5/9/2012	HRSC	BOOTH	Hearing Scheduled (Motion in Limine 05/24/2012 04:00 PM) set by Susan Weeks	John P. Luster
5/14/2012	NOHG	BAXLEY	Notice Of Hearing (05/24/12 at 4:00 pm)	John P. Luster
	MNLI	BAXLEY	Motion In Limine To Preclude Witnesses From Testifying	John P. Luster
	AFIS	BAXLEY	Affidavit Of Weeks In Support Of Motion In Limine To Preclude Witnesses From Testifying	John P. Luster
	SUBI	BAXLEY	Subpoena Issued To Any Hart	John P. Luster
	SUBI	BAXLEY	Subpoena Issued To Pat Honeyman	John P. Luster
	MOTN	HUFFMAN	Motion To Shorten Time	John P. Luster
5/15/2012	FILE	CRUMPACKER	New File Created***4***	John P. Luster
5/16/2012	AFFD	HUFFMAN	Affidavit Of Scott Poorman In Support Of Plaintiffs' Objection To Defendants' Motion In Limine	John P. Luster
	MOTN	HUFFMAN	Plaintiffs' Motion For Relief From Pre-Trial Order To Serve Supplemental Discovery And Motion To Shorten Time	John P. Luster
	MISC	HUFFMAN	Plaintiffs' Objection To Defendants' Motion In Limine	John P. Luster
	NOHG	HUFFMAN	Notice Of Hearing On Plaintiffs' Motion For Relief From Pre-Trial Order To Serve Supplemental Discovery And Motion To Shorten Time	John P. Luster

Brent Ford Regan, Moura Regan vs. Jeff D Owen, Karen A Owen

Date	Code	User		Judge
5/16/2012	NTSV	HUFFMAN	Notice Of Service - Plaintiffs' Supplemental Answers To Defendants' Interrogatories & Requests For Production	John P. Luster
5/18/2012	SUBI	CRUMPACKER	Subpoena Issued PM	John P. Luster
	SUBI	CRUMPACKER	Subpoena Issued HC	John P. Luster
5/21/2012	DEFX	CRUMPACKER	Defendant's List Of Exhibits	John P. Luster
	DFWL	CRUMPACKER	Defendant's Witness List	John P. Luster
5/22/2012	PLWL	DEGLMAN	Plaintiff's Witness List	John P. Luster
	PLTX	DEGLMAN	Plaintiff's List Of Exhibits	John P. Luster
	ANSW	DEGLMAN	Plaintiffs' Supplemental Answers to Defendants' Interrogatories	John P. Luster
	MEMS	BAXLEY	Reply Memorandum In Support Of Motion In Limine To Preclude Witnesses From Testifying	John P. Luster
	PLTX	BAXLEY	Plaintiff's CORRECTED Exhibit List	John P. Luster
5/23/2012	SDTI	BAXLEY	Subpoena Duces Tecum Issued To Deputy P Meehan KCSD	John P. Luster
	SDTI	BAXLEY	Subpoena Duces Tecum Issued To Deputy H Case KCSD	John P. Luster
5/25/2012	DCHH	BOOTH	Hearing result for Motion in Limine scheduled on 05/24/2012 04:00 PM: District Court Hearing Held Court Reporter: Anne MacManus Brownell Number of Transcript Pages for this hearing estimated: under 100 pages	John P. Luster
	CONT	BOOTH	Hearing result for Court Trial Scheduled scheduled on 06/04/2012 09:00 AM: Continued 3 DAY COURT TRIAL	John P. Luster
	HRSC	BOOTH	Hearing Scheduled (Court Trial Scheduled 05/31/2012 09:00 AM) contempt/preliminary injunction	John P. Luster
	HRSC	BOOTH	Hearing Scheduled (Court Trial Scheduled 12/03/2012 09:00 AM) 4 DAY COURT TRIAL #1 PRIORITY SETTING	John P. Luster
		BOOTH	Notice of Hearing	John P. Luster
5/30/2012	NOTC	CRUMPACKER	Notice of Election to Cross Examine the Adverse Party's Affiants & to Produce Testimony	John P. Luster
6/1/2012	DCHH	BOOTH	Hearing result for Court Trial Scheduled scheduled on 05/31/2012 09:00 AM: District Court Hearing Held Court Reporter: Amy Wilks - CDA Reporting Number of Transcript Pages for this hearing estimated: over 100 pages	John P. Luster
	HRSC	BOOTH	Hearing Scheduled (Motion 06/04/2012 03:30 PM) continue preliminary injunction hearing	John P. Luster
		BOOTH	Notice of Hearing	John P. Luster

Brent Ford Regan, Moura Regan vs. Jeff D Owen, Karen A Owen

Date	Code	User	Judge
6/7/2012	DCHH	BOOTH	Hearing result for Motion scheduled on 06/04/2012 03:30 PM: District Court Hearing Held Court Reporter: Amy Wilkins - CDA Reporting Number of Transcript Pages for this hearing estimated: continue preliminary injunction hearing - over 100 pages
6/8/2012	HRSC	BOOTH	Hearing Scheduled (Motion 07/10/2012 03:00 PM) entry of preliminary injunction
	HRSC	BOOTH	Hearing Scheduled (Motion for Summary Judgment 08/30/2012 03:00 PM)
	FILE	CRUMPACKER	New File Created****5**** Expando
6/13/2012	BNDC	VIGIL	Bond Posted - Cash (Receipt 24852 Dated 6/13/2012 for 10000.00)
6/19/2012	ORDR	BOOTH	Order Granting Preliminary Injunction
6/20/2012	ORDR	BOOTH	Order on Motions (May 24, 2012 hearing)
7/5/2012	HRVC	BUTLER	Hearing result for Motion scheduled on 07/10/2012 03:00 PM: Hearing Vacated entry of preliminary injunction - Per Poorman's office
7/24/2012	HRSC	BOOTH	Hearing Scheduled (Motion for Summary Judgment 10/02/2012 03:00 PM) set by Weeks
	HRSC	BOOTH	Hearing Scheduled (Court Trial Scheduled 12/03/2012 09:00 AM) Hearing result for Court Trial Scheduled scheduled on 12/03/2012 09:00 AM: Hearing Vacated 4 DAY COURT TRIAL #1 PRIORITY SETTING
	HRVC	BOOTH	Hearing result for Motion for Summary Judgment scheduled on 08/30/2012 03:00 PM: Hearing Vacated
8/10/2012	HRSC	BUTLER	Hearing Scheduled (Motion 08/30/2012 03:00 PM) to Reconsider 15 min - Weeks
8/14/2012	AFFD	CRUMPACKER	Affidavit of Scott L Poorman in Support of Plaintiffs 2nd Motion for Summary Judgment
	AFFD	CRUMPACKER	Affidavit of Harold D Smart in Support of Plaintiffs Motion for Summary Judgment
	AFFD	CRUMPACKER	Affidavit of thomas R Collins in Support of Plaintiffs Motion for Summary Judgment
	AFFD	CRUMPACKER	Affidavit of David English in Support of Plaintiffs Motion for summary Judgment
	PBRF	CRUMPACKER	Brief in Support of Plaintiffs Second Motion for Summary Judgment
	MNSJ	CRUMPACKER	Plaintiffs 2nd Motion For Summary Judgment & Notice of Hearing
	FILE	LEU	New File Created--#5--CREATED

Brent Ford Regan, Moura Regan vs. Jeff D Owen, Karen A Owen

Date	Code	User		Judge
8/15/2012	HRSC	BOOTH	Hearing Scheduled (Motion for Summary Judgment 09/13/2012 09:00 AM) TIME CHANGE FROM 3:00 PM TO 9:00 AM	John P. Luster
		BOOTH	Notice of Hearing	John P. Luster
	SDTR	CLEVELAND	Subpoena Duces Tecum Returned - Harold Smart	John P. Luster
8/16/2012	AFFD	CLEVELAND	Affidavit of Karen Owen in Support of Defendants' Motion to Modify Preliminary Injunction	John P. Luster
	MEMO	CLEVELAND	Memorandum in Support of Defendants' Motion to Modify Preliminary Injunction	John P. Luster
	MOTN	CLEVELAND	Defendants' Motion for Leave to AMEND Affirmative Defenses	John P. Luster
	MOTN	CLEVELAND	Defendants' Motion to Modify Preliminary Injunction	John P. Luster
	MOTN	CLEVELAND	Motion for Contempt	John P. Luster
	NOTC	CLEVELAND	Notice to Appear and Notice of Hearing	John P. Luster
	NOTC	CLEVELAND	Notice of Hearing on Pending Motions	John P. Luster
8/20/2012	AFSV	HUFFMAN	Affidavit Of Service-H.S.-8/15/12	John P. Luster
8/27/2012	AFFD	BAXLEY	Affidavit Of Brent Regan In Opposition To Defendants' Motion To Modify Preliminary Injunction	John P. Luster
8/30/2012	DCHH	BOOTH	Hearing result for Motion scheduled on 08/30/2012 03:00 PM: District Court Hearing Hel Court Reporter: Deborah Burnham Number of Transcript Pages for this hearing estimated: to Reconsider 15 min - Weeks under 100 pages	John P. Luster
	MEMO	MCNEIL	Dedendants' Memorandum in Opposition to Plaintiffs' Second Motion for Summary Judgment	John P. Luster
	AFFD	MCNEIL	Affidavit of Weeks in Response to Plaintiffs' Second Motion for Summary Judgment	John P. Luster
9/4/2012	AFFD	CRUMPACKER	Affidavit of Jeff D Owen in Support of Defendants 2nd Motion for Summary Judgment	John P. Luster
	AFFD	CRUMPACKER	Affidavit of Susan P Weeks in Support of Defendants 2nd Motion for Summary Judgment	John P. Luster
	MEMS	CRUMPACKER	Memorandum In Support Of Defendants 2nd Motion for Summary Judgment	John P. Luster
	DFWL	CRUMPACKER	Defendant's Supplemental Expert Witness Disclosure	John P. Luster
9/5/2012	MNSJ	CRUMPACKER	Defendants 2nd Motion For Summary Judgment	John P. Luster
	NOHG	CRUMPACKER	Notice Of Hearing	John P. Luster
9/6/2012	PBRF	CRUMPACKER	Plaintiff's Reply Brief in Support of Plaintiffs Second Motion for Summary Judgment	John P. Luster

Brent Ford Regan, Moura Regan vs. Jeff D Owen, Karen A Owen

Date	Code	User	Judge
9/13/2012	DCHH	BOOTH	Hearing result for Motion for Summary Judgment scheduled on 09/13/2012 09:00 AM: District Court Hearing Held Court Reporter: Keri Veare Number of Transcript Pages for this hearing estimated: under 100 pages
9/18/2012	PBRF	BAXLEY	Plaintiffs' Brief In Opposition To Defendants' Second Motion For Summary Judgment
	AFFD	BAXLEY	Affidavit Of Brent Regan In Opposition To Defendants' Second Summary Judgment Motion
	AFFD	BAXLEY	Affidavit Of Harvey Richman In Opposition To Defendants' Second Summary Judgment Motion
	AFFD	BAXLEY	Affidavit Of Ben Tarbutton In Opposition To Defendants' Second Summary Judgment Motion
	AFFD	BAXLEY	Affidavit Of Scott Poorman In Opposition To Defendants' Second Summary Judgment Motion
9/25/2012	MOTN	MCNEIL	Motion for Enlargement of Time to File Defendants' Reply in Support of Second Motion for Summary Judgment
9/27/2012	MEMO	LEU	Reply Memorandum In Support Of Defendants' Second Motion For Summary Judgment
10/2/2012	DCHH	BIELEC	Hearing result for Motion for Summary Judgment scheduled on 10/02/2012 03:00 PM: District Court Hearing Held Court Reporter: Keri Veale Number of Transcript Pages for this hearing estimated: Under 100 set by Weeks
11/7/2012	DEOP	BOOTH	Decision and Order re: Plaintiffs' Second Motion for Summary Judgment and Defendants' Second Motion for Summary Judgment
11/8/2012	HRSC	BOOTH	Hearing Scheduled (Motion 11/29/2012 03:00 PM) Rule 54(b)
11/9/2012	FILE	CRUMPACKER	New File Created****7***
11/19/2012	PLWL	CRUMPACKER	Plaintiff's Amended Witness List
11/21/2012	NOTC	MCKEON	Notice Of Acceptance Of Rule 68 Offer Of Judgment On Counterclaim
11/27/2012	HRVC	BOOTH	Hearing result for Court Trial Scheduled scheduled on 12/03/2012 09:00 AM: Hearing Vacated Hearing result for Court Trial Scheduled scheduled on 12/03/2012 09:00 AM: Hearing Vacated 4 DAY COURT TRIAL #1 PRIORITY SETTING
11/29/2012	HRVC	BOOTH	Hearing result for Motion scheduled on 11/29/2012 03:00 PM: Hearing Vacated Rule 54(b)

Brent Ford Regan, Moura Regan vs. Jeff D Owen, Karen A Owen

Date	Code	User	Judge
11/29/2012	ORDR	BOOTH	Order Granting Leave to File Trespass Counterclaim
	MISC	CRUMPACKER	Counterclaim
12/6/2012	NOTR	CRUMPACKER	Notice Of Transcript Delivery
12/20/2012	NOTR	MCKEON	Notice Of Transcript Delivery SW
1/23/2013	STIP	ZOOK	Stipulation for Dismissal of Contempt Claims
2/7/2013	ORDR	CLEVELAND	Order Dismissing Motions for Contempt and Releasing Cash Deposit
	CVDI	CLEVELAND	Civil Disposition entered for: Owen, Jeff D, Defendant; Owen, Karen A, Defendant; Regan, Brent Ford, Plaintiff; Regan, Moura, Plaintiff. Filing date: 2/7/2013
	FJDE	CLEVELAND	Judgment
	STAT	CLEVELAND	Case status changed: closed
2/8/2013	BNDE	CLEVELAND	Cash Bond Exonerated (Amount 10,000.00)
	AFFD	CRUMPACKER	Plaintiffs Affidavit for Attorney Fees & Costs
	MCAF	CRUMPACKER	Plaintiffs Memorandum Of Costs And Attorney Fees
2/22/2013	MOTN	CRUMPACKER	Defendants Motion to Disallow Costs & Attorney Fees
	MEMS	CRUMPACKER	Defendants Memorandum In Support Of Motion to Disallow Costs & Attorney Fees
3/7/2013	HRSC	BOOTH	Hearing Scheduled (Motion 04/03/2013 03:00 PM) objection to attorney fees/costs - set by Scott Poorman
	STAT	BOOTH	Case status changed: Closed pending clerk action
3/8/2013	NOHG	MCKEON	Notice Of Hearing On Defendants' Motion To Dissallow Costs And Attorney Fees
3/21/2013	HRVC	BOOTH	Hearing result for Motion scheduled on 04/03/2013 03:00 PM: Hearing Vacated objection to attorney fees/costs - set by Scott Poorman
	HRSC	BOOTH	Hearing Scheduled (Motion 04/09/2013 03:00 PM) for attorney fees
		HUFFMAN	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Weeks, Susan P. (attorney for Owen, Jeff D) Receipt number: 0012483 Dated: 3/21/2013 Amount: \$109.00 (Check) For: Owen, Jeff D (defendant) and Owen, Karen A (defendant)
	BNDC	HUFFMAN	Bond Posted - Cash (Receipt 12485 Dated 3/21/2013 for 100.00)
	ARDC	DEGLMAN	Appeal Filed In District Court

Brent Ford Regan, Moura Regan vs. Jeff D Owen, Karen A Owen

Date	Code	User	Judge
3/28/2013	STAT	MITCHELL	Case status changed: closed pending clerk action
	STAT	LEU	Case status changed: closed
4/1/2013	MISC	DEGLMAN	Clerk's Certificate of Appeal
4/3/2013	ANHR	BAXLEY	Amended Notice Of Hearing (04/09/13 at 3:00 pm)
4/5/2013	MISC	DEGLMAN	Amended Clerk's Certificate of Appeal
4/9/2013	DCHH	BURRINGTON	Hearing result for Motion scheduled on 04/09/2013 03:00 PM: District Court Hearing Hel Court Reporter: Keri Veare Number of Transcript Pages for this hearing estimated: Less than 100 pages
4/30/2013	NLTR	DEGLMAN	Notice of Lodging Transcript- Keri Veare 15 pages
	NLTR	DEGLMAN	Notice of Lodging Transcript- Keri Veare 27 pages
	NLTR	DEGLMAN	Notice of Lodging Transcript- Keri Veare 34 pages
5/3/2013	NLTR	DEGLMAN	Notice of Lodging Transcript- Valerie Nunemacher 32 pages
5/10/2013	ADMR	VIGIL	Administrative assignment of Judge (batch process)
5/13/2013	NLTR	DEGLMAN	Notice of Lodging Transcript- Jackie Stefani for Amy Wilkins 404 pages
5/14/2013	NLTR	DEGLMAN	Notice of Lodging Transcript- Jackie Stefani for Amy Wilkins 404 pages
	NLTR	DEGLMAN	Notice of Lodging Transcript- Anne Brownell 28 pages
5/15/2013	BNDC	CLEVELAND	Bond Posted - Cash (Receipt 20853 Dated 5/15/2013 for 104.00)
	NOTC	CLEVELAND	Notice of Payment - Susan P. Weeks OBO the Defendant
	BNDV	VICTORIN	Bond Converted (Transaction number 1028 dated 5/15/2013 amount 91.65)
	BNDE	VICTORIN	Cash Bond Exonerated (Amount 8.35)
	BNDV	DEGLMAN	Bond Converted (Transaction number 1031 dated 5/15/2013 amount 104.00)
7/26/2013	CERT	LEU	Certificate Of Mailing-ISC
7/30/2013	CERT	DIXON	Clerk's Certificate Of Service - K Kruger obo SW-7/30/13
7/31/2013	CERT	DIXON	Clerk's Certificate Of Service
11/24/2014	ORDR	LEU	Order Conditionally Dismissing Appear - Idaho Sumpreme Court

Brent Ford Regan, Moura Regan vs. Jeff D Owen, Karen A Owen

Date	Code	User		Judge
12/9/2014	STIP	DIXON	Stipulation On Entry Of Amended Judgment	Rich Christensen
12/10/2014	AMOR	BOOTH	Amended Judgment - Rule 54(b) Certificate	John P. Luster
12/19/2014	OPIN	MITCHELL	2014 Opinion No. 135 Filed	Rich Christensen
1/16/2015	REMT	MITCHELL	Remittitur	Rich Christensen
1/28/2015	ADMR	BOOTH	Administrative assignment of Judge	John P. Luster
	HRSC	BOOTH	Hearing Scheduled (Status Conference 03/16/2015 04:00 PM)	John P. Luster
		BOOTH	Notice of Hearing	John P. Luster
1/30/2015	JDMT	MITCHELL	Judgment for Appeal Costs	John P. Luster
3/16/2015	DCHH	STECKMAN	Hearing result for Status Conference scheduled on 03/16/2015 04:00 PM: District Court Hearing Held Court Reporter: Sammantha Drummond	John P. Luster
3/26/2015	HRSC	BOOTH	Hearing Scheduled (Court Trial Scheduled 11/03/2015 09:00 AM) 3 Day Court Trial	John P. Luster
		BOOTH	Notice of Trial (Uniform pretrial order attached)	John P. Luster
	ORDR	BOOTH	Mediation Order	John P. Luster
		BOOTH	Amended Notice of Trial	John P. Luster
5/8/2015	HRSC	BOOTH	Hearing Scheduled (Motion 06/18/2015 03:00 PM) mtn to rescind prior judgment and motion to reinstate bond - set by Susan Weeks	John P. Luster
5/12/2015	HRVC	BOOTH	Hearing result for Motion scheduled on 06/18/2015 03:00 PM: Hearing Vacated mtn to rescind prior judgment and motion to reinstate bond - set by Susan Weeks	John P. Luster
5/19/2015	NOTD	JLEIGH	Notice Of Deposition Of Brent Regan	John P. Luster
5/21/2015	MOTN	DIXON	Motion For Entry Of Order Rescinding Prior Judgments	John P. Luster
	MEMS	DIXON	Memorandum In Support Of Motion For Entry Of Order Requiring Bond	John P. Luster
	MEMS	DIXON	Memorandum In Support Of Motion For Entry Of Order Rescinding Prior Judgments	John P. Luster
	MOTN	DIXON	Motion For Entry Of Order Requiring Bond	John P. Luster
	NOTH	DIXON	Notice Of Hearing	John P. Luster
6/1/2015	HRSC	BOOTH	Hearing Scheduled (Motion 06/10/2015 01:30 PM) To Rescind - set by Susan Weeks	John P. Luster
6/10/2015	DCHH	BOOTH	Hearing result for Motion scheduled on 06/10/2015 01:30 PM: District Court Hearing Hel Court Reporter: NONE Number of Transcript Pages for this hearing estimated: To Rescind - set by Susan Weeks under 100 pages	John P. Luster

Brent Ford Regan, Moura Regan vs. Jeff D Owen, Karen A Owen

Date	Code	User		Judge
6/10/2015	HRVC	BOOTH	Hearing result for Court Trial Scheduled scheduled on 11/03/2015 09:00 AM: Hearing Vacated 3 Day Court Trial	John P. Luster
	HRSC	BOOTH	Hearing Scheduled (Court Trial Scheduled 12/01/2015 09:00 AM) 3 DAY COURT TRIAL	John P. Luster
		BOOTH	Amended Notice of Trial	John P. Luster
6/11/2015	ORDR	DIXON	Order Requiring Posting Bond	John P. Luster
	ORDR	DIXON	Order Rescinding Prior Judgments	John P. Luster
6/19/2015	BNDC	MITCHELL	Bond Posted - Cash (Receipt 23655 Dated 6/19/2015 for 10000.00)	John P. Luster
6/30/2015	HRSC	BOOTH	Hearing Scheduled (Motion for Summary Judgment 09/04/2015 10:00 AM)	John P. Luster
8/7/2015	MEMO	CLEVELAND	Memorandum in Support of Defendants' Third Motion for Summary Judgment	John P. Luster
	AFFD	CLEVELAND	Affidavit of Jeff D. Owen in Support of Defendants' Third Motion for Summary Judgment	John P. Luster
	AFFD	CLEVELAND	Affidavit of Susan P. Weeks in Support of defendants' Third Motion for Summary Judgment	John P. Luster
	MOTN	CLEVELAND	Defendants' Third Motion for Summary Judgment	John P. Luster
	NOTH	CLEVELAND	Notice Of Hearing - Susan P. Weeks	John P. Luster
8/21/2015	PBRF	BRADY	Plaintiffs' Brief In Opposition To Defendants' Third Motion For Summary Judgment	John P. Luster
	AFFD	BRADY	Affidavit Of Michael McDowell In Opposition To Defendant' Third Motion For Summary Judgment	John P. Luster
8/28/2015	MEMO	DIXON	Defendants' Reply Memorandum In Support Of Third Motion For Summary Judgment	John P. Luster
9/4/2015	DCHH	RILEY	Hearing result for Motion for Summary Judgment scheduled on 09/04/2015 10:00 AM: District Court Hearing Held Court Reporter: Diane Bolan Number of Transcript Pages for this hearing estimated: Under 100 Pages	John P. Luster
10/9/2015	DEOP	BOOTH	Decision on Defendants' Third Motion for Summary Judgment	John P. Luster
10/21/2015	HRVC	BOOTH	Hearing result for Court Trial Scheduled scheduled on 12/01/2015 09:00 AM: Hearing Vacated 3 DAY COURT TRIAL	John P. Luster
	HRSC	BOOTH	Hearing Scheduled (Motion 11/09/2016 04:00 PM) motion for release of attorney fees on bond	John P. Luster
10/26/2015	NOTH	ESPE	Notice Of Hearing	John P. Luster
	MISC	ESPE	Declaration of Susan P. Weeks in Support of Memorandum of Costs and Attorney Fees	John P. Luster
10/27/2015	FILE	BAXLEY	*****New File #8	John P. Luster

Brent Ford Regan, Moura Regan vs. Jeff D Owen, Karen A Owen

Date	Code	User		Judge
10/27/2015	MCAF	BAXLEY	Memorandum Of Costs And Attorney Fees	John P. Luster
	MOTN	BAXLEY	Motion For Recovery On Bond	John P. Luster
	MEMS	BAXLEY	Memorandum In Support Of Motion To Recover Against Preliminary Injunction Bond Posted Pursuant To IRCP 65	John P. Luster
10/30/2015	FJDE	LEU	Final Judgment	John P. Luster
11/2/2015	HRSC	BOOTH	Hearing Scheduled (Motion to Amend 11/09/2015 04:00 PM) judgment and shorten time	John P. Luster
	MOTN	DEGLMAN	Motion to Alter or Amend Judgment	John P. Luster
	NOHG	DEGLMAN	Notice Of Hearing	John P. Luster
	MEMO	DEGLMAN	Memorandum in Support of Motion to Alter or Amend Judgment	John P. Luster
	MOTN	DEGLMAN	Motion to Shorten Time	John P. Luster
	NOHG	DEGLMAN	Notice Of Hearing	John P. Luster
11/3/2015	OBJT	CLEVELAND	Plaintiff's Objection to Defendants' Motion for Recovery on Bond	John P. Luster
11/5/2015	MISC	ESPE	Supplemental Declaration of Susan P. Weeks in Support of Memorandum of Costs and Attorney Fees	John P. Luster
	MEMO	ESPE	Reply Memorandum in Support of Defendants' Motion for Recovery on Bond	John P. Luster
11/9/2015	DCHH	HODGE	Hearing result for Motion scheduled on 11/09/2015 04:00 PM: District Court Hearing Hel Court Reporter: Keri Veare Number of Transcript Pages for this hearing estimated: Under 100 pages	John P. Luster
	DCHH	HODGE	Hearing result for Motion to Amend scheduled on 11/09/2015 04:00 PM: District Court Hearing Hel Court Reporter: Keri Veare Number of Transcript Pages for this hearing estimated: Under 100 pages	John P. Luster
11/10/2015	ORDR	BOOTH	Order Holding Bond	John P. Luster
11/24/2015	SUBC	DEGLMAN	Notice of Substitution Of Attorney- Arthur Macomber obo Plaintiffs	John P. Luster
11/25/2015	AFFD	WOOSLEY	Affidavit of Brent Regan RE: Owens' November 2015 Roadwork Destroying Easement Road on Orphan Parcel	John P. Luster
	AFFD	WOOSLEY	Affidavit of Arthur B Macomber RE: Owens' November 2015 Roadwork Destroying Easement Road on Orphan Parcel	John P. Luster

Brent Ford Regan, Moura Regan vs. Jeff D Owen, Karen A Owen

Date	Code	User		Judge
11/25/2015	NOTC	WOOSLEY	Notice of Ex-Parte Motion and Motion for Denial of Defendants' Pending Motion; and For Enforcement of Preliminary Injunction Against Defendants for Roadway Destruction by Temporary Restraining Order	John P. Luster
	OBJT	WOOSLEY	Objection to Plaintiffs' Ex Parte Motion and Motion for Denial of Defendants' Pending Motion and For Enforcement of Preliminary Injunction	John P. Luster
11/30/2015	MISC	HICKS	Reply to Owens' Objection to Regans' Ex Parte Motion for Denial of Defendants' Pending Motion; and for Enforcement of Preliminary Injunction Against Defendants for Roadway Destruction	John P. Luster
12/10/2015		CLEVELAND	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Macomber, Arthur Bruce (attorney for Regan, Brent Ford) Receipt number: 0045758 Dated: 12/10/2015 Amount: \$129.00 (Check) For: Regan, Brent Ford (plaintiff) and Regan, Moura (plaintiff)	John P. Luster
	BNDC	CLEVELAND	Bond Posted - Cash (Receipt 45760 Dated 12/10/2015 for 100.00)	John P. Luster
	APDC	LEU	Appeal Filed In District Court	John P. Luster
12/15/2015	DEOP	BOOTH	Decision On Defendant's Motion for Recovery on Bond and Objection to Permanent Injunction	John P. Luster
12/17/2015	HRSC	BOOTH	Hearing Scheduled (Motion 01/11/2016 10:00 AM) to hold bond and preliminary injunction - set by Art Macomber	John P. Luster
	MOTN	BAXLEY	Motion To Hold Bond And Grant Preliminary Injunction Of Defendant During Pendency Of Case - Hearing Date [pending]	John P. Luster
	NOHG	BAXLEY	Notice Of Hearing On Motion To Hold Bond And Motion For Preliminary Injunction During Pendency Of Case	John P. Luster
	CVDI	LEU	Civil Disposition entered for: Owen, Jeff D, Defendant; Owen, Karen A, Defendant; Regan, Brent Ford, Plaintiff; Regan, Moura, Plaintiff. Filing date: 12/17/2015	John P. Luster
	FJDE	LEU	Final Judgment	John P. Luster
12/18/2015	BNDV	LEU	Bond Converted (Transaction number 2297 dated 12/18/2015 amount 10,000.00)	John P. Luster
12/29/2015	BRIE	JLEIGH	Brief In Support Of Motions To Hold bond and Maintain Or Grant Preliminary Injunction During Pendency Of Case	John P. Luster
12/31/2015	RTCT	DEGLMAN	Return Certificate- SV 12-29-15	John P. Luster
1/4/2016	OBJT	DIXON	Objection To Plaintiffs' Motion to Hold Bond And Grant Preliminary Injunction During Pendency Of Appeal	John P. Luster

Brent Ford Regan, Moura Regan vs. Jeff D Owen, Karen A Owen

Date	Code	User		Judge
1/7/2016		BOOTH	Amended Notice of Hearing	John P. Luster
1/11/2016	DCHH	BOOTH	Hearing result for Motion scheduled on 01/11/2016 10:00 AM: District Court Hearing Hel Court Reporter: NONE Number of Transcript Pages for this hearing estimated: to hold bond and preliminary injunction - set by Art Macomber under 100 pages	John P. Luster
1/21/2016	NLTR	LEU	Notice Of Transcript Lodged - 26 pages - Diane M. Bolan	John P. Luster
1/22/2016	ORDR	BOOTH	Order on Preservation of Property Pending Appeal Pursuant to I.A.R. 13(b)(10)	John P. Luster
1/27/2016	APDC	LEU	Amended Notice Of Appeal	John P. Luster

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
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CLERK DISTRICT COURT

[Handwritten signature]

Susan P. Weeks, # 4255
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1626 Lincoln Way
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Telephone: (208) 667-0683
Facsimile: (208) 664-1684

Attorneys for Defendants

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

BRENT REGAN and MOURA REGAN,
husband and wife,

Plaintiffs,

vs.

JEFF D. OWEN and KAREN A. OWEN,
husband and wife,

Defendants.

CASE NO. CV-11-2136

MEMORANDUM IN SUPPORT OF
DEFENDANTS' THIRD MOTION FOR
SUMMARY JUDGMENT

Defendants, through their counsel of record, James, Vernon & Weeks, P.A., submit this Memorandum in Support of Defendants' Third Motion for Summary Judgment.

I. INTRODUCTION

This matter is back before the Court on remand from the Idaho Supreme Court. The Court's judgment of an express easement across a portion of Defendants' property was not challenged on appeal. The Court's decree reforming the Owens' deed was reversed on appeal and is no longer in issue. The Court's judgment that a prescriptive easement existed across the Orphan Parcel was reversed and remains at issue. *See Regan v. Owen*, 157 Idaho 758, 339 P.3d 1162, 1169 (2014).

In addressing the prescriptive easement issue, the Supreme Court emphasized that Owens hold title to the Orphan Parcel based upon the issuance of a tax deed to Kootenai County. The Supreme Court held "The tax deed conveyed absolute title to the Country free of encumbrances. *Regan v. Owen*. 157 Idaho at 339, 339 P.3d at 1168. The Idaho Supreme Court characterized this title as "absolute title" free of any encumbrances except mortgage of record who had not been sent notice as provided in I.C. § 63-1005. . *Regan v. Owen*, 157 Idaho at 758, 339 P.3d 1169. The Idaho Supreme Court further held "[a]n encumbrance is "any right or interest in land to the diminution of its value, but consistent with the free transfer of the fee." *Id* The Supreme Court further held:

Whether something is an encumbrance does not depend upon the extent to which it diminishes the value of the land. An encumbrance 'embraces all cases in which the owner does not acquire the complete dominion over the land which his grant apparently implies." *Id*. An easement is not an encumbrance if the easement is essential to the enjoyment of the land and it enhances the land's value. *Id*. There is no finding by the district court that the alleged prescriptive easement across the Orphan Parcel increased its value.

Regan v. Owen. 157 Idaho at 758, 339 P.3d at 1169.

Based upon these holdings, Owens submit this summary judgment. There is no evidence that the alleged prescriptive easement across the Orphan Parcel is essential to the enjoyment of the parcel. Further, Regan has disclosed no expert in either its discovery or its expert witness disclosures contending that the alleged prescriptive easement increases the value to the Owens of the Orphan Parcel. In fact, the undisputed evidence is that a prescriptive easement would diminish the value of the Orphan Parcel.

II. UNDISPUTED FACTS

The previous affidavits submitted in support of the prior summary judgments establish:

1. Jeff and Karen Owen are the owners of a 10.7 acre parcel of real property in Kootenai County.

2. The Owens acquired their current 10.7 acres by two separate conveyances: They acquired a 10.3 acre parcel from David and Helen Hanna by a warranty deed dated February 4, 2003. The Owens then acquired a 0.4 acre parcel (the Orphan Parcel) from Kootenai County by a deed dated November 28, 2005.

3. Kootenai County acquired the Orphan Parcel by tax deed dated April 13, 2004.

4. Brent and Moura Regan are the owners of a 50.55 acre parcel of real property adjoining the Owens' parcel in Kootenai County.

In addition, the present Affidavit of Jeff D. Owen establishes:

5. The alleged prescriptive easement across the Orphan Parcel is not essential to Owens' use and enjoyment of the Parcel, and detracts from their use and enjoyment of the Orphan Parcel.

6. The alleged prescriptive easement does not enhance the value of the Orphan Parcel, and in fact diminishes the value of the Orphan Parcel.

III. STANDARD OF REVIEW

This Court's standard used for grant of a motion for summary judgment is as follows:

Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. I.R.C.P. 56(c).

The burden of proving the absence of material facts is upon the moving party. *Thomson v. City of Lewiston*, 137 Idaho 473, 476, 50 P.3d 488, 491 (2002); *see also Petricevich v. Salmon River Canal Co.*, 92 Idaho 865, 452 P.2d 362 (1969). The adverse party, however, "may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." I.R.C.P. 56(e). The moving party is therefore entitled to a judgment when the

nonmoving party fails to make a showing sufficient to establish the existence of an element essential to that party's case on which that party will bear the burden of proof at trial. See *Thomson*, 137 Idaho at 476, 50 P.3d at 491, *Badell*, 115 Idaho at 102, 765 P.2d at 127.

When an action, as here, will be tried before the court without a jury, the trial court as the trier of fact is entitled to arrive at the most probable inferences based upon the undisputed evidence properly before it and grant the summary judgment despite the possibility of conflicting inferences. *Intermountain Forest Management*, 136 Idaho at 235, 31 P.3d at 923. Resolution of the possible conflict between the inferences is within the responsibilities of the fact finder. *Cameron v. Neal*, 130 Idaho 898, 900, 950 P.2d 1237, 1239 (1997). This Court exercises free review over the entire record that was before the district judge to determine whether either side was entitled to judgment as a matter of law and reviews the inferences drawn by the district judge to determine whether the record reasonably supports those inferences. *Intermountain Forest Management*, 136 Idaho at 236, 31 P.3d at 924.

P.O. Ventures, Inc. v. Loucks Family Irrevocable Trust, 144 Idaho 233, 237, 159 P.3d 870, 874 (2007).

III. ARGUMENT

As noted in the Introduction, an easement only survives a tax deed if: 1) it is essential to the land, and 2) it enhances the land's value. Regan has provided no evidence that the easement is essential to the Orphan Parcel, or that it enhances the Orphan Parcel's value.

Brent Regan testified in his deposition as follows:

Q. Does the access road enhance the value of your property?

A. Yes.

Q. Does it enhance the value of the Owen's parcel?

A. Couldn't say.

Q. How does it enhance the value of your property?

A. By giving me access to Bonnell Road.

Q. And isn't it true you have an express easement across the Owen parcel that gives access to Bonnell Road?

A. Yes.

Exhibit A to Weeks Affidavit, p. 38, ll. 11 – 20.

Jeff Owens has testified Regan's alleged prescriptive easement is not essential to their use and enjoyment of the Orphan Parcel. Jeff Owen has also testified that the alleged prescriptive easement diminishes the value of the Orphan Parcel.

Given these undisputed facts, any claim that Regans have to a prescriptive easement across the Orphan Parcel were extinguished by the sale by tax deed to Kootenai County in 2004. The Court should rule on summary judgment as a matter of law, the Regans no claim to a prescriptive easement across the Orphan Parcel.

DATED this 7th day of August, 2015.

JAMES, VERNON & WEEKS, P.A.

By Susan P Weeks
Susan P. Weeks

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of August, 2015, I caused to be served a true and correct copy of the foregoing instrument by the method indicated below, and addressed to the following:

Scott L. Poorman
Scott L Poorman, P.C.
8884 North Government Way, Suite E
Hayden, ID 83835

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX) (208) 772-6811

Christine L. Moore

Susan P. Weeks, # 4255
James, Vernon & Weeks, P.A.
1626 Lincoln Way
Coeur d'Alene, ID 83814
Telephone: (208) 667-0683
Facsimile: (208) 664-1684

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
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CLERK DISTRICT COURT

DEPT. OF

Attorneys for Defendants

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

BRENT REGAN and MOURA REGAN,
husband and wife,

Plaintiffs,

vs.

JEFF D. OWEN and KAREN A. OWEN,
husband and wife,

Defendants.

CASE NO. CV-11-2136

AFFIDAVIT OF JEFF D. OWEN IN
SUPPORT OF DEFENDANTS' THIRD
MOTION FOR SUMMARY JUDGMENT

STATE OF IDAHO)
) : ss.
County of Kootenai)

Jeff D. Owen, being first duly sworn upon oath, deposes and says:

1. I am one the Defendants in the above matter. I am over the age of 18 years and competent to testify as a witness herein. The matters stated herein are within my personal knowledge.

2. I am the owner of the real property referred to in this litigation as the Orphan Parcel which was purchased and acquired by issuance of a tax deed.

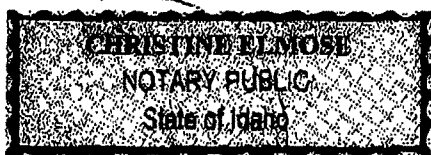
3. I am also the owner of the real property located directly south of the Orphan Parcel.

4. An easement across the Orphan Parcel is not essential to my use and enjoyment of the Orphan Parcel. In fact, it detracts from my use and enjoyment of the Orphan parcel because it places traffic across the Orphan parcel over which I have no control and prohibits me from complete and free use of the Orphan Parcel.

5. A prescriptive easement for the benefit of Plaintiff's parcels does not enhance the value of the orphan. In fact, it diminishes the value of the Orphan Parcel because it restricts the free use and enjoyment of the Orphan Parcel.

Jeff D. Owen
JEFF D. OWEN

SUBSCRIBED AND SWORN to before me this 7th day of August, 2015.



Christine Elmore
Notary Public for Idaho;
Residing at: *Courd'Alene, ID*
Commission Expires: *10/27/2020*

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of August, 2015, I caused to be served a true and correct copy of the foregoing instrument by the method indicated below, and addressed to the following:

Scott L. Poorman
Scott L Poorman, P.C.
8884 North Government Way, Suite E
Hayden, ID 83835

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX) (208) 772-6811

Christine Elmore

STATE OF IDAHO }
 COUNTY OF KOOTENAI } SS
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 CLERK DISTRICT COURT
 DEPUTY
 [Signature]

Susan P. Weeks, # 4255
 James, Vernon & Weeks, P.A.
 1626 Lincoln Way
 Coeur d'Alene, ID 83814
 Telephone: (208) 667-0683
 Facsimile: (208) 664-1684

Attorneys for Defendants

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

BRENT REGAN and MOURA REGAN,
 husband and wife,

Plaintiffs,

vs.

JEFF D. OWEN and KAREN A. OWEN,
 husband and wife,

Defendants.

CASE NO. CV-11-2136

AFFIDAVIT OF SUSAN P. WEEKS IN
 SUPPORT OF DEFENDANTS' THIRD
 MOTION FOR SUMMARY JUDGMENT

STATE OF IDAHO)
 : ss.
 County of Kootenai)

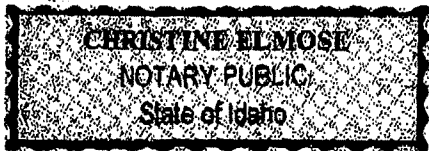
Susan P. Weeks, being first duly sworn upon oath, deposes and says:

1. I am the attorney for the Defendants in the above matter. I am over the age of 18 years and competent to testify as a witness herein. The matters stated herein are within my personal knowledge.

2. Attached hereto as Exhibit "A" is a true and correct copy of a portion of the Affidavit of Brent Regan taken on May 27, 2015.

Susan P Weeks
SUSAN P. WEEKS

SUBSCRIBED AND SWORN to before me this 7th day of August, 2015.



Christine Elmore
Notary Public for Idaho;
Residing at: Coeur d'Alene, ID
Commission Expires: 6/27/2020

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of August, 2015, I caused to be served a true and correct copy of the foregoing instrument by the method indicated below, and addressed to the following:

Scott L. Poorman
Scott L Poorman, P.C.
8884 North Government Way, Suite E
Hayden, ID 83835

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX) (208) 772-6811

Christine Elmore

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

BRENT REGAN AND MOURA REGAN,)
husband and wife,)

Plaintiffs,)

vs.)

JEFF D. OWEN AND KAREN A. OWEN,)
husband and wife,)

Defendants.)

NO. CV-11-2136



DEPOSITION OF BRENT REGAN

Deposition upon oral examination of Brent Regan taken at the request of the Defendants, before Danelle Bungen, CSR, and Notary Public, at the law offices of James Vernon & Weeks, 1626 Lincoln Way, Coeur d'Alene, Idaho, commencing at 1:00 p.m. on May 27, 2015, pursuant to the Idaho Rules of Civil Procedure.

REGAN, BRENT
05/27/2015

BRENT REGAN AND MOURA REGAN vs. JEFF D. OWEN AND KAREN A. OWEN
CV-11-2136

Page 38

1 A. No.

2 Q. Who was hunting on your property at that time?

3 A. There was a fellow who I authorized to be on the
4 property, and I don't have his name off the top of my
5 head, but I gave his name to the police and they
6 investigated it.

7 Q. And do you still have the name of that individual?

8 A. Yes.

9 Q. So if asked, you're able to produce that name?

10 A. Yes.

11 Q. Does the access road enhance the value of your
12 property?

13 A. Yes.

14 Q. Does it enhance the value of the Owens' parcel?

15 A. Couldn't say.

16 Q. How does it enhance the value of your property?

17 A. By giving me access to Bonnell Road.

18 Q. And isn't it true you have an express easement across
19 the Owen parcel that gives access to Bonnell Road?

20 A. Yes.

21 Q. At any time were you notified of the tax sale that
22 resulted in the orphan parcel being sold to the Owens?

23 A. No.

24 Q. How did you learn it had been sold to the Owens?

25 A. When we attempted to use it for bringing in a well

STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED
2015 AUG -7 AM 11:47

Susan P. Weeks, # 4255
James, Vernon & Weeks, P.A.
1626 Lincoln Way
Coeur d'Alene, ID 83814
Telephone: (208) 667-0683
Facsimile: (208) 664-1684

CLERK DISTRICT COURT
DEPT. [Signature]

Attorneys for Defendants

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

BRENT REGAN and MOURA REGAN,
husband and wife,

Plaintiffs,

vs.

JEFF D. OWEN and KAREN A. OWEN,
husband and wife,

Defendants.

CASE NO. CV-11-2136

DEFENDANTS' THIRD MOTION FOR
SUMMARY JUDGMENT

COME NOW, the above-named Defendants, Jeff D. Owen and Karen A. Owen, by and through their attorney of record Susan P. Weeks of the firm of James, Vernon & Weeks, P.A., and move this Court pursuant to Rule 56, of the Idaho Rules of Civil Procedure, for an Order granting Defendants' Third Motion for Summary Judgment.

This motion is supported by the Memorandum In Support of Defendants' Third Motion for Summary Judgment, the Affidavit of Susan P. Weeks and the Affidavit of Jeff. Owen filed concurrently with this motion.

Oral argument is requested.

DATED this 7th day of August, 2015

JAMES, VERNON & WEEKS, P.A.

By: Susan P. Weeks
Susan P. Weeks
Attorneys for: Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of August, 2015, I caused to be served a true and correct copy of the foregoing instrument by the method indicated below, and addressed to the following:

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Christina Elmore

2015 AUG 21 PM 12: 04

CLERK DISTRICT COURT

A. Brady
DEPUTY *AB*

Scott L. Poorman, ISB #4701
SCOTT L. POORMAN, P.C.
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Attorney for plaintiffs

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

BRENT REGAN and MOURA REGAN,
husband and wife,

Plaintiffs,

v.

JEFF D. OWEN and KAREN A. OWEN,
husband and wife,

Defendants.

Case No. CV 11-2136

**Plaintiffs' Brief in Opposition to
Defendants' Third Motion for
Summary Judgment**

Plaintiffs, by and through their attorney of record, submit this answering brief in opposition to the defendants' third motion for summary judgment.

In their latest summary judgment motion, the defendants assert that "... an easement only survives a tax deed if: 1) it is essential to the land, and 2) it enhances the land's value.¹ In support of this argument, the defendants rely upon dicta comments made by the Idaho Supreme Court in *Regan v. Owen*, 157 Idaho 758, 339 P.3d 1162. However, the Supreme Court's comments fall significantly short of pronouncing the *rule* proposed by the defendants. In fact,

¹ Defendants' Memorandum, pg. 4.

there is no Idaho appellate decision that establishes the effect of a tax sale on a prescriptive easement claim. It appears this issue has not yet been decided in Idaho.

Fortunately, this issue has been considered in many other jurisdictions, although with varying outcomes.

“The majority of courts that have considered the question have concluded that tax-foreclosure sales do not result in extinguishment of some servitudes. Although they vary in the types of servitudes protected and the theory on which the exemption is based, an important consideration is that the value of servitudes is often reflected in the value of other property subject to the taxing authority. Exempting most servitudes from termination on foreclosure sales does not have a detrimental impact on the public treasury. Even under statutes providing that the purchaser at a tax sale takes title to the property free and clear of encumbrances, the majority hold that the benefit of such servitudes is not terminated by a tax foreclosure sale.”

Restatement (Third) of Property (Servitudes) §7.9, at 391 (2000).

The Idaho statute at issue states:

63-1009. EFFECT OF TAX DEED AS CONVEYANCE. The deed conveys to the grantee the absolute title to the land described therein, free of all encumbrances except mortgages of record to the holders of which notice has not been sent as provided in section 63-1005, Idaho Code, any lien for property taxes which may have attached subsequently to the assessment and any lien for special assessments.

The defendants propose that this statute extinguishes all “encumbrances” except those expressly exempted therein. If the defendants’ interpretation is extended to its ultimate conclusion, then even easements and covenants imposed for the benefit of adjacent lands would be extinguished by a tax sale, including easements that provide essential utilities for adjacent residential properties. For example, under the defendants’ theory, a tax sale and subsequent conveyance of a single condominium unit would exempt that unit from the common assessments and regulations imposed by the condominium declaration for the entire project. Most courts that have considered similar

Plaintiffs’ Brief in Opposition to Defendants’ Third Motion for Summary Judgment

statutory language have declined to apply the extreme interpretation suggested by the defendants. 72 Am Jur 2d, State and Local Taxation §§962, 963.

The relatively recent decision in *Marshall v. Burke*, 162 N.H. 560, 34 A.3d 705 (N.H. 2011) illustrates the majority position on this issue. Plaintiffs Marshall claimed a prescriptive easement over a "Beach Lot" that defendants Burke had acquired following a tax sale of the Beach Lot by the local municipality. Burke alleged that the plaintiffs' prescriptive easement was extinguished by the tax sale and subsequent deed to Burke. The trial court granted Burke's motion for summary judgment on that basis and Marshall appealed.

After noting that the Marshalls' prescriptive easement claim had ripened or vested prior to the tax sale in question, the New Hampshire Supreme Court held that a tax sale does not extinguish prescriptive easements that have ripened into vested property rights prior to recording of the tax deed. *Id.* at 564. The New Hampshire court also referenced a number of decisions from other jurisdictions that have adopted the opposite position. The Court explained:

In the tax sale context, there is a crucial distinction between a claim to a fee interest and a claim to an appurtenant easement. In the case of a fee interest, the value of that interest to the holder-- and the value subject to taxation is reflected in the property itself. Accordingly, where one claiming entitlement to the benefit of that value through adverse possession has not paid the taxes due on the property, depending upon the facts, there may be no unfairness in holding that a sale of the property by the taxing authority extinguishes the interest. *See Congregation Yetev Lev D'Satmar, Inc.*, 465 N.Y.S.2d 879, 452 N.E.2d at 1211 (" [s]tatutes taxing real property are universal and property owners [including those claiming ownership by adverse possession] are chargeable with knowledge that taxes will be levied against the property regularly and that a default may result in forfeiture of the land"). With an appurtenant prescriptive easement, however, the value of that interest is deemed to be reflected in the property that is benefitted by the easement (the dominant estate), and, conversely,

the easement is regarded as diminishing the value to the servient estate (here the Beach Lot). Where the taxes have been paid on the dominant estate, it is at least unfair-- and arguably would constitute a taking or deprivation of property without due process of law, *see Hayes v. Gibbs*, 110 Utah 54, 169 P.2d 781, 786 (1946)-- to the owner of the dominant estate to extinguish the easement simply because the taxes were not paid on the (reduced) value of the servient property. This is not only the precise reasoning we adopted in *Gowen*, *see Gowen*, 90 N.H. at 387-88, 10 A.2d 249, but also is the rationale which supports the majority view that a tax sale does not extinguish an appurtenant easement. *See Alvin v. Johnson*, 241 Minn. 257, 63 N.W.2d 22, 26 (1954) (" An easement which lies upon one lot but is appurtenant to another lot is really part of the latter. It is carved out of the former. So it would appear that, when the servient lot is sold for taxes not paid upon it, the easement ought not to pass to the purchaser; the lot should pass subject to the easement, or, to express it another way, the lot less the easement should pass." (quotation omitted)); *Restatement (Third) of Property (Servitudes)* § 7.9, at 391 (2000) (" The majority of courts that have considered the question have concluded that tax-foreclosure sales do not result in extinguishment of some servitudes."); *accord Buchholz*, 156 N.H. at 175, 934 A.2d 511; *see also* Annotation, *Easement, Servitude, or Covenant as Affected by Sale for Taxes*, 7 A.L.R.5th 187 (1992); Annotation, *Easement or Servitude or Restrictive Covenant as Affected by Sale for Taxes*, 168 A.L.R. 529 (1947). And while it might be possible to distinguish between recorded and unrecorded appurtenant easements, extending protection from tax sales only to the former, given our law's long history of recognizing unrecorded prescriptive easements as a valid property right, we agree with the Minnesota Supreme Court that " the arguments which support survival of a recorded easement from a tax deed are equally weighty and pertinent when considering the survival of an easement by prescription." *Alvin*, 63 N.W.2d at 28; *see also Helle v. Markotan*, 137 N.E.2d 715 (Ohio Com.Pl.1955) (holding that tax sale did not extinguish pre-existing easement by implication).

Marshall v. Burke at 567, 568.

In the present case, the facts are undisputed that the Regans' prescriptive use of the roadway through the orphan parcel had ripened into a vested right prior to the County tax sale and subsequent County Deed to Owen. The Regans took title to the Regan Property in March of 1999 and immediately began to use the orphan road for ingress and egress. That prescriptive use continued uninterrupted for five (5) years prior to the

Plaintiffs' Brief in Opposition to Defendants' Third Motion for Summary Judgment

recording of the Tax Deed to Kootenai County on April 14, 2004. The County deeded the orphan parcel to Owen over a year later in November of 2005. The 2006 statutory amendment extending the time period for prescriptive easement claims from 5 years to 20 years does not apply to the Regans because their claim was acquired prior to that amendment. *Capstar Radio Operating Company v. Lawrence*, 153 Idaho 411, 420, n. 2. (2012).

Courts in other jurisdictions have also decided the effect of a tax deed on an appurtenant easement based on whether the valuation of the tax parcel reflects the existence of the easement. The opinion in *Conlin v. Metzger*, 77 N.D. 620, 44 N.W.2d 617, (N.D. 1950) provides a concise example of this basis. The plaintiff Conlin filed a quiet title action claiming absolute ownership of property acquired from the Williams County Auditor following a tax sale of the property by the County. The defendant Metzger claimed a prescriptive easement over the parcel for ingress and egress to an adjacent parcel. The trial court held for the defendant and the plaintiff appealed. The sole question on appeal was whether the tax deed destroyed the defendant's prescriptive easement rights.

In their decision, the North Dakota Supreme Court recognized that there are two lines of authority on this issue and that a majority of cases hold that the tax sale of land that is subject to an easement, servitude or restrictive covenant does not extinguish such easement or servitude. The Court explained:

A study of the authorities leads to the conclusion that the division is based on the question of what is included in the assessment on which the tax title is based. In both lines of authority the question is decided upon the basis of the assessment. Only the interest properly assessed can be sold. *Tintic Undine Mining Co. v. Ercanbruck et al.*, 93 Utah 561, 74 P.2d 1184. In the majority holdings it is pointed out that a tract of land, called the dominant tenement, Sec. 47-0503,

NDRC 1943, may have an appurtenance, Sec. 47-0106, NDRC 1943, such as a right of way, over an adjoining tract which becomes a servitude or burden upon that piece of land called the servient tenement. Sec. 47-0504, NDRC 1943. The value of the dominant tenement is increased by having this way of access to it. So the value of the servient tenement is reduced because of the burden of that way upon it. Then it is said that the value to the dominant tenement of the appurtenant right of way is added to the value of the dominant tenement itself by the assessor and included in the total assessment against that dominant tenement. Likewise the assumption is made that the decrease in value of the servient tenement caused by the burden of the right of way across it is deducted from its total value so that only the remaining value of the servient tenement is assessed. Then it is held that the tax lien upon this servient tenement is only on that lessened value and the title conveyed by the tax deed is only for the servient tenement and does not include the easement for right of way across it.

As a reason for such division in the assessment of a tract of land it is argued that if a property right, such as an appurtenant right of way, belonging to and assessed with the dominant tenement, is sold and destroyed by a tax sale of the servient tenement then there would be a taking of property from the owner of the dominant tenement without due process of law. Further it is said the owner of the dominant tenement who pays the taxes on his property including the value of the appurtenant right of way would, in order to protect his easement, also have to pay taxes on the servient tenement although the value of the easement is excluded therefrom. That, it is said, would amount to double taxation. *Hays v. Gibbs*, 110 Utah 54, 169 P.2d 781, 168 A.L.R. 513; *Jackson v. Smith*, 153 A.D. 724, 138 N.Y.S. 654; *Tax Lien Co. v. Schultz*, 213 N.Y. 9, 106 N.E. 751, L.R.A. 1915D, 1115, Ann.Cas.1916C, 636; *Northwestern Improvement Co. v. Lowry*, 104 Mont. 289, 66 P.2d 792; *Ross v. Franko*, 139 Ohio St. 395, 40 N.E.2d 664; *City of Longbranch v. Highlands, L. B. & S. B. Co.*, 134 N.J.Eq. 266, 35 A.2d 22. *Alamogordo Imp. Co. v. Prendergast*, 43 N.W. 245, 91 P.2d 428; *Crawford et al. v. Senosky*, 128 Or. 229, 274 P. 306; *Tide-Water Pipe Co. v. Bell*, 280 Pa. 104, 124 A. 351, 40 A.L.R. 1523, 110 A.L.R. 612; *Alamogordo Improv. Co. v. Prendergast*, 43 N.M. 245, 91 P.2d 428, 122 A.L.R. 1285; *Hayes v. Gibbs*, 110 Utah 54, 169 P.2d 781, 168 A.L.R. 529.

On the other hand the minority cases hold that proceedings on the sale of property for nonpayment of taxes are strictly in rem; that an easement is included in the res; that the assessment is made against the land itself as an entirety and not against scattered and divided interests therein; that the purchaser of a tax title gets complete, paramount title from the sovereign state free from easements or

burdens. *Hill v. Williams*, 104 Md. 595, 65 A. 413; *Wolfson v. Heins*, 149 Fla. 499, 6 So.2d 858; In *Hanson v. Carr*, 66 Wash. 81, 118 P. 927, 928, it is held that: 'Otherwise the owner of real estate may grant an easement or leasehold and surrender possession of the real estate to such grantee, and, upon foreclosure of the tax lien by the state, the purchaser would acquire only the fee, subject to the easement of lease, which would destroy the priority of the tax lien.'

44 N.W.2d at 619.

After considering both lines of cases, the North Dakota Court determined that the prescriptive use of the tax-sale parcel by defendant Metzger did not pre-date the assessment of that parcel, and therefore, no servitude or easement had been "carved out of the property." Therefore, the tax lien covered the total value of the parcel and was paramount to the prescriptive rights which came later. Accordingly, the Court concluded that the tax sale had cut off the subsequent easement claim by the defendant.

In the present case, the Regans' prescriptive use of the orphan parcel does pre-date the assessment of that parcel and their prescriptive use had vested under the 5-year statute prior to the tax sale of the parcel in April of 2004. In addition, the orphan parcel was assessed in 2000 with a "placeholder" value that reflected the existing roadway passing through the parcel. [Affidavit of Michael McDowell, ¶ 5] According to the County Assessor, the value of the roadway through the orphan parcel is reflected in the adjacent parcels that benefit from that roadway. To terminate the prescriptive easement rights vested to Regan under these circumstances would be inequitable, and amount to taking that property right without due process or just compensation. Because the assessed value of the orphan parcel reflected the conditions that already existed when the orphan parcel was first taxed, including the existing roadway and the presumed use of that roadway, the subsequent tax sale of the orphan parcel should not extinguish the Regans' pre-existing and vested prescriptive easement rights. To do so would punish the

Plaintiffs' Brief in Opposition to Defendants' Third Motion for Summary Judgment

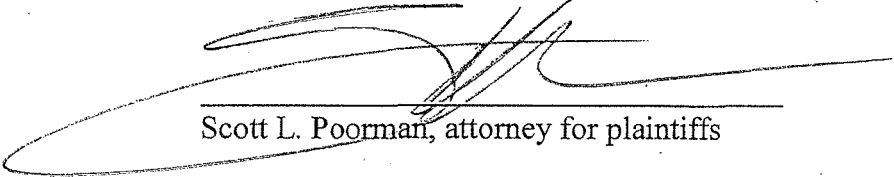
Regans for a tax delinquency that was not their responsibility and reward the Owens with a better title than what was assessed and taxed by Kootenai County.

CONCLUSION

The issue raised by the defendants' summary judgment motion is an open question in Idaho and the comments made by the Supreme Court in its prior decision in this case do not answer that question. The majority of courts that have considered the effect of a tax sale on easement rights have held that a tax sale of the servient estate does not extinguish those rights where the easement rights are vested and where the assessed value of the tax sale parcel reflects those rights. Even under statutes that declare the purchaser at a tax sale takes title to the property free and clear of encumbrances, the majority of courts have held that easement rights benefiting adjacent parcels are not extinguished by a tax sale. The evidence in this case supports the conclusion that the Regans' easement rights were vested prior to the tax sale in 2004 and the assessed value of the orphan parcel was based on the Assessor's determination that the orphan parcel is an unbuildable, private road parcel. Under these circumstances, and based on the sound policies and legal principles adopted by a majority of jurisdictions, the defendants' motion for summary judgment should be denied.

Dated this 21 day of August, 2015.

SCOTT L. POORMAN, P.C.



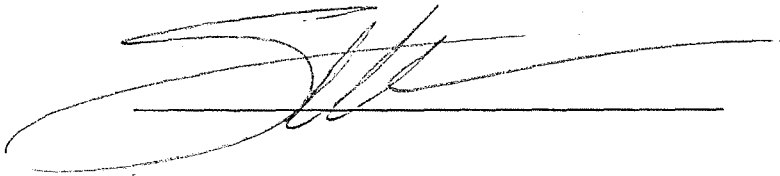
Scott L. Poorman, attorney for plaintiffs

Certificate of Delivery

I hereby certify that on the 21 day of August, 2015, a true and accurate copy of the foregoing **Plaintiffs' Brief in Opposition to Defendants' Third Motion for Summary Judgment** was delivered as follows:

- U.S. mail postage paid
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- hand delivery

Susan P. Weeks
James, Vernon & Weeks, PA
1626 Lincoln Way
Coeur d'Alene, ID 83814-2971
Fax: 664-1648




taxation purposes. I am also familiar with the assessment practices and procedures of my office and the records and documents generated by my office concerning the assessment of real property in Kootenai County.

3. Specifically, I have reviewed and I am familiar with the assessment history and documentation regarding Kootenai County Parcel No. 50N03W-27-7160 (AIN 220140), hereafter referred to as the “orphan parcel.” True and correct copies of assessment records from my office for the orphan parcel are attached and incorporated herein as **Exhibit “1”**.
4. The orphan parcel was assigned Parcel No. 50N03W-27-7160 and assessed for the first time in 2000. It is my understanding that the orphan parcel represents the remainder of several parent parcels that surround the orphan parcel and were conveyed by a common owner prior to 2000.
5. After a parcel number was assigned to the orphan parcel, it was given a “placeholder” value of \$1,000 and placed on the assessment roll for the year 2000. This assessed value was based on the unusual configuration of the orphan parcel and the existing roadway passing through the parcel. Placeholder values are typically assigned to parcels that are unbuildable and to remainder parcels that are used for private roadways. The orphan parcel did not appear to be a buildable lot and its utility was limited by the existing roadway running the length of the parcel. The Assessor’s Office uses a “placeholder” value under these circumstances because the value of the roadway parcel is reflected in the adjacent benefiting properties, which are assessed at fair market value. The \$1,000 value also provides enough revenue to cover most of the cost of mailing the assessment notice and tax bills.

6. The assessed value of the orphan parcel as initially determined in 2000 did not change for the years 2001, 2002 or 2003. I am aware that the property taxes levied against the orphan parcel for those years were not paid and the orphan parcel was taken by the Kootenai County Treasurer under a Tax Deed recorded on April 14, 2004.
7. After the orphan parcel was deeded by the County in November of 2005 to Jeff D. Owen, the assessed value was reappraised by my office and increased due to the proximity of the orphan parcel to the adjacent parcel owned by Mr. and Mrs. Owen.


Dated this 19th day of August, 2015.



Michael McDowell, Kootenai County Assessor

SUBSCRIBED AND SWORN to before me this 19th day of August, 2015.

**Sally Deucher
Notary Public
State of Idaho**



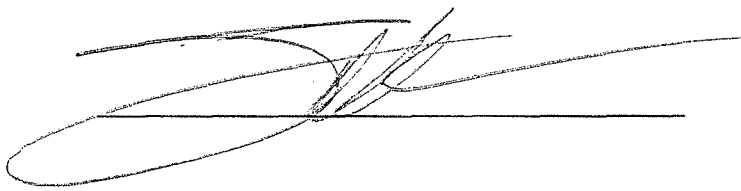
Notary for the State of Idaho
Commission Expires: 11/18/2015

Certificate of Delivery

I hereby certify that on the 21 day of August, 2015, a true and accurate copy of the foregoing **Affidavit of Michael McDowell in Opposition to Defendants' Third Motion for Summary Judgment** was delivered as follows:

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Fax: 664-1684



AT8.1 220140 50N03W-27-7160
 27 50N 03W
 HARGIS, ALEXANDER ETAL
 2707 COLBY AVE STE 1001
 EVERETT, WA 98206
 SE-SW EX TAX#'S

.REAL
 Code Area 022-000
 N X T - P R O P

11 AUG 1999
 13:43:11

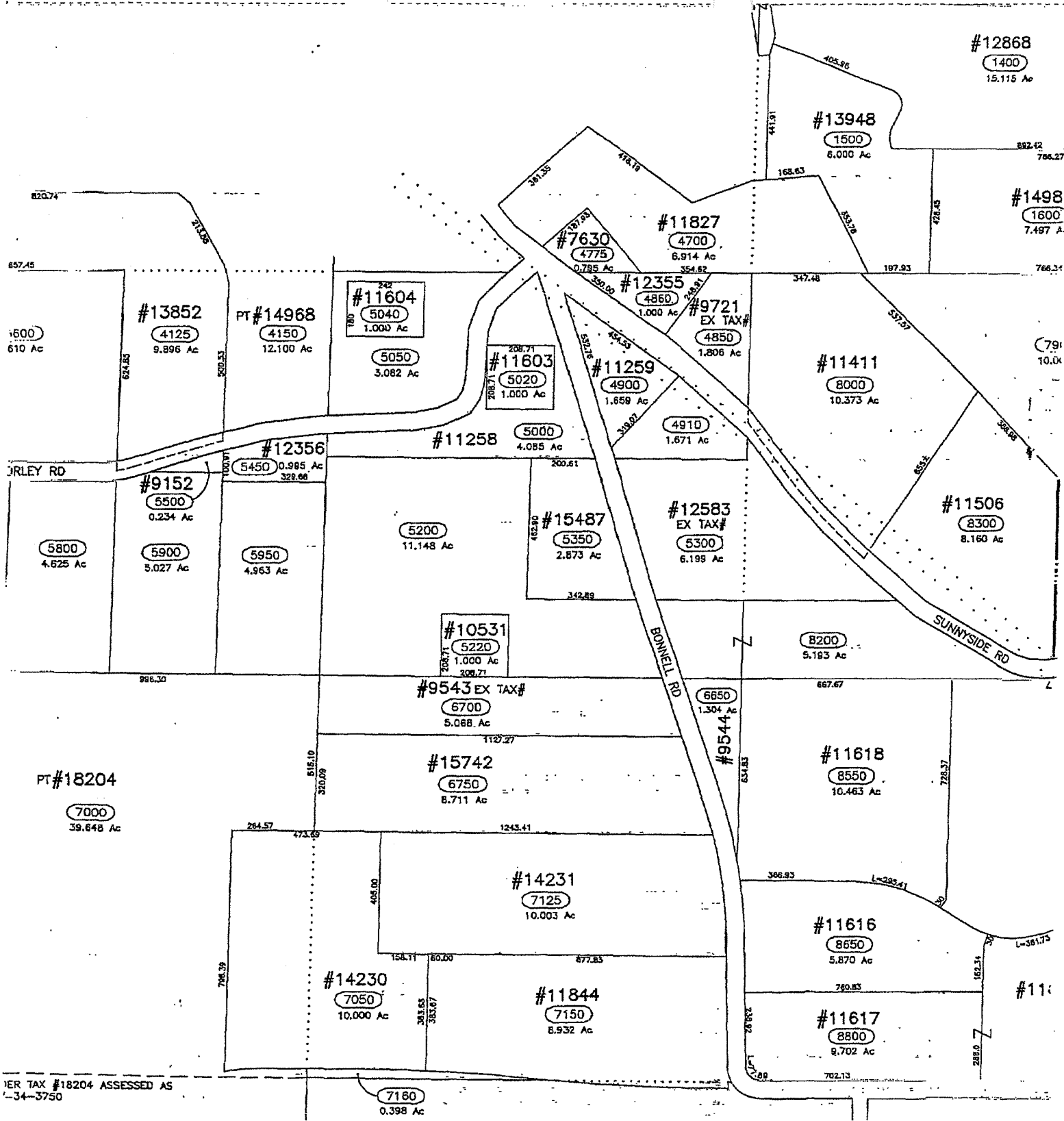
Total

PARENT: 50N03W-27-7000

- END -

2000

SITUS ADDRESS												
FLAGS	ROLL	REV.	STAT.	OTHER	WASTE	RES.	COMM	INIT'L	KWT	DATE	9-23-99	OPER. INIT'L
	D		A									
CAT	NOTE			ACRES	F.F.	MKT. VALUE	FACTOR	YR. BLT.	DT. APPRS'D			
12				.398		1000						9-99
REMARKS 9/99- PLACE HOLDEN VALUE.												



EX TAX #18204 ASSESSED AS 34-3750

SCALE: 1 INCH = 400 FEET

AS-10

AT8.1 220140 50N03W-27-7160
6460 27 50N 03W
HARGIS, ALEXANDER ETAL
2707 COLBY AVE STE 1001
EVERETT, WA 98206
SE-SW EX TAX#'S

REAL REGULAR ROLL for 2000 24 AUG 2000
Code Area 022-000 12:06:17

PARENT: 50N03W-27-7000

Total
REVAL YEAR 1999

Category Note Acres Front Ft Market Blt Apprd Init Factor
12 RURAL LAND 0.398 1,000 0999 KWJ

- END -

SITUS ADDRESS		2001 REVAL											
CAT	NOTE	ROLL	REV.	STAT.	OTHER	WASTE	RES.	COMM	INIT'L	MLC	DATE	YR. BLT.	DT. APPRS'D
		12		01		A							12/13/00
REMARKS 10-31 vacant unbuildable, PLACEHOLDER VALUE													

50N03W277160

HARGIS, ALEXANDER ETAL

512

ADMINISTRATIVE INFORMATION

OWNERSHIP

Tax ID 220140

Printed 12/13/2000 Card No. 1 of 1

PARCEL NUMBER
50N03W277160

HARGIS, ALEXANDER ETAL
2707 COLBY AVE STE 1001
EVERETT, WA 98206

TRANSFER OF OWNERSHIP

Date

Parent Parcel Number

Property Address

50N03W27
SE-SW EX TAX #'S

Neighborhood
6460 TWP 50N03W IN DIST 6

Property Class
512 512- Rural residential tracts

TAXING DISTRICT INFORMATION

Jurisdiction 28

Area 001

District 022000

RESIDENTIAL

VALUATION RECORD

Assessment Year	01/01/2000		
Reason for Change	Worksheet		
	2000 Value		
VALUATION	L	1000	1000
0	B	0	0
	T	0	1000
VALUATION	L	1000	1000
0	B	0	0
	T	1000	1000

LAND DATA AND CALCULATIONS

Street or Road:	Land Type	Rating	Measured	Table	Prod. Factor	Base Rate	Adjusted Rate	Extended Value	Influence Factor	Value
		Soil ID	Acreage		-or-					
Zoning:		Actual	Effective	Effective	Depth Factor					
Legal Acres:		Frontage	Frontage	Depth	Square Feet					
0.3980	Rural Land		0.3980		1.00	1000.00	1000.00	1000	SV	1000

IMP: IMPROVEMENT INFORMATION

LAND: LAND INFORMATION

PLACEHOLDER VALUE

M: MAINTENANCE

KWJ-09/99S

RY01: REVAL

MLS-12/00V

1000

Supplemental Cards
TOTAL LAND VALUE

1000

AS-10

AT8.1 220140 50N03W-27-7160
 6460 27 50N 03W
 HARGIS, ALEXANDER ETAL
 6027 77TH SE
 MERCER IS, WA 98040

REAL REGULAR ROLL for 2004 11 FEB 2004
 Code Area 022-000 07:17:27
 I N A C T I V E

*** NOTES * * 01-23-04 ***

SE-SW EX TAX#'S

Last Year's Market: \$1,000 LAND
 \$1,000 Total

REVAL YEAR 2001

PARENT: 50N03W-27-7000

Category	Note	Acres	Front Ft	Market Blt	Apprd	Init Factor
12 RURAL LAND		0.399		1,000	1200	MLS 1.000

- END -

'04 Amendment

SITUS ADDRESS					AS-10					
FLAGS	ROLL	REV.	STAT.	OTHER	WASTE	RES.	COMM	INIT'L	DATE	OPER. INT'L
	0			A						
CAT	NOTE			ACRES	F.F.	MKT. VALUE	FACTOR	YR. BLT.	DY. APPRS'D	
12				.390						
REMARKS										

ADMINISTRATIVE INFORMATION

PARCEL NUMBER
50N03W277160
Parent Parcel Number

Property Address

Neighborhood
6460 TWP 50N03W IN DIST 6

Property Class
512 512- Rural residential tracts

TAXING DISTRICT INFORMATION

Jurisdiction 28
Area 001
District 022000

OWNERSHIP

HARGIS, ALEXANDER ETAL
6027 77TH SE
MERCER IS, WA 98040
50N03W27
SE-SW EX TAX#'S

Tax ID 220140

TRANSFER OF OWNERSHIP

Date

Printed 04/29/2004 Card No. 1 of 1

RESIDENTIAL

VALUATION RECORD

Assessment Year	01/01/2000	01/01/2001	Worksheet	
Reason for Change	Roll Value	5Y Reval		
VALUATION	L 1000	1000	1000	
Market Value	B 0	0	0	
	T 1000	1000	1000	

Site Description

Topography:

Public Utilities:

Street or Road:

Neighborhood:

Zoning:

Legal Acres:
0.3900

LAND DATA AND CALCULATIONS

Land Type	Rating Soil ID -or- Actual Frontage	Measured Acreage -or- Effective Frontage	Table Effective Depth	Prod. Factor -or- Depth Factor -or- Square Feet	Base Rate	Adjusted Rate	Extended Value	Influence Factor	Value
1 Rural Land		0.3900		1.00	1000.00	1000.00	1000	SV	1000

IMP: IMPROVEMENT INFORMATION
LAND: LAND INFORMATION
PLACEHOLDER VALUE
M: MAINTENANCE
KNJ-09/99S
SLH-04/04S
RY01: REVAL
MLS-12/00V

Supplemental Cards

MEASURED ACREAGE 0.3900

Supplemental Cards

TRUE TAX VALUE 1000

Supplemental Cards
TOTAL LAND VALUE

50N03W277160

OWEN JEFF D

Tax ID 220140

Printed 08/19/2015 Card No. 1 of 1

ADMINISTRATIVE INFORMATION

PARCEL NUMBER 50N03W277160
Parent Parcel Number
Property Address
Neighborhood 6460 TWP 50N03W IN DIST 6
Property Class 512 512- Rural residential tract
TAXING DISTRICT INFORMATION
Jurisdiction 28
Area 001
District 022000

OWNERSHIP

OWEN JEFF D
OWEN KAREN A
3233 S BONNELL RD
COEUR D ALENE, ID 83814
DELETED 2011 SE-SW EX TAX#S 2750N03W

TRANSFER OF OWNERSHIP

Table with columns: Date, Owner Name, Doc #, Amount. Rows show transfers to OWEN JEFF D on 12/09/2010 for \$0.

RESIDENTIAL

VALUATION RECORD

Table with columns: Assessment Year (2005-2010), Reason for Change, GRM Base, Reval/MktAdj. Rows show VALUATION and Market Value.

Site Description

Topography:
Public Utilities:

LAND DATA AND CALCULATIONS

Table with columns: Street or Road, Rating, Measured Soil ID, Table Acreage, Prod. Factor, Depth Factor, Base Rate, Adjusted Rate, Extended Value, Influence Factor, Value. Includes zoning information.

IMP: IMPROVEMENT INFORMATION

LAND: LAND INFORMATION
DRC-12/10 Combined with 172650 for 2011
PLACEHOLDER VALUE

Supplemental Cards

MEASURED ACREAGE 0.3900

Supplemental Cards

TRUE TAX VALUE

Supplemental Cards
TOTAL LAND VALUE

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Docket No. 43848

Brent & Mouira Regan

503W27.*
503W34.*

12-9

REQUEST FOR SEGREGATION OR COMBINATION AS-51

The owner is responsible for checking with the city/county Planning and Building Departments regarding applicable zoning and subdivision regulations for both combining and splitting land parcels. Any action taken through the Assessor's Office does not constitute permit approval for other city/county departments.

I, Jeff & Karen Owen (owner), hereby request the following parcel(s) be SEGREGATED / COMBINED

For assessment purposes beginning the Assessment Year: 2011. (please circle action requested)

PARCEL: 50N03W-27-7160 SERIAL: 220140

PARCEL: 50N03W-34-3600 SERIAL: 172650
(attach additional pages if needed)

For segregations, please list the separate legal descriptions below, or attach individual Instrument # with description references as applicable. If there are buildings or other improvements assessed to the current parcel, please indicate on which descriptions (new parcels) the buildings or improvements are located:

Combine p# 27-7160 into p# 34-3600 - see Instr. # 2294085 for Correct Vesting

Please read the following information carefully regarding the combining of parcels for assessment purposes and acknowledge by initialing the applicable statement(s) and signing and dating below.

Initial: KO It is my intent to combine multiple assessment notices and tax bills into a single assessment notice and tax bill, and I understand that this action will not affect the valuation basis for my property.

Initial: _____ It is my intent to combine a buildable parcel of land with other non-buildable parcel(s) of land for both valuation and assessment notice and tax billing purposes, into a single assessment notice. I have attached a "determination of non-buildability" for each applicable parcel, from the appropriate City or County Planning or Building Department, or the Panhandle Health District.

NON-SUBDIVIDED PARCELS

Initial: _____ It is my intent to combine multiple buildable parcels of land into a single buildable parcel for both valuation and assessment notice/tax billing purposes. I have attached a copy of a recorded deed that describes the new boundary of the single buildable parcel with added language expressing the grantors intent to merge and consolidate said parcels into a single parcel for all purposes. (Please ask for example Quitclaim Deed)

SUBDIVIDED PARCELS

Initial: _____ Combining multiple buildable lots into a single buildable parcel for valuation purposes requires documentation from the appropriate City or County Planning Department stating that the combined lots constitute a single buildable parcel.

ATTENTION

Initial: KO I understand that for any parcels to be combined into one assessment notice/tax bill, current years' taxes must be paid in full. This includes any delinquencies and 2nd half payments still owing. Non-payment of taxes will result in denial of this application for combination.

Signature: Karen Owen Date: 12-9-10 Daytime Phone: 208-660-7650

ASSESSOR'S OFFICE USE ONLY:

Taxes Delinquent: NO YES for assessment years: 2010 in full INIT: J. New

Comments: See attached receipt copy

Paid in full
Kootenai *[Signature]*

Cashier: HMJ Location: HMJD
Session: HMJ-12092010-0 Date: 12/9/2010

Payment Receipt: U10.4027
Real Property \$26.94
Bill Number: 149141
Bill Year: 2010
PIN: 50N03A277160
Owner: OWEN, JEFF D
Prop Desc: SE-SW EX TAX#'S

Tendered Information:
Amount Due: \$26.94
Cash \$26.94
Total Tendered: \$26.94

By Whom Paid:
OWEN, JEFF D
3233 S BONNELL RD
COEUR D'ALENE ID 83814

Thank you

Susan P. Weeks, # 4255
James, Vernon & Weeks, P.A.
1626 Lincoln Way
Coeur d'Alene, ID 83814
Telephone: (208) 667-0683
Facsimile: (208) 664-1684

Attorneys for Defendants

STATE OF IDAHO
COUNTY OF KOOTENAI
JSS
BOTH 20
AUG 28 PM 4:38
CLERK DISTRICT COURT
Lisa Peterson
RECEIVED

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

BRENT REGAN and MOURA REGAN,
husband and wife,

Plaintiffs,

vs.

JEFF D. OWEN and KAREN A. OWEN,
husband and wife,

Defendants.

CASE NO. CV-11-2136

DEFENDANTS' REPLY MEMORANDUM
IN SUPPORT OF THIRD MOTION FOR
SUMMARY JUDGMENT

Defendants, through their counsel of record, James, Vernon & Weeks, P.A., submit this Reply Memorandum in Support of Defendants' Third Motion for Summary Judgment.

I. INTRODUCTION

The Plaintiffs, Brent and Moura Regan ("Regans"), have failed to present any genuine issues of material fact germane to the Defendants' Motion for Summary Judgment. Regans have presented no evidence that their prescriptive easement enhanced the value of the Orphan Parcel. Regans have presented Court with no Idaho law contrary to that cited by the Defendants. Instead, Regans have presented this Court with non-binding foreign law that, even upon application to the facts of this case, fails to support their position. Thus, summary judgment should be granted in the Defendants' favor.

DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF THIRD MOTION FOR
SUMMARY JUDGMENT: 1

II. ARGUMENT

Idaho statute is clear that conveyance by tax deed conveys absolute title free of all encumbrances to the grantee. I.C. § 63-1009. The Idaho Supreme Court applied Idaho law defining an encumbrance to the facts of this case and held that an easement is an encumbrance that is extinguished by tax deed unless that easement is essential to the enjoyment of the land and enhances the value of the parcel. In fact, the Idaho Supreme Court reversed this Court, holding “[t]here is no finding by the district court that the alleged prescriptive easement across the Orphan Parcel increased its value.” This holding is not dicta as suggested by Regans.

Regans have also failed to present facts in opposition to Owens’ summary judgment establishing an increase in value of the Orphan Parcel arising from their claimed prescriptive easement.¹ The foreign law presented to this court is not controlling and even fails to support Regans’ position.

1. Idaho Law is Clear on the Effect of a Tax Deed as a Conveyance

Idaho statute is clear that the grantee of a tax deed receives absolute title free of all encumbrances except: 1) recorded mortgages when the holders do not receive statutory notice and 2) liens for special assessments:

EFFECT OF TAX DEED AS CONVEYANCE. The deed conveys to the grantee the absolute title to the land described therein, free of all encumbrances except mortgages of record to the holders of which notice has not been sent as provided in section 63-1005, Idaho Code, any lien for property taxes which may have attached subsequently to the assessment and any lien for special assessments.

I.C. § 63-1009 (emphasis added). The plain language of the statute says that the grantee gets the parcel free of all encumbrances. The language could not be any clearer. If the Regans’ prescriptive easement is an “encumbrance”, it simply did not survive the tax sale. This is not the

¹ Regan claims it is undisputed they have a prescriptive easement. This claim is untrue. However, for purposes of summary judgment, the Court should draw an inference that they have such an easement.

Owens' interpretation of the statute as the Regans assert. Opposition at 2. This is the plain language of the statute. Further, it is not dicta as suggested by Regans. It is the holding of the case on appeal.

The Supreme Court on appeal of this case distinguished when an easement is distinguished as an encumbrance and when it survives a tax deed grant. Citing to a 1929 decision, the Supreme Court held in this case on appeal that an easement is not an "encumbrance" if it is essential to enjoyment of the burdened land and enhances the burdened land's value:

An encumbrance is "any right or interest in land to the diminution of its value, but consistent with the free transfer of the fee." *Hunt v. Bremer*, 47 Idaho 490, 494, 276 P. 964, 965 (1929). Whether something is an encumbrance does not depend upon the extent to which it diminishes the value of the land. An encumbrance "embraces all cases in which the owner does not acquire the complete dominion over the land which his grant apparently implies." *Id.* **An easement is not an encumbrance if the easement is essential to the enjoyment of the land and it enhances the land's value. *Id.***

Regan v. Owen, 157 Idaho 758, 765, 339 P.3d 1162, 1169 (2014) (emphasis added). This is the law of Idaho. An easement is an encumbrance when: (1) it is not essential to the enjoyment of the land, and (2) does not enhance the land's value. An encumbrance does not survive a conveyance by tax deed.

The Idaho Supreme Court applied this law to the facts of this case and concluded "[t]here is no finding by the district court that the alleged prescriptive easement across the Orphan Parcel increased its value." *Id.* Consequently, Regans' claim of a prescriptive easement that survived the tax deed conveyance has been remanded to this Court and remains at issue.²

² Despite remand of the prescriptive easement issue to this Court the Plaintiffs inaccurately assert that "the facts are undisputed that the Regans' prescriptive use of the roadway through the orphan parcel had ripened into a vested right prior to the County tax sale and subsequent County Deed to Owen." Opposition at 4. While for the purposes of summary judgment alone the existence of a prescriptive easement is undisputed, Regans' statement mischaracterizes the posture and status of this case. The Supreme Court's latest opinion was clear that there has never been a finding

The application of Idaho's law to the facts of this case is clear: Regans' prescriptive easement only survived the tax sale of the Orphan Parcel if the easement was essential to the enjoyment of the Orphan Parcel and enhanced the Orphan Parcel's value. Owens presented evidence on summary judgment that the alleged prescriptive easement was not essential to enjoyment of the Orphan Parcel and did not enhance the Orphan Parcel's value. The owner of property is qualified to testify to its value. *Hurtado v. Land O'Lakes, Inc.*, 153 Idaho 13, 21, 278 P.3d 415, 423 (2012). To survive summary judgment, Regan must show a genuine issue of material fact to these two elements.

Regans have failed to present any genuine issues of material fact regarding either of these elements. Regans do not address the first element in any fashion. No argument is presented by Regans that a prescriptive easement was essential to Owens' enjoyment of the Orphan Parcel. As to the second element, Regans have failed to present evidence that the value of the Orphan Parcel was enhanced by the prescriptive easement. In fact, Kootenai County Assessor Michael McDowell's affidavit clearly states that the only increase in assessed value to the Orphan Parcel was attributed to its proximity to the Owens adjacent parcel:

7. After the orphan parcel was deeded by the County in November of 2005 to Jeff D. Owen, the assessed value was reappraised by my office and increased due to the proximity of the orphan parcel to the adjacent parcel owned by Mr. and Mrs. Owen.

Aff. Michael McDowell ¶ 7 (August 19, 2015). Further examination of the attachments to Michael McDowell's affidavit indicates the value of the Orphan Parcel was returned to its original \$1,000 assessed value in the year 2006 and remained at that assessed value. The

by clear and convincing evidence that the Regans have a prescriptive easement. *Regan v. Owen*, 157 Idaho 758, 765, 339 P.3d 1162, 1169 (2014).

DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF THIRD MOTION FOR

Summary Judgment: 4

Docket No. 43848

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Plaintiffs have failed to provide this Court with any evidence of increased value of the Orphan Parcel because of the alleged prescriptive easement.

Idaho law is clear that without a showing by Regan that the alleged prescriptive easement is essential to Owens enjoyment of the Orphan Parcel *and* that the alleged prescriptive easement enhanced the value of the Orphan Parcel, the easement is extinguished by the tax deed.

Accordingly, summary judgment should be granted for Plaintiffs.

2. Foreign Law Does not Control This Court and Does Not Support the Plaintiffs' Argument

Regans urges this Court to apply foreign law to create an exception to the law cited by our Supreme Court on appeal. Regans position is flawed for several reasons.

First, "[w]hen construing a statute, the words used must be given their plain, usual, and ordinary meaning, and the statute must be construed as a whole." *Athay v. Stacey*, 142 Idaho 360, 365, 128 P.3d 897, 902 (2005) (citations omitted). *See also City of Huetter v. Keene*, 244 P.3d 157 (2010). The statute in this matter is clear. The tax deed conveys absolute title to the land described free of all encumbrances. To avoid the plain language of this case, Regans must establish that the prescriptive easement is not an encumbrance. To not be an encumbrance, the elements of *Hunt v. Bremer*, 47 Idaho 490, 494, 276 P. 964, 965 (1929) must be established.

The second flaw with Regan's argument that the Supreme Court's enunciations in this case may be modified is that such holdings are the law of this case and must be followed:

The doctrine of "law of the case" is well established in Idaho and provides that "upon an appeal, the Supreme Court, in deciding a case presented states in its opinion a principle or rule of law necessary to the decision, such pronouncement becomes the law of the case, and must be adhered to throughout its subsequent progress, both in the trial court and upon subsequent appeal..."

Swanson v. Swanson, 134 Idaho 512, 515, 5 P.3d 973, 976 (2000). Had Regans wished to urge an exception to the Supreme Court's holding based upon foreign law, Regans had an opportunity to

DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF THIRD MOTION FOR

petition for a rehearing of the Supreme Court's latest decision but failed to do so. Accordingly, this Court must adhere to the Idaho Supreme Court's statement of law that "[a]n easement is not an encumbrance if the easement is essential to the enjoyment of the land and it enhances the land's value." *Regan v. Owen*, 157 Idaho at 765, 339 P.3d at 1169.

This Court is well aware that the law of foreign jurisdictions is not controlling in Idaho and may only have a persuasive effect at best. When the law of this state is clear on the matter, this Court should not even consider the foreign law presented. As discussed above, Idaho law is clear that an easement across a parcel conveyed by tax deed is extinguished unless the easement is essential to the enjoyment of the parcel and enhances the parcel's value.

If this Court does decide to entertain the foreign law presented, Regans fail to provide evidence that supports the survival of their easement after the tax sale. Regans urge this Court to adopt a holding that an easement survives a tax deed if the value of the servitude is reflected in the assessed value of the dominant estate and servient estate. For instance, the North Dakota case cited by Regan holds that an easement can survive a tax sale only if it increases the assessed value of the dominant estate (increasing the taxes paid by the dominant estate) and causes a decrease in the assessed value of the servient estate (decreasing the taxes paid by the servient estate). *Conlin v. Metzger*, 77 N.D. 620, 622-23, 44 N.W.2d 617, 619 (1950). The North Dakota court reasoned that when the assessed values are affected as described, extinguishing the dominant estate's easement across the servient estate because of a tax sale of the servient estate amounts to a taking from the dominant estate without due process of law. *Id.* at 623, 44 N.W.2d at 619. However, if there was no change to the assessed values of the dominant and servient estates after the tax deed is issued, the claimed easement is extinguished. *Id.*

The problem with Regan's reliance on this case, other than the obvious fact that it is not controlling in Idaho and contradicts Idaho law, is that Regans present no facts establishing that the assessed value of their land (as the dominant estate) increased as a result of their prescriptive easement. Regans also fail to present facts that the Orphan Parcel's assessed value (as the servient estate) decreased as a result of the prescriptive easement. To the contrary, Michael McDowell's affidavit clearly states there was an increase in assessed value of the Orphan Parcel after the tax sale. Aff. McDowell ¶ 7. Therefore, even under the foreign law Regans request this Court adopt their easement was extinguished by the tax sale. This is not the law in Idaho, but if it were the Regans' easement was still extinguished by the tax sale as they came forward with no evidence to support their claim or create a material issue of fact on this basis.

Regan also urges this Court to adopt New Hampshire's reasoning in *Marshall v. Burke*, 162 N.H. 560, 34 A.3d 705 (2011) regarding appurtenant easements surviving tax sales. Regans fail to mention that the New Hampshire court had no statute with which restricted or guided the Court's analysis. This fact distinguishes the present case. Regans have provided the court with no law or authority that allows this Court to simply ignore a controlling Idaho statute. The Court is precluded from adopting the New Hampshire logic in this matter given the plain language of the controlling Idaho statute.

III. CONCLUSION

Any claim that the Regans may have had to a prescriptive easement across the Orphan Parcel were extinguished by operation of law upon sale of the parcel by tax deed. Regans present no genuine issues of material fact to Defendants' motion for summary judgment. Therefore, Defendants Jeff and Karen Owen respectfully request this Court grant summary judgment in

their favor.

DATED this 28th day of August, 2015.

JAMES, VERNON & WEEKS, P.A.

By Susan P. Weeks
Susan P. Weeks

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of August, 2015, I caused to be served a true and correct copy of the foregoing instrument by the method indicated below, and addressed to the following:

Scott L. Poorman
Scott L Poorman, P.C.
8884 North Government Way, Suite E
Hayden, ID 83835

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX) (208) 772-6811

Christine Elmose

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED: 9/15
AT 2:20 O'CLOCK P M
CLERK, DISTRICT COURT
DEPUTY

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

BRENT REGAN and MOURA REGAN,)
husband and wife,)
))
vs. Plaintiffs,)
))
JEFF D. OWEN and KAREN A. OWEN,)
husband and wife,)
))
Defendants.)
_____)

Case No. CV-11-2136
**DECISION ON DEFENDANTS'
THIRD MOTION FOR
SUMMARY JUDGMENT**

This case is before the district court on remand from the Idaho Supreme Court resulting from its Opinion in *Regan v. Owen*, 157 Idaho 758, 339 P.3d 1162 (2014). The parties are adjoining property owners in Kootenai County. At dispute is the use of an easement by Regans across Owens' property. The Supreme Court vacated the district court's judgment granting an easement by reforming the deed based upon a mutual mistake. The case was remanded for consideration of Plaintiffs' remaining claim of an easement by prescription.

On August 7, 2015 Defendants' filed their Third Motion for Summary Judgment. The motion was heard on September 4, 2015. Plaintiffs were represented by their attorney Scott L. Poorman and the Defendants by attorneys Susan Weeks and Daniel Keyes. At the conclusion of the hearing the court took the matter under advisement.

DECISION-Defendants' Third Motion for Summary Judgment

SUMMARY JUDGMENT STANDARD

Summary judgment is proper “if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” **I.R.C.P. 56(c)**. When considering whether the evidence in the record shows that there is no genuine issue of material fact, the trial court must liberally construe the facts, and draw all reasonable inferences, in favor of the nonmoving party. If the evidence reveals no disputed issues of material fact, then only a question of law remains. **Conner v. Hodges**, 157 Idaho 19, 23, 333 P.3d 130, 134 (2014). However, to survive summary judgment, “an adverse party may not rest upon the mere allegations or denials of that party’s pleadings, but the party’s response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” **I.R.C.P. 56(c)**. Therefore, “the nonmoving party must submit more than just conclusory assertions that an issue of material fact exists .” **Jenkins v. Boise Cascade Corp.**, 141 Idaho 233, (2005) “A mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue of material fact for the purposes of summary judgment.” *Id.*

STATEMENT OF FACTS

The issue before the Court is limited to the claim by the Plaintiff for a prescriptive easement. As recognized in the Supreme Court Opinion this Court has not made the necessary factual findings to support a judgment for such a prescriptive right. However, for the purposes of this Third Motion for Summary Judgment, Defendants concede that

DECISION-Defendants’ Third Motion for Summary Judgment

all necessary elements are present to establish a prescriptive easement across their property. The Owens argue that because their tax deed conveyed absolute title, free of all encumbrances pursuant to Idaho Code Section 63-1009, the Regans' claim for a prescriptive easement fails.

The facts before the court are set forth in the Supreme Court opinion discussing the three conveyances of property in section 34 along its northern boundary. Regans and Owens own adjoining 10 acre parcels. Due to the property description included in the original conveyances a small (.40 acre) parcel over which the disputed easement travels, was not included. Real estate taxes were not paid on this "orphan parcel" and as a result, on April 13, 2004, the county treasurer issued a tax deed conveying the parcel to Kootenai County. On November 28, 2005, the county conveyed the parcel to Owens.

In support of the Third Motion for Summary Judgment Owens have filed an affidavit of Jeff Owen. The affidavit sets forth that "An easement across the Orphan Parcel is not essential to my use and enjoyment of the Orphan Parcel because it places traffic across the Orphan Parcel over which I have no control and prohibits me from complete and free use of the Orphan Parcel". "A prescriptive easement for the benefit of Plaintiff's parcels does not enhance the value of the orphan". "In fact, it diminishes the value of the Orphan Parcel because it restricts the free use and enjoyment of the Orphan Parcel".

Additionally Defendants submitted a portion of the deposition taken of Brent Regan on May 27, 2015. Counsel inquired regarding the disputed access road whether it enhanced the value of the Owen's parcel and Regan responded that he "couldn't say".

DECISION-Defendants' Third Motion for Summary Judgment

Plaintiffs submitted the affidavit of Kootenai County Assessor Michael McDowell setting forth the tax history regarding the orphan parcel. The parcel was given a "placeholder" value each year of \$1,000 on the assessment roll from 2000 until 2004. Placeholder values are typically assigned to parcels that are unbuildable and to remainder parcels that are used for private driveways. The Assessor's office uses a "placeholder" value under these circumstances because the value of the parcel is reflected in the adjacent benefiting properties, which are assessed at fair market value. The \$1,000 value also provides enough revenue to cover most of the cost of mailing the assessment notice and tax bills. Once the property was deeded in November of 2005 to Jeff Owen the assessed value was reappraised and increased due to the proximity of the orphan parcel to the adjacent parcel owned by Mr. and Mrs. Owen.

DISCUSSION

Defendants' argument is quite simple. Since the tax deed conveyed to the county absolute title free of any encumbrances, Owens acquired the parcel from the county unencumbered by Regans' claim of a prescriptive easement. In support of this argument Owens reference the Supreme Court Opinion under paragraph III. **Did the District Court Err in Stating that It Had Granted the Regans a Thirty-Foot Easement Across the Orphan Parcel?** where it was noted that the district court erred in its statement that it had determined that the Regans had a prescriptive easement along the centerline of the proposed road.

The Supreme Court noted that Idaho Code Section 63-1009 states:

The [tax] deed conveys to the grantee the absolute title to the land described therein, free of all encumbrances except mortgages of record to the holders of which notice has not been sent as provided in section

DECISION-Defendants' Third Motion for Summary Judgment

63-1005, Idaho Code, any lien for property taxes which may have attached subsequently to the assessment and any lien for special assessment.

When the Owens purchased the Orphan Parcel from the county they received the title the county had. The Supreme Court addressed the definition of an encumbrance in citing the Court's holding in *Hunt v. Beamer*, 47 Idaho 490, 276 P. 965 (1929):

An encumbrance is "any right or interest in land to the diminution of its value, but consistent with the free transfer of the fee."

Whether something is an encumbrance does not depend upon the extent to which it diminishes the value of the land. An encumbrance "embraces all cases in which the owner does not acquire the complete dominion over the land which his grant apparently implies.

An easement is not an encumbrance if the easement is essential to the enjoyment of the land and it enhances the land's value. (emphasis added)

The Supreme Court noted that there was no finding by the district court that the alleged prescriptive easement across the Orphan Parcel increased its value.

Based upon undisputed facts now before the court Owens contend that there is no material issue of fact that the claim of an easement across their property is an encumbrance which is contrary to their absolute title as provided by statute, and as a matter of law they are entitled to summary judgment.

In their response the Plaintiffs argue that the comments made by the Supreme Court upon which the Defendants rely are dicta and fall short of pronouncing a rule. They assert that there is no Idaho appellate decision that establishes the effect of a tax sale on a prescriptive easement claim. Consequently Plaintiffs urge the Court to look to other jurisdictions that have addressed this question.

The Plaintiffs point out that the strict application of the statute would create inequitable results such as extinguishing utility easements for the benefit of adjoining

DECISION-Defendants' Third Motion for Summary Judgment

properties, or exempting a single condominium unit from common assessments and regulations when transferred subsequent to a tax sale.

Plaintiffs argue that Regans' prescriptive use of the roadway through the orphan parcel had ripened into a vested right prior to the County tax sale and subsequent county deed to Owen. They urge this court to consider the rulings of other jurisdictions where the majority of courts have concluded that a tax sale of the servient estate does not extinguish those rights where the easement rights are vested and where the assessed value of the tax parcel reflects those rights. Additionally where statutes declare that the purchaser at a tax sale takes title to the property free and clear of encumbrances, the majority of courts have held that easement rights benefiting adjacent parcels are not extinguished by tax sale. The court is specifically cited to the holdings in *Marshall v. Burke*, 162 N.H. 560, 34 A.3d 705 (N.H. 2011) and *Conlin v. Metzger*, 77 N.D. 620, 44 N.W. 2d 617, (N.D. 1950).

It is well recognized that the law of foreign jurisdictions is not controlling and the Court is precluded from considering the foreign law where the law in Idaho is clear. The court must first determine whether the Supreme Court's opinion in this case is controlling on this issue. The court recognizes a legitimate concern by Plaintiff that the Supreme Court's discussion in its opinion regarding the prescriptive easement is dicta and not controlling. The final judgment in this case addressed only two issues. The express easement that was not in dispute and the creation of the easement right by reformation of the deed.

A determination of the prescriptive easement was not a judgment of the trial court and would not ordinarily be subject to appellate consideration. The trial court's

DECISION-Defendants' Third Motion for Summary Judgment

memorandum decision did address the prescriptive easement question and the parties agreed that the court's findings and determination on this issue were in error. It was obviously proper for the Supreme Court to address any confusion the trial court may have created.

Defendant cites this court to the well established "law of the case" doctrine as discussed in *Swanson v. Swanson*, 134 Idaho 512, 5 P.3d 973 (2000) in urging enforcement of the principles discussed in the Supreme Court's opinion. Regardless of whether the opinion discussing the prescriptive easement is binding precedent, dicta, or the law of the case; one thing appears to be clear. The Supreme Court, at a minimum, is giving the trial court guidance on addressing the issue on remand. The question of the prescriptive easement was not fully and properly decided by the trial court. That issue was remanded. In so doing, the Supreme Court referenced the need to address the statute on tax deeds, and the case law defining encumbrances. The direction of the Supreme Court should be followed.

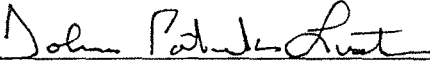
The plain language in Idaho Code Section 63-1009 is clear. The tax deed conveys absolute title free of all encumbrances. The legislature has delineated certain exceptions that do not apply in this case. The rigid language of the statute may create inequitable or oppressive results, however, it is not the province of the trial court to re-write the law or impose an application contrary to the clearly stated language.

The law defining an encumbrance that is established in *Hunt v. Beamer* is controlling. An easement is not an "encumbrance" if it is essential to the enjoyment of the burdened land and enhances the burdened land's value. It is undisputed that the Regans' claim of a prescriptive easement would constitute an encumbrance upon

DECISION-Defendants' Third Motion for Summary Judgment

Owens' land they received from the county after it was acquired by tax deed. As a matter of law Defendants are entitled to summary judgment dismissing Plaintiffs' claim for a prescriptive easement. Defendants' Third Motion for Summary Judgment is hereby granted.

Dated this 8th day of October, 2015



John Patrick Luster, Senior District Judge

I hereby certify that on the ^{9th} day of October, 2015, a true and correct copy of the foregoing
DECISION – Defendants’ Third Motion for Summary Judgment was delivered as follows:

Susan Weeks
Attorney at Law
FAX 664-1684

Scott Poorman
Attorney at Law
FAX 772-6811

JIM BRANNON, Clerk of the Court, by  Deputy Clerk

#855

STATE OF IDAHO } ss
COUNTY OF KOOTENAI }
FILED: 10-30-15
AT 3:30 O'CLOCK P.M.
CLERK, DISTRICT COURT
[Signature]
DEPUTY
[Signature]

Scott L. Poorman, ISB #4701
SCOTT L. POORMAN, P.C.
8884 North Government Way, Suite E
Post Office Box 2871
Hayden, ID 83835
Telephone: (208) 772-6800
Facsimile: (208) 772-6811

Attorney for plaintiffs

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

BRENT REGAN and MOURA REGAN,
husband and wife,

Plaintiffs,

v.

JEFF D. OWEN and KAREN A. OWEN,
husband and wife,

Defendants.

Case No. CV 11-2136

FINAL JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS:

1. The express easement reserved over the north thirty feet (30') of the defendants' real property as described in the Warranty Deed recorded on December 28, 1988 as Kootenai County Instrument No. 1137747 is confirmed.
2. The plaintiffs are declared to be the successors-in-interest to the easement rights reserved in Kootenai County Instrument No. 1137747, and said express easement rights are appurtenant to and for the benefit of that portion of the plaintiffs' real property described in **Exhibit A** attached and incorporated herein.

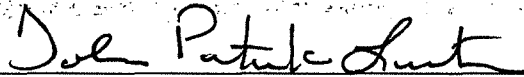
3. The plaintiffs, and their heirs, successors and assigns, have the right to use the easement reserved over the north thirty feet (30') of the defendants' real property as described in Kootenai County Instrument No. 1137747 for roadway and all utility purposes.

4. The defendants are permanently enjoined from interfering with the plaintiffs' use and enjoyment of the express easement over the north thirty feet (30') of the defendants' real property as described in Kootenai County Instrument No. 1137747, and from asserting any adverse claim or right against said easement.

5. The plaintiffs are entitled to a full and immediate refund of the \$10,000 cash bond deposited with the Clerk of the Court;

6. The plaintiffs' claims of mutual mistake and prescriptive easement are dismissed with prejudice and all associated requests for relief are denied.

Entered this 30th day of October, 2015.



John Luster, District Judge

Clerk's Certificate of Delivery

I hereby certify that on the 30 day of October, 2015, a true and accurate copy of the foregoing **FINAL JUDGMENT** was delivered as follows:

- U.S. mail postage paid
- fax transmission
- hand delivery

Susan P. Weeks
James, Vernon & Weeks, PA
1626 Lincoln Way
Coeur d'Alene, ID 83814-2971
Fax: 664-1648 *1688*

5926

- U.S. mail postage paid
- fax transmission
- hand delivery

Scott L. Poorman
SCOTT L. POORMAN, P.C.
PO Box 2871
Hayden, ID 83835
Fax: 772-6811

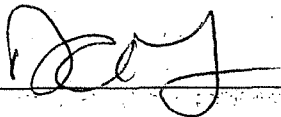


Exhibit A

PARCEL II:

A tract of land In Sections 27, 28 and 34 all in Township 50 North, Range 3 W.B.M., Kootenai County, Idaho, and more particularly described as follows:

Beginning at the Northwest corner of said Section 34; thence South $00^{\circ}28'27''$ West along the West line of the Northwest quarter said Section 34 a distance of 692.12 feet; thence South $89^{\circ}22'06''$ East a distance of 445.88 feet; thence South $00^{\circ}29'37''$ West a distance of 947.36 feet to the Intersection with the Northerly right-of-way of the County Road; thence South $89^{\circ}22'06''$ East along the right of way a distance of 1336.62 feet; thence North $00^{\circ}33'07''$ East a distance of 947.35 feet; thence North $89^{\circ}22'06''$ West a distance of 428.28 feet; thence North $00^{\circ}25'26''$ East a distance of 716.49 feet to Point "A" for this description; thence North $89^{\circ}07'47''$ West a distance of 183.40 feet to a point of curve; thence along a 400.00 foot radius curve to the left a distance of 97.97 feet to Point "B" for this description, curve chord bears South $83^{\circ}51'13''$ West a distance of 97.73 feet; thence North $01^{\circ}33'55''$ East a distance of 798.39 feet; thence South $89^{\circ}07'43''$ East a distance of 264.57 feet; thence North $01^{\circ}33'57''$ East a distance of 515.10 feet; thence North $89^{\circ}16'28''$ West a distance of 996.30 feet; thence North $01^{\circ}53'12''$ East a distance of 634.56 feet to the Intersection with the Southerly right of way of the County Road; thence North $89^{\circ}20'52''$ West along said right of way a distance of 300.92 feet to the Intersection with the Easterly right of way of the County Road; thence South $01^{\circ}59'38''$ West along said right of way a distance of 634.21 feet; thence North $89^{\circ}16'28''$ West a distance of 30.01 feet to Point "C" for this description; thence South $01^{\circ}59'39''$ West a distance of 38.48 feet to a point of curve; thence along a 750.00 foot radius curve to the right a distance of 198.58 feet, curve chord bears South $09^{\circ}34'45''$ West a distance of 198.00 feet; thence South $17^{\circ}09'51''$ West a distance of 280.46 feet to Point "D" for this description; thence North $89^{\circ}40'59''$ West a distance of 568.64 feet to the Intersection with the West line of Lot 5, First Addition to Sunnyside; thence South $01^{\circ}50'44''$ West along the West line of Lot 5 and Lot 12, said First Addition to Sunnyside a distance of 804.60 feet to the Intersection with the North line of the County right of way; thence North $89^{\circ}59'14''$ East along said right of way a distance of 666.25 feet to the Intersection with the West line of the Southwest quarter said Section 27; thence South $01^{\circ}59'39''$ West a distance of 25.02 feet to the Point of Beginning.

2015 DEC 10 AM 10:02

CLERK DISTRICT COURT

[Signature]
DEPUTY

Arthur B. Macomber
Attorney for Appellants
Macomber Law, PLLC
1900 Northwest Blvd., Suite 110
Coeur d'Alene, ID 83814
Telephone: 208-664-4700
Facsimile: 208-664-9933
art@macomberlaw.com
Idaho State Bar No. 7370

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

BRENT REGAN and MOURA REGAN,
husband and wife,

Plaintiffs-Appellants,

v.

JEFF D. OWEN and KAREN A. OWEN,
husband and wife,

Defendants-Respondents.

Supreme Court Docket No: _____

Case No. CV-2011-2136

NOTICE OF APPEAL

Filing Fee: (L4) \$129.00

TO: THE ABOVE-NAMED RESPONDENTS, JEFF D. OWEN AND KAREN A. OWEN; AND THOSE PARTIES' ATTORNEY, SUSAN P. WEEKS, JAMES, VERNON & WEEKS, PA, 1626 LINCOLN WAY, COEUR D'ALENE, IDAHO, 83814; AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named plaintiffs-appellants, BRENT REGAN and MOURA REGAN hereby appeal against the above-named defendants-respondents JEFF D. OWEN and KAREN A. OWEN to the Idaho State Supreme Court from the Final Judgment filed in the above-entitled action on the 30th day of October, 2015, Honorable Judge John P. Luster presiding.

2. The parties hereby timely appeal to the Idaho Supreme Court pursuant to Appellate Rule 14(a) the judgment described in paragraph one above, which is an appealable order pursuant to Idaho Appellate Rule 11(a)(1).

3. A preliminary statement of the issues on appeal the appellants intend to assert include, but providing appellants may assert other issues pursuant to I.A.R. 17(f):

- (a) Whether the trial court erred in not considering Idaho Code section 55-603 when it ruled to dismiss Regans' prescriptive easement claim with prejudice?
- (b) Whether the trial court erred in assuming the Tax Deed for the orphan parcel was valid, even though it did not meet the legal description requirements to be included in a tax deed pursuant to Idaho Code section 63-1006(6)(c)?
- (c) Whether the trial court erred in dismissing Regans' prescriptive easement claim, because parties in interest Regan were denied due process by the Kootenai County Board of Commissioners when it did not provide Regans notice of the pending issuance of the Tax Deed for the orphan parcel?
- (d) Whether the trial court erred when it determined the definition of "absolute title" to the servient estate orphan parcel did not include such servient status for Regans' dominant estate appurtenant and vested rights to the prescriptive easement claimed but unadjudicated by that court?
- (e) Whether the administrative action of the Kootenai County Treasurer seizing the orphan parcel of land and then by tax deed conveying it to Kootenai County constituted a taking pursuant to title 67, chapter 80 of Idaho Code of the vested real property easement interest owned by dominant estate owners Regan, specifically in this case an unadjudicated prescriptive easement claim?

(f) Whether the trial court erred in not determining whether Owens' December 17, 2010 combining of his two parcels effectively served as a relocation by that servient estate owner of the existing northern thirty-foot wide easement roadway pursuant to Idaho Code section 55-313?

(g) Whether if the previous question regarding relocation by the servient estate is answered in the affirmative, then must paragraph one in the October 30, 2015 judgment be vacated and remanded to the trial court to determine the true location of the 30-foot easement?

4. No Order has been entered sealing all or any portion of the record or transcript.

5. (a) A reporter's transcript is requested.

(b) Appellants request the preparation of the following reporters' transcript's in hard copy [], electronic format [], or both [XX]: The entire reporter's Standard Transcript as defined in the second sentence of I.A.R. 25(c) for the Hearing of Defendants' Third Motion for Summary Judgment held September 4, 2015 at 10:00 a.m. before the Honorable Judge John P. Luster with Reporter Keri Veare transcribing, including materials in the record for that hearing as defined at subsections (f) and (g) of I.A.R. 25.

6. Appellants hereby request additional documents be included in the clerk's record pursuant to I.A.R. 28(c):

(a) Filed 8/7/2015: Defendants' Third Motion for Summary Judgment;

(b) Filed 8/7/2015: Memorandum in Support of Defendants' Third Motion for Summary Judgment;

(c) Filed 8/7/2015: Affidavit of Jeff D. Owen in Support of Defendants' Third Motion for Summary Judgment;

- (d) Filed 8/7/2015: Affidavit of Susan P. Weeks in Support of Defendants' Third Motion for Summary Judgment;
- (e) Filed 8/21/2015: Plaintiffs' Brief In Opposition To Defendants' Third Motion For Summary Judgment;
- (f) Filed 8/21/2015: Affidavit Of Michael McDowell In Opposition To Defendant' Third Motion For Summary Judgment;
- (g) Filed 8/28/2015: Defendants' Reply Memorandum In Support Of Third Motion For Summary Judgment; and
- (h) Filed 10/09/2015: Decision on Defendants' Third Motion for Summary Judgment.

Appellants also request previous pleadings and documents automatically included under I.A.R. 28(b)(1).

7. Plaintiffs'-Appellants' attorney signing below certifies:

- (a) That a copy of this Notice of Appeal was served on Kari Veare, the transcriptionist for the September 4, 2015 Hearing, and that a transcript has been requested from her at the following address: Kari Veare, P.O. Box 9000, Coeur d'Alene, Idaho, 83816-9000;
- (b) That the clerk of the district court has been paid the estimated fee for preparation of the reporter's transcript;
- (c) That the estimated fee for preparation of the clerk's record has been paid;
- (d) That the appellate filing fee has been paid; and
- (e) That service has been made upon all parties pursuant to I.A.R. 20.

DATED this 10th day of December, 2015.



Arthur B. Macomber
Attorney for Appellants Regan

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **NOTICE OF APPEAL** was served this 10th day of December, 2015, upon the following people in the manner indicated:

Susan Patricia Weeks James, Vernon & Weeks, PA 1626 Lincoln Way Coeur d'Alene, ID 83814 Phone: (208) 667-0683 FAX: (208) 664-1684 Email: sweeks@jvwlaw.net <i>Attorney for Defendants Owen</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile: 208-664-1684
Jim Brannon, Clerk of the District Court P.O. Box 9000 Coeur d'Alene, Idaho 83816-9000	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail
Keri Veare, Court Reporter First District Court P.O. Box 9000 Coeur d'Alene, Idaho 83816-9000	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail



Arthur B. Macomber
Attorney for Appellants Regan

Susan P. Weeks, ISB #4255
Daniel M. Keyes, ISB #9492
James, Vernon & Weeks, P.A.
1626 Lincoln Way
Coeur d'Alene, ID 83814
Telephone: (208) 667-0683
Facsimile: (208) 664-1684

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: 12/17/15
10:43 O'CLOCK A.M.
CLERK, DISTRICT COURT
[Signature]
DEPUTY

Attorneys for Defendants

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

BRENT REGAN and MOURA REGAN,
husband and wife,

Plaintiffs,

vs.

JEFF D. OWEN and KAREN A. OWEN,
husband and wife,

Defendants.

CASE NO. CV-11-2136

FINAL JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS:

1. The express easement reserved over the north thirty feet (30') of the Defendants' real property as described in the Warranty Deed recorded on December 28, 1988 as Kootenai County Instrument No. 1137747 is confirmed.
2. The Plaintiffs are declared to be the successors-in-interest to the easement rights reserved in Kootenai County Instrument No. 1137747, and said express easement rights are appurtenant to and for the benefit of that portion of the Plaintiffs' real property described in **Exhibit A** attached and incorporated herein.

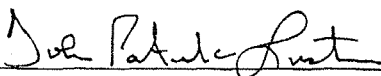
FINAL JUDGMENT: 1

3. The Plaintiffs, and their heirs, successors and assigns have the right to use the reserved easement over the north thirty feet (30') of the defendants' real property as described in Kootenai County Instrument No. 1137747 for roadway and all utility purposes.

4. The Plaintiffs' claims of mutual mistake and prescriptive easement are dismissed with prejudice and all associated requests for relief are denied.

5. The Clerk of Court is hereby ordered to release the \$10,000 cash bond to Defendants.

DATED this 17th day of December, 2015.



Judge Luster, District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 17 day of December, 2015, I caused to be served a true and correct copy of the foregoing instrument by the method indicated below, and addressed to the following:

Susan P. Weeks
Daniel M. Keyes
James, Vernon & Weeks, P.A.
1626 Lincoln Way
Coeur d'Alene, ID 83814

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX) (208) 664-1684

Arthur B. Macomber
Macomber Law, PLLC
PO Box 102
Coeur d'Alene, ID 83816-0102

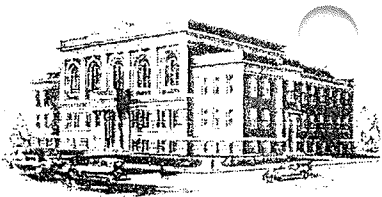
- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX) (208) 664-9933

Exhibit A

PARCEL II:

A tract of land In Sections 27, 28 and 34 all in Township 50 North, Range 3 W.B.M., Kootenai County, Idaho, and more particularly described as follows:

Beginning at the Northwest corner of said Section 34; thence South $00^{\circ}28'27''$ West along the West line of the Northwest quarter said Section 34 a distance of 692.12 feet; thence South $89^{\circ}22'06''$ East a distance of 445.88 feet; thence South $00^{\circ}29'37''$ West a distance of 947.36 feet to the Intersection with the Northerly right-of-way of the County Road; thence South $89^{\circ}22'06''$ East along the right of way a distance of 1336.62 feet; thence North $00^{\circ}33'07''$ East a distance of 947.35 feet; thence North $89^{\circ}22'06''$ West a distance of 428.28 feet; thence North $00^{\circ}25'26''$ East a distance of 716.49 feet to Point "A" for this description; thence North $89^{\circ}07'47''$ West a distance of 183.40 feet to a point of curve; thence along a 400.00 foot radius curve to the left a distance of 97.97 feet to Point "B" for this description, curve chord bears South $83^{\circ}51'13''$ West a distance of 97.73 feet; thence North $01^{\circ}33'55''$ East a distance of 798.39 feet; thence South $89^{\circ}07'43''$ east a distance of 264.57 feet; thence North $01^{\circ}33'57''$ East a distance of 515.10 feet; thence North $89^{\circ}16'28''$ West a distance of 996.30 feet; thence North $01^{\circ}53'12''$ East a distance of 634.56 feet to the Intersection with the Southerly right of way of the County Road; thence North $89^{\circ}20'52''$ West along said right of way a distance of 300.92 feet to the Intersection with the Easterly right of way of the County Road; thence South $01^{\circ}59'38''$ West along said right of way a distance of 634.21 feet; thence North $89^{\circ}16'28''$ West a distance of 30.01 feet to Point "C" for this description; thence South $01^{\circ}59'39''$ West a distance of 38.48 feet to a point of curve; thence along a 750.00 foot radius curve to the right a distance of 198.58 feet, curve chord bears South $09^{\circ}34'45''$ West a distance of 198.00 feet; thence South $17^{\circ}09'51''$ West a distance of 280.46 feet to Point "D" for this description; thence North $89^{\circ}40'59''$ West a distance of 568.64 feet to the Intersection with the West line of Lot 5, First Addition to Sunnyside; thence South $01^{\circ}50'44''$ West along the West line of Lot 5 and Lot 12, said First Addition to Sunnyside a distance of 804.60 feet to the Intersection with the North line of the County right of way; thence North $89^{\circ}59'14''$ East along said right of way a distance of 666.25 feet to the Intersection with the West line of the Southwest quarter said Section 27; thence South $01^{\circ}59'39''$ West a distance of 25.02 feet to the Point of Beginning.



Diane M. Bolan

OFFICIAL COURT REPORTER - ID CSR No. 473
324 West Garden Avenue, Box 9000 } SS
Coeur d'Alene, Idaho 83814-9000 }
FILED:
Phone: (208) 481-2009 • Fax (208) 446-1188
Email: realtimereporter@hotmail.com

2016 JAN 21 PM 2:49

CLERK DISTRICT COURT
Diane M. Bolan
DEPUTY

TO: Clerk of the Courts
Idaho Supreme Court Building
Email: sctfilings@idcourts.net

BRENT REGAN and MOURA REGAN,
husband and wife,)
)
Plaintiffs/Appellants,)
)
vs.)
)
JEFF D. OWEN and KAREN A.)
OWEN, husband and wife,)
)
Defendants/Respondents.)

CASE NO. CV-2011-2136
S.C. DOCKET NO: 43848

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on January 21, 2016, I lodged an Original Transcript, totaling 26 pages, and three Certified Copies, entitled:

Defendant's Third Motion for Summary Judgment, held September 4, 2015 for the above-referenced appeal with the District Court Clerk of the County of Kootenai in the First Judicial District.

Diane M. Bolan
Diane M. Bolan, Official Court Reporter,
Dated January 21, 2016

STATE OF IDAHO)
COUNTY OF KOOTENAI) SS
FILED:

2016 JAN 27 PM 4: 08

CLERK DISTRICT COURT
[Signature]
DEPUTY

Arthur B. Macomber
Attorney for Appellants
Macomber Law, PLLC
1900 Northwest Blvd., Suite 110
Coeur d'Alene, ID 83814
Telephone: 208-664-4700
Facsimile: 208-664-9933
art@macomberlaw.com
Idaho State Bar No. 7370

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

BRENT REGAN and MOURA REGAN,
husband and wife,

Plaintiffs-Appellants,

v.

JEFF D. OWEN and KAREN A. OWEN,
husband and wife,

Defendants-Respondents.

Supreme Court Docket No: 43848

Case No. CV-2011-2136

AMENDED NOTICE OF APPEAL

Filing Fee: None per I.A.R. 17(m).

TO: THE ABOVE-NAMED RESPONDENTS, JEFF D. OWEN AND KAREN A. OWEN; AND THOSE PARTIES' ATTORNEY, SUSAN P. WEEKS, JAMES, VERNON & WEEKS, PA, 1626 LINCOLN WAY, COEUR D'ALENE, IDAHO, 83814; AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. Pursuant to I.A.R. 17(m), this Amended Notice of Appeal states the correct final judgment date due to said original October judgment being amended in December (see Exhibit "A" herewith), deletes the issue stated in subparagraph (e) of the original Notice, states the name of the correct transcriptionist of record, and makes other minor corrections as found in the stricken and underlined portions of this Amended Notice.

2. The above-named plaintiffs-appellants, BRENT REGAN and MOURA REGAN hereby appeal against the above-named defendants-respondents JEFF D. OWEN and KAREN A. OWEN to the Idaho State Supreme Court from the Final Judgment filed in the above-entitled action on the ~~30th day of October~~ 17th day of December, 2015, Honorable Judge John P. Luster presiding.

3. The parties hereby timely appeal to the Idaho Supreme Court pursuant to Appellate Rule 14(a) the judgment described in paragraph ~~one~~ two above, which is an appealable order pursuant to Idaho Appellate Rule 11(a)(1).

4. A preliminary statement of the issues on appeal the appellants intend to assert include, but providing appellants may assert other issues pursuant to I.A.R. 17(f):

- (a) Whether the trial court erred in not considering Idaho Code section 55-603 when it ruled to dismiss Regans' prescriptive easement claim with prejudice?
- (b) Whether the trial court erred in assuming the Tax Deed for the orphan parcel was valid, even though it did not meet the legal description requirements to be included in a tax deed pursuant to Idaho Code section 63-1006(6)(c)?
- (c) Whether the trial court erred in dismissing Regans' prescriptive easement claim, because parties in interest Regan were denied due process by the Kootenai County Board of Commissioners when it did not provide Regans notice of the pending issuance of the Tax Deed for the orphan parcel?
- (d) Whether the trial court erred when it determined the definition of "absolute title" to the servient estate orphan parcel did not include such servient status for Regans' dominant estate appurtenant and vested rights to the prescriptive easement claimed but unadjudicated by that court?

~~(e) Whether the administrative action of the Kootenai County Treasurer seizing the orphan parcel of land and then by tax deed conveying it to Kootenai County constituted a taking pursuant to title 67, chapter 80 of Idaho Code of the vested real property easement interest owned by dominant estate owners Regan, specifically in this case an unadjudicated prescriptive easement claim?~~

~~(f)~~ (e) Whether the trial court erred in not determining whether Owens' December 17, 2010 combining of his two parcels effectively served as a relocation by that servient estate owner of the existing northern thirty-foot wide easement roadway pursuant to Idaho Code section 55-313?

~~(g)~~ (f) Whether if the previous question regarding relocation by the servient estate is answered in the affirmative, then must paragraphs one and three in the ~~October 30~~ December 17, 2015 judgment be vacated and remanded to the trial court to determine and then restate the true location of the 30-foot express easement to confirm whether the Instrument No. 1137747 controls said easement's location?

5. No Order has been entered sealing all or any portion of the record or transcript.

6. (a) A reporter's transcript is requested.

(b) Appellants request the preparation of the following reporters' transcript's in hard copy [], electronic format [], or both [XX]: The entire reporter's Standard Transcript as defined in the second sentence of I.A.R. 25(c) for the Hearing of Defendants' Third Motion for Summary Judgment held September 4, 2015 at 10:00 a.m. before the Honorable Judge John P. Luster with Reporter ~~Keri Veare~~ Diane Bolen transcribing, including materials in the record for that hearing as defined at subsections (f) and (g) of I.A.R. 25.

7. Appellants hereby request additional documents be included in the clerk's record pursuant to I.A.R. 28(c):

- (a) Filed 8/7/2015: Defendants' Third Motion for Summary Judgment;
- (b) Filed 8/7/2015: Memorandum in Support of Defendants' Third Motion for Summary Judgment;
- (c) Filed 8/7/2015: Affidavit of Jeff D. Owen in Support of Defendants' Third Motion for Summary Judgment;
- (d) Filed 8/7/2015: Affidavit of Susan P. Weeks in Support of Defendants' Third Motion for Summary Judgment;
- (e) Filed 8/21/2015: Plaintiffs' Brief In Opposition To Defendants' Third Motion For Summary Judgment;
- (f) Filed 8/21/2015: Affidavit Of Michael McDowell In Opposition To Defendant' Third Motion For Summary Judgment;
- (g) Filed 8/28/2015: Defendants' Reply Memorandum In Support Of Third Motion For Summary Judgment; and
- (h) Filed 10/09/2015: Decision on Defendants' Third Motion for Summary Judgment.

Appellants also request previous pleadings and documents automatically included under I.A.R. 28(b)(1).

8. Plaintiffs'-Appellants' attorney signing below certifies:

(a) That a copy of this Notice of Appeal was served on ~~Kari Veare~~ Diane Bolen, the transcriptionist for the September 4, 2015 Hearing, and that a transcript has been requested from her at the following address: ~~Kari Veare~~ Diane Bolen, P.O. Box 9000, Coeur d'Alene, Idaho, 83816-9000;


(b) That the clerk of the district court has been paid the estimated fee for preparation of the reporter's transcript;

(c) That the estimated fee for preparation of the clerk's record has been paid;

(d) That the appellate filing fee has been paid; and

(e) That service has been made upon all parties pursuant to I.A.R. 20.

DATED this ~~10th day of December, 2015~~ 27th day of January, 2016.



Arthur B. Macomber
Attorney for Appellants Regan

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **AMENDED NOTICE OF APPEAL** was served this ~~10th day of December, 2015~~ 27th day of January, 2016, upon the following people in the manner indicated:

Susan Patricia Weeks James, Vernon & Weeks, PA 1626 Lincoln Way Coeur d'Alene, ID 83814 Phone: (208) 667-0683 FAX: (208) 664-1684 Email: sweeks@jvwlaw.net <i>Attorney for Defendants Owen</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile: 208-664-1684
Jim Brannon, Clerk of the District Court P.O. Box 9000 Coeur d'Alene, Idaho 83816-9000	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail
Keri Veare Diane Bolen, Court Reporter First District Court P.O. Box 9000 Coeur d'Alene, Idaho 83816-9000	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail



Arthur B. Macomber
Attorney for Appellants Regan

Susan P. Weeks, ISB #4255
Daniel M. Keyes, ISB #9492
James, Vernon & Weeks, P.A.
1626 Lincoln Way
Coeur d'Alene, ID 83814
Telephone: (208) 667-0683
Facsimile: (208) 664-1684

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: 12/17/15
10:43 O'CLOCK A.M.
CLERK, DISTRICT COURT

DEPUTY

Attorneys for Defendants

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

BRENT REGAN and MOURA REGAN,
husband and wife,

Plaintiffs,

vs.

JEFF D. OWEN and KAREN A. OWEN,
husband and wife,

Defendants.

CASE NO. CV-11-2136

FINAL JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS:

1. The express easement reserved over the north thirty feet (30') of the Defendants' real property as described in the Warranty Deed recorded on December 28, 1988 as Kootenai County Instrument No. 1137747 is confirmed.

2. The Plaintiffs are declared to be the successors-in-interest to the easement rights reserved in Kootenai County Instrument No. 1137747, and said express easement rights are appurtenant to and for the benefit of that portion of the Plaintiffs' real property described in Exhibit A attached and incorporated herein.

FINAL JUDGMENT: 1

Ex. A

3. The Plaintiffs, and their heirs, successors and assigns have the right to use the reserved easement over the north thirty feet (30') of the defendants' real property as described in Kootenai County Instrument No. 1137747 for roadway and all utility purposes.

4. The Plaintiffs' claims of mutual mistake and prescriptive easement are dismissed with prejudice and all associated requests for relief are denied.

5. The Clerk of Court is hereby ordered to release the \$10,000 cash bond to Defendants.

DATED this 17th day of December, 2015.

Dee Patricia Luster
Judge Luster, District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 17 day of December, 2015, I caused to be served a true and correct copy of the foregoing instrument by the method indicated below, and addressed to the following:

Susan P. Weeks
Daniel M. Keyes
James, Vernon & Weeks, P.A.
1626 Lincoln Way
Coeur d'Alene, ID 83814

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX) (208) 664-1684

Arthur B. Macomber
Macomber Law, PLLC
PO Box 102
Coeur d'Alene, ID 83816-0102

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX) (208) 664-9933

[Handwritten signature and scribbles over the certificate of service section]

Exhibit A**PARCEL II:**

A tract of land in Sections 27, 28 and 34 all in Township 50 North, Range 3 W.B.M., Kootenai County, Idaho, and more particularly described as follows:

Beginning at the Northwest corner of said Section 34; thence South $00^{\circ}28'27''$ West along the West line of the Northwest quarter said Section 34 a distance of 692.12 feet; thence South $89^{\circ}22'06''$ East a distance of 445.88 feet; thence South $00^{\circ}29'37''$ West a distance of 947.36 feet to the Intersection with the Northerly right-of-way of the County Road; thence South $89^{\circ}22'06''$ East along the right of way a distance of 1336.62 feet; thence North $00^{\circ}33'07''$ East a distance of 947.35 feet; thence North $89^{\circ}22'06''$ West a distance of 428.28 feet; thence North $00^{\circ}25'26''$ East a distance of 716.49 feet to Point "A" for this description; thence North $89^{\circ}07'47''$ West a distance of 183.40 feet to a point of curve; thence along a 400.00 foot radius curve to the left a distance of 97.97 feet to Point "B" for this description, curve chord bears South $83^{\circ}51'13''$ West a distance of 97.73 feet; thence North $01^{\circ}33'55''$ East a distance of 798.39 feet; thence South $89^{\circ}07'43''$ East a distance of 264.57 feet; thence North $01^{\circ}33'57''$ East a distance of 515.10 feet; thence North $89^{\circ}16'28''$ West a distance of 996.30 feet; thence North $01^{\circ}53'12''$ East a distance of 634.56 feet to the Intersection with the Southerly right of way of the County Road; thence North $89^{\circ}20'52''$ West along said right of way a distance of 300.92 feet to the Intersection with the Easterly right of way of the County Road; thence South $01^{\circ}59'38''$ West along said right of way a distance of 634.21 feet; thence North $89^{\circ}16'28''$ West a distance of 30.01 feet to Point "C" for this description; thence South $01^{\circ}59'39''$ West a distance of 38.48 feet to a point of curve; thence along a 750.00 foot radius curve to the right a distance of 198.58 feet, curve chord bears South $09^{\circ}34'45''$ West a distance of 198.00 feet; thence South $17^{\circ}09'51''$ West a distance of 280.46 feet to Point "D" for this description; thence North $89^{\circ}40'59''$ West a distance of 568.64 feet to the Intersection with the West line of Lot 5, First Addition to Sunnyside; thence South $01^{\circ}50'44''$ West along the West line of Lot 5 and Lot 12, said First Addition to Sunnyside a distance of 804.60 feet to the Intersection with the North line of the County right of way; thence North $89^{\circ}59'14''$ East along said right of way a distance of 666.25 feet to the Intersection with the West line of the Southwest quarter said Section 27; thence South $01^{\circ}59'39''$ West a distance of 25.02 feet to the Point of Beginning.

FINAL JUDGMENT: 3

IN THE SUPREME COURT OF THE STATE OF IDAHO

BRENT REGAN and MOURA REGAN,
husband and wife,

Plaintiffs/Appellants,

v.

JEFF D. OWEN and KAREN A. OWEN,
husband and wife,

Defendants/Respondent.

SUPREME DOCKET NO.
43848

CLERK’S CERTIFICATE OF EXHIBITS

I, Jim Brannon, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that there was no exhibits submitted for the Limited Appeal.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Kootenai County, Idaho this 12th day of February, 2016.

Jim Brannon
Clerk of the District Court

Debra D. Leu
Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF IDAHO

BRENT REGAN and MOURA REGAN,)
 husband and wife,)
)
 Plaintiffs/Appellants,)
)
 v.)
)
 JEFF D. OWEN and KAREN A. OWEN,)
 husband and wife,)
)
 Defendants/Respondent.)
)
)
 _____)

SUPREME DOCKET NO.
43848

CLERK’S CERTIFICATE OF SERVICE

I, Jim Brannon, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that I have personally served or mailed, by United States mail, one copy of the Clerk’s Record On Limited Appeal to each of the Attorneys of record in this cause as follows:

ARTHUR B. MACOMBER
PO Box 102
Coeur D’Alene, ID 83816

SUSAN P. WEEKS
1626 Lincoln Way
Coeur d’Alene, ID 83814

IN WITNESS WHEREOF, I have unto set my hand and affixed the seal of the said Court this 12th day of February 2016.

Jim Brannon
Clerk of District Court

By: Debra D. Leu

IN THE SUPREME COURT OF THE STATE OF IDAHO

BRENT REGAN and MOURA REGAN,)
 husband and wife,)
)
 Plaintiffs/Appellants,)
)
 v.)
)
 JEFF D. OWEN and KAREN A. OWEN,)
 husband and wife,)
)
 Defendants/Respondent.)
)
)
 _____)

SUPREME DOCKET NO.
43848

I, Jim Brannon, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that the above and foregoing record in the above entitled cause was compiled and bound under my direction as, and is a true, full and correct record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

I further certify that no exhibits were offered in this case.

I certify that the Attorneys for the Appellant and Respondent were notified that the Clerk's Record On Limited Appeal was complete and ready to be picked up, or if the attorney is out of town, the copies were mailed by U.S. mail, postage prepaid on the 12th day of February 2016.

I do further certify that the Clerk's Record will be duly lodged with the Clerk of the Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Kootenai County, Idaho this 12th day February 2016.

JIM BRANNON
Clerk of the District Court

By: Debra D. Leu
Deputy Clerk