8-23-2017

Fischer v. Croston Respondent's Brief Dckt. 44887

IN THE SUPREME COURT OF THE STATE OF IDAHO

WILLIAM R. FISCHER and M. ANN FISCHER, Trustees of the William and Ann Fischer Revocable Trust,

Plaintiffs/Respondents,

v.

JAMES F. CROSTON and MARJORIE C. CROSTON, husband and wife, and ALL UNKNOWN OWNERS AND/OR OTHER PERSONS OR ENTITIES CLAIMING ANY INTEREST IN THE FOLLOWING DESCRIBED REAL PROPERTY, (see file for property description),

Defendants/Appellants.

Supreme Court Docket No. 44887

Case No. CV-2016-2894

RESPONDENTS' BRIEF

Appeal from the District Court of the Seventh Judicial District
of the State of Idaho, in and for the County of Bonneville;
Honorable Joel E. Tingey, District Judge, Presiding

Karl R. Decker, ISB #3390
W. Forrest Fischer, ISB #10009
HOLDEN, KIDWELL,
HAHN & CRAPO, P.L.L.C.
1000 Riverwalk Drive, Suite 200
P.O. Box 50130
Idaho Falls, ID 83405
Telephone: (208)523-0620
Facsimile: (208) 523-9518
Email: kdecker@holdenlegal.com
wfischer@holdenlegal.com

Attorneys for Plaintiffs/Respondents

Robin D. Dunn, Esq., ISB # 2903
DUNN LAW OFFICES, PLLC
477 Pleasant Country Lane
P.O. Box 277
Rigby, ID 83442
Telephone: (208) 745-9202
Facsimile: (208) 745-8160
Email: rdunn@dunnlawoffices.com

Attorney for Defendants/Appellants

TABLE OF CONTENTS

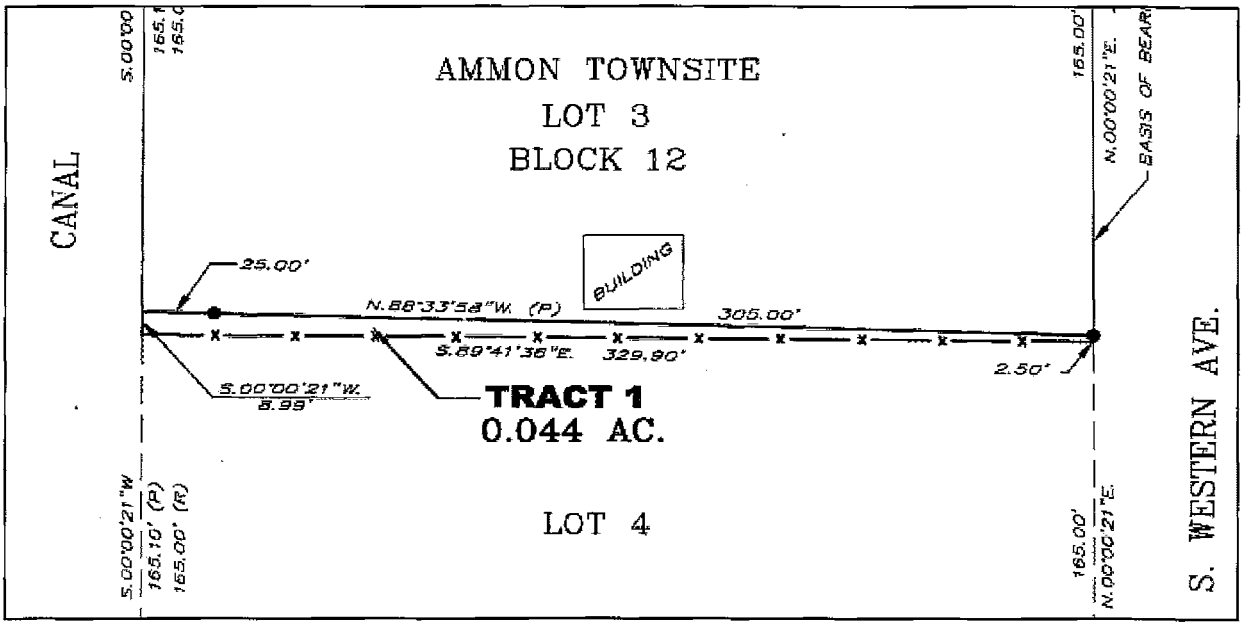
TABLE OF AUTHORITIES

Cases

Statutes

Rules

RULE 35(g) REAL PROPERTY MAP



INTRODUCTION

In *Weitz v. Green,* this Court issued an admonition against the use of self-help to solve boundary line issues:

> This Court strongly disfavors the resort to forceful self-help in resolving property disputes. When parties have entered into a conflict over real property the rights are usually fixed far in advance of the exchange of attorneys' letters, or subsequent filing of a lawsuit, motions, depositions, and hearings. **Making a bold physical attempt to gain, or regain, possession or control of a real property interest, by demolishing or erecting gates or fences, bulldozing land, etc., results in no strategic advantage. Instead, passions become inflamed, positions become entrenched, damages are exacerbated rather than mitigated, and the parties end up spending far more money in litigation than their supposed interest was worth to begin with.** Attorneys who counsel their clients to engage in self-help, without being certain that the respective rights and responsibilities have been settled, do their clients a disservice. Clients who ignore the advice of counsel and take matters into their own hands do themselves a disservice. **In short, parties who attempt to solve a property dispute through their own forceful action do so at their own peril.**

Weitz v. Green, 148 Idaho 851, 864, 230 P.3d 743, 756 (2010) (internal citations omitted) (emphasis added). Despite this clear warning, Appellants James F. Croston and Margorie C. Croston ("Crostons") engaged in self-help by forcibly claiming for themselves almost 1,900 square feet of property belonging to Respondents William R. Fischer and M. Ann Fischer, Trustees of the William and Ann Fischer Revocable Trust ("Fischers"). The Crostons did so by unilaterally constructing a fence on property that they claimed belonged to them, but in actuality belonged to the Fischers. When it became clear that the parties were in a dispute over their mutual boundary line between the properties, the Crostons should have ceased their fence building and engaged in discussions with their neighbors. Unfortunately, the Crostons chose not to do this, but instead opted for a "bold physical attempt to gain possession or control" of a portion of the Fischers' property, by constructing a new fence.

The Crostons' actions compelled the Fischers to file a civil suit to reclaim their lost property based on well-established case law which conclusively demonstrated that the property belonged to the Fischers. At the District Court, the Fischers moved for summary judgment based on this established law—the doctrine of boundary by agreement. In opposition, the Crostons alleged that in 2015, the parties entered into an oral agreement wherein the Fischers supposedly agreed to allow the Crostons to take their property and substantially interfere with their established access road to the west end of the property. However, both in discovery and at summary judgment, the Crostons failed to produce any competent evidence that an oral agreement between the parties existed. Accordingly, the District Court properly granted the Fischers summary judgment in their favor.

The Crostons have since appealed the District Court's ruling, but failed to explicitly assign any error to the District Court's Memorandum Decision and Order ("Decision"). Moreover, the Crostons failed to provide substantial legal arguments justifying their appeal. Instead, the Crostons have "simply asked this Court to second guess the district court" without providing any foundation in light of long-standing law on the issues. *Teton Peaks Investment Co. v. Ohme*, 146 Idaho 394, 397, 195 P.3d 1207, 1210 (2008). Because of this fact, this Court should affirm the District Court's Decision and award the Fischers their reasonable attorney's fees and costs against the Crostons pursuant to Idaho Code ("I.C.") § 12-121.

STATEMENT OF THE CASE

The Fischers own real property in Bonneville County, Idaho, located at 3000 S. Western Avenue, Ammon, Idaho ("Fischer Property"), which is legally described as:

> Lot 3, and the South 59 feet of Lot 2, Block 12, Ammon Townsite, Bonneville County, State of Idaho, according to the recorded plat thereof.

R. Vol. I., ("R.") at 8. The Fischers acquired the Fischer Property in their individual capacity in 1992 and later transferred it into a trust on November 2, 2001. R. at 8. The Fischers are trustees of this trust. R. at 8.

The Fischers originally purchased the Fischer Property from Douglas M. Ackerman and Cheryl A. Ackerman in January 1992. R. at 103. The Ackermans obtained the Fischer Property from Larry J. Kennedy and Sharon Kennedy less than a year earlier, in June 1991. R. at 102. The Kennedys acquired the Fischer Property in 1982 from Sharon Kennedy's parents, Levi D. Barzee and Inza E. Barzee, who had owned the property since 1943. R. at 101.

Immediately adjacent to the south of the Fischer property is real property owned by the Crostons, commonly known as 3020 S. Western Avenue, Ammon, Idaho ("Croston Property"). R. at 8. The Croston Property is legally described as:

> Lot number four (4), Block number twelve (12) of the Ammon Townsite, Bonneville County, State of Idaho as per recorded plat thereof.

R. at 8. The northern boundary of the Croston Property is the southern boundary of the Fischer Property. R. at 8. The Crostons acquired the Croston Property in March 1959, from Denzel W. Rowbury and Viola H. Rowbury. R. at 110. At the time the Crostons purchased the Croston Property, there was an existing post-and-wire fence running along the Fischer Property's southern boundary, dividing the Fischer Property and Croston Property ("Old Fence"). R. at 81-82, 119. The Fischers do not know when the Old Fence was first constructed. R. at 68. However the Old Fence predated the Crostons' acquisition of the Croston Property such that the date and purpose for construction of the Old Fence is beyond the personal knowledge of the Crostons. R. at 113, 114, 119. The best evidence currently available reflects that the Old Fence existed since at least 1951. R. at 81. Specifically, the declarations of Sharon Anderson and

Larry Kennedy set forth their familiarity of the Old Fence, its location since at least 1951, and the common understanding that the Old Fence represented the southern boundary of the Fischer Property. *See* R. at 80 – 94.

In addition to the Old Fence, there was a shed on a concrete foundation located on the south-west side of the Fischer Property ("Shed"). R. at 85-86. It is unknown when this Shed was built or who built it. Nevertheless, there is evidence that the prior owners of the Fischer Property primarily used the Shed to store tools and animal feed. R. at 85-86. To access the Shed, there runs an existing, two-track dirt road that ran west from Western Avenue along the southern boundary of the Fischer Property until it met up with the Shed (the "Access Road"). R. at 8.

In 1992, the Fischers built a single-family home on the Fischer Property. R. at 68. When they purchased the Fischer Property, the Fischers regarded and understood the Old Fence to be the southern boundary of their property. R. at 8. Furthermore, from 1992 to 1996, the Fischers used the entire length and breadth of the Access Road to access the western part of the Fischer Property and the Shed. R. at 8–9.

In or about 1996, the Fischers constructed a large garage ("Garage") approximately 140 feet to the west of the easternmost boundary, and approximately 15 feet north of the Old Fence. R. at 9. Around the same time, the Fischers removed the Shed in order to utilize the space it occupied, but left the Shed's concrete foundation intact. R. at 9. The Fischers continued to use the Access Road in order to access the Garage and used the space between the Garage and the Old Fence to access the westernmost part of the Fischer Property. R. at 9. Altogether, The Fischers exclusively used the Access Road to access the western portion of the Fischer Property and the Garage for over 24 years. R. at 9.

Since purchasing and building a home on the Fischer Property, the Fischers have regarded and treated the Old Fence as their southern boundary line. R. at 8. The Fischers maintained the Fischer Property up to the Old Fence for over two decades by mowing and controlling the large grasses that grow on the property, especially along the Old Fence. R. at 69.

Until 2015, the Fischers never witnessed the Crostons, or anyone else, maintaining the Old Fence. R. at 9. As a result, the Old Fence decayed to a point that certain portions had failed and fallen onto the Fischer Property. R. at 9. Due to the dilapidated condition of the Old Fence, the Fischers decided to replace it with a new, more aesthetically pleasing fence in August 2015. R. at 9.

While the Fischers were in the midst of replacing the Old Fence, the Crostons sent them a letter dated September 4, 2015, wherein they threatened to sue the Fischers for trespass and malicious injury to the Croston Property ("Demand Letter") for their work on the Old Fence. R. at 9, 125. This Demand Letter also required that the Fischers "restore [the] property to [the Crostons'] satisfaction." R. at 125. At the bottom of the Demand Letter, it appeared that the Crostons sent additional copies of the letter to the City of Ammon's Planning Department and Code Enforcement Department, the Bonneville County Sheriff, and the Progressive Irrigation District. R. at 125. Given the tone and tenor of the Demand Letter and the inclusion of third party governmental agencies, the Fischers immediately ceased replacing the Old Fence and consulted with their attorney regarding what they could do to avoid being sued. R. at 9, 69. When the Fischers ceased their work on the Old Fence, portions of it still remained as evidence by pictures taken by both the Crostons and the Fischers. R. at 79, 158, and 159.[1]

[1] The Crostons have argued that the Old Fence was completely removed at the time that the started constructing the New Fence. This is a false statement which is contradicted by photographic evidence in the record. *See* R. at 79, 158, and 159.

Wanting to avoid litigation with the Crostons, the Fischers commissioned Ellsworth & Associates, PLLC, ("Ellsworth") to conduct a survey of the existing boundary line between the Fischer Property and Croston Property. R. at 10. The Fischers wanted a survey to ensure that the replacement fence would be located exactly where the Old Fence had been, because the Fischers had removed parts of the Old Fence. R. at 69.

Prior to the survey, Respondent Ann Fischer ("Mrs. Fischer") encountered and spoke with Jim Croston ("Jim"), on or about August 30, 2015. R. at 70. At the time of their conversation, Mrs. Fischer did not know that Jim was the son of the Crostons. R. at 70. Jim was in the process of marking and measuring those portions where the Old Fence had been, using spray paint to draw a line approximating the Old Fence's location on those portions where it had been removed. R. at 70. During their conversation, Mrs. Fischer indicated to Jim that the Fischers would be replacing the Old Fence with a better one. R. at 70. Mrs. Fischer informed Jim that the Fischers had hired a survey company to mark the line of the Old Fence so there would be no disputes when they constructed the new fence. R. at 70, 127. Mrs. Fischer denies that she ever entered into an oral agreement changing the properties' boundary during any portion of her conversation with Jim. R. at 70. Rather, Mrs. Fischer merely informed Jim of the steps the Fischers were planning on taking to replace the fence on the boundary between the properties. R. at 70. At the time of this conversation, there was no reason to believe that the Old Fence was not on the deeded boundary line. R. at 70.

In September 2015, Ellsworth surveyed the boundary line between the Fischer and Croston properties, placing survey markers. R. at 10. During this survey, the surveyor made several marks on the Fischer property to correspond with Ellsworth's understanding of the location of the lot boundaries according to the recorded plat of the Ammon Townsite ("Plat"). R.

at 10. Upon visual review of the survey markers, it appeared that the location of the Old Fence did not follow the lot line shown on the Plat. R. at 10. Instead, the easternmost post of the Old Fence appeared to be approximately two and a half feet south of the north lot line, with the Old Fence running in a straight line to a westernmost point approximately 8 feet south of the lot line of the Croston Property shown on the Plat. R. at 10.

The area located between the Old Fence and the platted boundary, as shown by the Ellsworth survey, consists of 1,896 square feet and is legally described as follows:

> Beginning at the Northeast corner of Lot 4, Block 12, of the Original Ammon Townsite, Bonneville County, Idaho; running thence N. 88°33'58'' W. 330.00 feet to the Northwest corner of said Lot 4; then S. 00°00'21"W. along the West line of said Lot 4 a distance of 8.99 feet to an existing fence line; thence S. 89°41'36'' E. along said existing fence line 329.90 feet to a point on the East line of said Lot 4; thence N. 00°00'21'' E. along said East line 2.50 feet to the POINT OF BEGINNING

R. at 10, 128 (hereinafter referred to as "Tract 1").

After reviewing the survey and identifying Tract 1, the Fischers overnighted a letter to the Crostons dated September 24, 2015, notifying them of the fence line discrepancy, asserting the Fischers' legal right to Tract 1, and offering settlement of any potential issues between the Parties. R. at 11. At the same time, the Fischers posted two "No Trespassing" signs along the Old Fence. R. at 11.

On or about September 25, 2015, counsel for the Fischers called the Crostons and spoke with Appellant Marjorie Croston ("Marjorie"). R. at 131. According to Marjorie, the Fischers attorney notified her of the Fischers' legal claim to Tract 1, instructed her not to construct a new fence until the parties came to an agreement, and told her to expect a letter in the mail outlining the Fischers' claims. R. at 131. Marjorie informed the Fischers' attorney that her daughter, Linda Penning ("Penning"), had the Crostons' Power of Attorney to act on their behalf in this

matter. R. at 131. Following this phone call, Marjorie called Penning and informed her of her conversation with the Fischers' attorney. R. at 132. Contrary to the Fischers' reasonable requests, Penning told Marjorie that she "would put the fence up now instead of waiting" as they wanted "to run some livestock anyway." R. at 132. However, the Crostons could not put livestock on the Croston Property due to prohibitions within the Ammon City Code. R. at 133 – 137.

On September 27, 2015, Penning began construction of a new wire fence along what she assumed to be the boundary line ("New Fence"). R. at 11. Upon seeing the fencing crews on their property, the Fischers provided Penning with a copy of their letter dated September 24, 2015, and requested that she cease building the fence. R. at 11. When Penning refused to comply with the Fischers' request, the Fischers' attorney immediately called Marjorie Croston. R. at 138. When Marjorie did not answer the phone, the Fischers' attorney left her a detailed voice message wherein he strongly advised that she instruct Penning to stop constructing the New Fence lest the Fischers file a lawsuit against her. R. at 138. Unfortunately, despite the Fischers' numerous demands, the Crostons proceeded to complete the New Fence by the end of the day. R. at 11.

Currently, the New Fence blocks the Fischers' access to the western portion of their property over the Access Road running next to the Garage. R. at 69. The New Fence runs at such an angle that it encroaches almost 9 feet into the Fischers' Property at the western end of the property, crossing the old concrete foundation of the Shed. R. at 128, 139–142.

ADDITIONAL ISSUES PRESENTED ON APPEAL

1. Should the Court deny the Crostons' appeal *in toto* where Appellants' Opening Brief fails to properly designate issues on appeal?

2. Did the Crostons waive their right to challenge the District Court's decision to strike portions of the Affidavit of Linda D. Penning by failing to designate it as an issue on appeal and also failing to provide any argument or authority to challenge the Decision?

3. Are the Fischers entitled to attorney fees where the Crostons' appeal was brought, pursued, and defended frivolously and where the Crostons' appeal merely disputes the District Court's factual findings as opposed to providing detailed legal analysis and argumentation?

ARGUMENT

A. Because Appellants' Brief Fails to Designate Issues on Appeal, the Crostons' Appeal Should Be Denied *in Toto*.

Rule 35(a)(4) of the Idaho Appellate Rules expressly requires that appellant's brief contain "[a] list of the issues present on appeal, expressed in the terms and circumstances of the case but without unnecessary detail." This Court has repeatedly warned that failure to designate issues on appeal in accordance with I.A.R. 35(a)(4) is "cause for denying an appeal" due to the fact that "[i]t is not the duty of this Court to review the record for errors." *Everhart v. Washington Cty. Rd. & Bridge Dep't*, 130 Idaho 273, 274, 939 P.2d 849, 850 (1997) (citation omitted); *see also Weisel v. Beaver Springs Owners Ass'n, Inc.*, 152 Idaho 519, 525, 272 P.3d 491, 497 (2012) ("appellant's failure to include in his initial appellate brief a fair statement of an issue presented for review results in waiver of the issue."); *State v. Hoisington,* 104 Idaho 153, 159, 657 P.2d 17, 23 (1983) ("This Court has consistently followed the rule that it will not review the actions of a district court which have not been specifically assigned as error[,] [e]specially where there are no authorities cited nor argument contained in the briefs upon the question.").

Despite the foregoing, this Court has also held that the requirements of I.A.R. 35(a)(4) may be relaxed if the briefing addressed an issue through authority or argument. *Everhart*, 130 Idaho at 274, 939 P.2d at 850; *Weisel*, 152 Idaho at 525, 272 P.3d at 297. However, for the

Court to relax this rule, appellant's opening brief must "contain the contentions of the appellant with respect to the issues presented on appeal, the reasons therefor, with citations to the authorities, statutes and parts of the transcript and record relied upon." *Weisel,* 152 Idaho at 525, 272 P.3d at 297 (citation omitted). Conversely, "if the issue is only mentioned in passing and not supported by any cogent argument or authority, it cannot be considered by this Court." *Bach v. Bagley*, 148 Idaho 784, 790, 229 P.3d 1146, 1152 (2010) (citation omitted). Altogether, this Court has "repeatedly stated that [it] will not consider an issue not supported by argument and authority in the opening brief." *Weisel,* 152 Idaho at 525, 272 P.3d at 297.

Here, Appellants' Brief does not expressly designate any issues on appeal or otherwise clearly articulate any fault on part of the District Court below. *See generally* Appellants' Brief. Rather, Appellants' Brief confusingly designates an "additional issue on appeal," following I.A.R. 34(b)(4), as though the Crostons were respondents. *Id.* at, pp. 3, 9. Even then, this "additional issue" fails to address the District Court's award of attorney's fees by arguing the wrong statute. R. at 14–16 *cf.* R. 293. Accordingly, the analysis then switches to whether the Crostons properly and adequately briefed issues within their argument, enabling the Court to relax the requirements of I.A.R. 35(a)(4). However, Appellants' Brief fails on this account as well.

Turning to the substance of the Crostons' arguments, it is hard to find where in Appellants' Brief that the Crostons expressly find fault with the District Court's Decision. While there are about three specific sentences where the Crostons generally assert the District Court was wrong in its reasoning on a particular fact,[2] there is precious little argument or legal analysis supporting the Crostons' overall claims. Instead, the Crostons' appeal "simply disputes the trial court's factual findings" without providing anything more. *Flying Elk Investment, LLC v.*

[2] *See* Appellants' Brief, at pp. 11 – 12.

Cornwall, 149 Idaho 9, 16, 232 P.3d 330, 337 (2010). Failing to provide legal argumentation supported by relevant authority is fatal to the Crostons' appeal. Specifically, this Court has warned that "[a] general attack on the findings and conclusions of the district court, without specific reference to evidentiary or legal errors, is insufficient to preserve an issue." *Minor Miracle Prods., LLC v. Starkey*, 152 Idaho 333, 337, 271 P.3d 1189, 1193 (2012). (citation omitted). Moreover, the "Court will not search the record on appeal for error" where the appellant fails to adequately assign error to the district court's decision. *Id.* (citation omitted). Thus, the Crostons' appeal fails as a whole, lacking support from the record.

Ultimately, it is not the Court's burden to parse out the Crostons' legal arguments or decipher which of the District Court's findings and conclusions that the Crostons believe are flawed. Therefore, the Court should deny the Crostons' appeal outright for failure to properly designate issues on appeal and/or failure to provide sufficient supporting argumentation with citations to relevant authorities.

B. The Crostons Are Precluded from Relying on Portions of the Affidavit of Linda D. Penning Because They Failed to Challenge the District Court's Decision Striking These Portions Based on Lack of Foundation and Hearsay.

On appeal, "[t]he failure to support on alleged error with argument and authority is deemed a waiver of the issue." *Matter of Estate of Logan*, 120 Idaho 226, 231, 815 P.2d 35, 40 (Ct. App. 1991) (citation omitted); *see also Haight v. Dale's Used Cars, Inc.*, 139 Idaho 853, 885, 87 P.3d 926, 964 fn.1 (Ct. App. 2003). Additionally, failure to designate issues on appeal in accordance with I.A.R. 35(a)(4) is "cause for denying an appeal" as discussed *supra* in Section A.

In the District Court, the Fischers moved to strike the Affidavit of Linda D. Penning ("Penning Affidavit") entirely on the basis that it was unsigned and not properly notarized as

required for affidavits under I.C. § 51-109. R. at 207 – 210. In the alternative, the Fischers moved to strike all of the exhibits appended to the Penning Affidavit on the basis that they lacked proper foundation, contained inadmissible hearsay, and violated I.R.C.P. 37(c)(1). R. 210 – 212. Ruling on the Fischer's motion to strike, the District Court struck exhibits A, B, and D to the Penning Affidavit on the basis of hearsay and lack of foundation. R. at 246 – 247. However, the District Court denied the remainder of the Fischers' motion to strike for unstated reasons. *See* R. at 247.

Here, Appellants' Brief neither challenges nor addresses the District Court's decision to strike certain exhibits from the Penning Affidavit. *See generally*, Appellants' Brief. Accordingly, the Crostons waived their right to challenge this ruling. *See Matter of Estate of Logan*, 120 Idaho at 231, 815 P.2d at 40. The Crostons' waiver of this issue is important because it limits the evidence in the record that this Court is able to review. Moreover, it renders all citations to the stricken exhibits within Appellants' Brief as improper. For example, on page 10 of Appellants' Brief, the Crostons cite to Exhibit D to the Penning Affidavit as evidence. However, as discussed above, the District Court struck Exhibit D. R. at 246 – 247. Accordingly, the Court should disregard this citation and all other citations referencing or incorporating exhibits A, B, and D to the Penning Affidavit as evidence.

C. The District Court Properly Found That the Old Fence Is the True Boundary Line Between the Fischer Property and Croston Property under the Doctrine of Boundary Line by Agreement.

The District Court properly found that the Old Fence marked and served as the boundary between the Fischer Property and Croston Property for over six decades before this dispute arose. R. at 248. Fences that have been in place for a long time are presumed to be the true boundary under Idaho Law. *See Luce v. Marble*, 142 Idaho 264, 271, 127 P.3d 167, 174 (2005).

Furthermore, the conduct of prior property owners demonstrate that the Old Fence was regarded as the true boundary between the properties. These facts, coupled with lack of any evidence from those who were alive at the time the fence was built, create the presumption that the Old Fence is the true boundary between the properties. Accordingly, this Court should affirm the District Court's grant of summary judgment in favor of the Fischers which declared that the Old Fence is the true boundary between the Fischer Property and Croston Property.

The doctrine of boundary by agreement[3] is well established in Idaho law. The doctrine is based upon the premise that long acquiescence between neighbors concerning the boundary line between their properties ought to preclude "a controversy that will involve rights that have been unquestioned for a generation." *Dreher v. Powell,* 120 Idaho 715, 718, 819 P.2d 569, 572 (Ct. App. 1991) (citation omitted). "Where the boundary is uncertain or disputed, coterminous owners 'may orally agree upon a boundary line' and such an agreement can become binding on successors if the parties to the oral agreement take possession under it." *Flying Elk Inv.*, 149 Idaho at 13, 232 P.3d at 334 (citing *Downing v. Boehringer,* 82 Idaho 52, 56, 349 P.2d 306, 308 (1960)).

As distilled by this Court, "[b]oundary by agreement or acquiescence has two elements: (1) there must be an uncertain or disputed boundary and (2) a subsequent agreement fixing the boundary." *Luce,* 142 Idaho at 271, 127 P.3d at 174. Concerning the first element, "[t]here is no requirement that there be a dispute over the boundary. Rather, there must be either uncertainty or a dispute as to the location of the true boundary." *Johnson v. Newport,* 131 Idaho 521, 523, 960 P.2d 742, 744 (1998). Moreover, "if the location of the true boundary is unknown to either of the parties, and is uncertain or in dispute, such coterminous owners may agree upon a boundary

[3] "Though [Idaho] cases often use the phrase 'boundary by acquiescence' interchangeably with 'boundary by agreement,' ... the latter phrase more accurately describes the doctrine." *Wells v. Williamson,* 118 Idaho 37, 40, 794 P.2d 626, 629 (1990).

line." *Trappett v. Davis,* 102 Idaho 527, 531, 633 P.2d 592, 596 (1981). Finally, "[i]gnorance of the true boundary creates the uncertainty necessary to satisfy the first element." *Flying Elk Inv.*, 149 Idaho at 13, 232 P.3d at 334 (citing *Morrissey v. Haley*, 124 Idaho 870, 873, (1993)).

Concerning the second element, "[t]he agreement may be either express or implied by the landowners' conduct." *Flying Elk Inv.*, 149 Idaho at 13, 232 P.3d at 334 (citing *Teton Peaks Investment Co. v. Ohme*, 146 Idaho 394, 397, 195 P.3d 1207, 1210 (2008)). Since there must be an agreement, acquiescence "is merely regarded as competent evidence of the agreement," and alone is not enough to establish a boundary by agreement. *Flying Elk Inv.*, 149 Idaho at 13, 232 P.3d at 334 (citation omitted). However, "[a]llowing an adjoining landowner to improve the disputed land is evidence of an agreement." *Id.* (citation omitted).

If the elements of boundary by agreement are satisfied, "the parties to the agreement are no longer entitled to the amount of property provided for in their deeds and must absorb the effect of any increase or decrease in the amount of their property as a result of the new boundary." *Stafford v. Weaver*, 136 Idaho 223, 225, 31 P.3d 245, 247 (2001). "The new boundary then is binding on successors in interest who purchase with notice of the agreement." *Anderson v. Rex Hayes Family Trust*, 145 Idaho 741, 744, 185 P.3d 253, 256 (2008) (citation omitted).

In evaluating the existence of an implied agreement regarding a boundary line fence, Idaho courts are guided by two related presumptions:

> First, when a fence line has been erected, and then coterminous landowners have treated that fence line as fixing the boundary between their properties for such a length of time that neither ought to be allowed to deny the correctness of its location **the law presumes an agreement fixing that fence line as the boundary**
> ...
> Second, coupled with the long existence and recognition of a fence as a boundary, the want of any evidence as to the manner or

> circumstances of its original location, **the law presumes that it was originally located as a boundary by agreement** because of uncertainty or dispute as to the true line.

Luce, 142 Idaho at 271–72, 127 P.3d at 174 (citations and quotations omitted) (**emphasis** and internal spacing added). Based on these presumptions, Idaho courts have "repeatedly found a boundary by agreement where a fence is treated as the property line for a number of years, there is no information about why the fence was built, and no evidence to disprove that the fence was intended to be a boundary." *Flying Elk,* 149 Idaho at 14, 232 P.3d at 335. Ultimately, "[t]he doctrine of boundary by agreement or acquiescence is based on a reasonable assumption implied from the surrounding circumstances." *Luce*, 142 Idaho at 272, 127 P.3d at 174.

Here, the District Court properly found that the Old Fence satisfied the elements of boundary line by agreement. R. at 250. It was undisputed that the Old Fence existed for at least 64 years before the dispute between the Fischers and Crostons arose. R. at 248. Moreover, it is undisputed that both the parties and their predecessors in interest regarded the Old Fence as the boundary line between the properties. Appellants' Brief, at p. 10 ("The appellants have no disagreement that a boundary is established, as in the instant case, after being in place for numerous years by monument such as a fence.") These facts, coupled with the evidence concerning the construction of the Shed on the Fischer Property in reliance upon the location of the Old Fence line,[4] gives rise to the twin presumptions described in *Luce* and satisfy the elements of boundary line by agreement.

On appeal, the Crostons do not dispute the facts concerning the Old Fence serving as the accepted boundary line between their property and the Fischer Property for over six decades. Appellants' Brief, at p. 10. Furthermore, the Crostons do not assign error to the District Court's finding that the Old Fence satisfied the elements of boundary by agreement under Idaho law.

[4] R. at 85 – 86.

Accordingly, as a matter of law, the Fischer Property absorbed ownership of Tract 1 by operation of boundary line by agreement since at least 1951. *See Stafford*, 136 Idaho at 225, 31 P.3d at 247.

Based on the foregoing, this Court should find that the District Court did not err in its analysis and application of boundary by agreement in this case. It is important for the Court to decide this matter first as it controls the context of the only argument raised by the Crostons on appeal – namely, whether there is a contemporaneous oral agreement between the parties regarding the boundary line between their respective properties that is legal and enforceable. Because the Crostons concede that the Fischers owned Tract 1 by merit of boundary line by agreement prior to the events of September 2015,[5] it is their burden to prove the existence of a subsequent enforceable oral agreement conveying ownership of Tract 1. However, the Crostons failed to carry this burden both in front of the District Court and on appeal as discussed below.

D. The District Court Correctly Found That No Legally Binding Oral Agreement Existed Between the Parties Concerning the Location of the New Fence.

Below and on appeal, the Crostons argue that the parties entered into an agreement fixing a new boundary line between their respective properties and that this line would be the survey line marked by Ellsworth. Appellants' Brief, at p. 12. Yet, it is undisputed that no written agreement exists between the parties concerning the location of the boundary line. R. at 119. Instead, the Crostons argue that the parties entered into an oral agreement fixing a new boundary line in September 2015, relying on an unsworn statement by the Crostons' son, Jim. Appellants' Brief, at 12. Specifically, Jim claims that while he was marking the location of the Old Fence, Mrs. Fischer allegedly said to him:

> We will be replacing the fence with a much better fence. We are going to get a survey to find out where the line is at. We are using

[5] Appellants' Brief, at p. 10.

> the same surveyors as the City uses so [there] shouldn't be any disputes.

R. at 127. Jim states that he "said OK." R. at 127. Based upon this statement, the Crostons claim that the parties entered into an oral agreement regarding the boundary between their two properties. Appellants' Brief, at p. 12.

However, this argument is without merit. The oral agreement described in Jim's statement, even viewed in a favorable light, does not satisfy the elements of boundary line by agreement. Furthermore, the Jim's statement lacks necessary elements to form a binding contract. Based on these facts, the District Court was correct in findings that no oral agreement between the parties existed.

1. *Jim Could Not Make Any Agreement Regarding the Property Boundary.*

As described in Section C *supra*, "[w]here the boundary is uncertain or disputed, **coterminous owners** may orally agree upon a boundary line and such an agreement can become binding on successors if the parties to the oral agreement take possession under it." *Flying Elk Inv.*, 149 Idaho at 13, 232 P.3d at 334 (citation and internal quotation marks omitted) (emphasis added).[6] However, Jim lacked the authority to enter into any agreement on his parents' behalf. *Huyett v. Idaho State Univ.*, 140 Idaho 904, 908, 104 P.3d 946, 950 (2004) ("For an agent to bind a principal to a third party in contract the agent must have actual or apparent authority.").

Specifically, Jim does not have any ownership interest in the Crostons Property. R. at 118. Furthermore, at no time did the Crostons, or Jim himself, represent that Jim was authorized

[6] Within its Decision, the District Court embraces the idea that a boundary by agreement can be contemporaneous in nature – that is to say, applicable to current property owners so long as the true boundary line is unknown. R. at 248 – 249. Below, the Fischers argued that the Statute of Frauds precludes such a contemporaneous agreement, as it constitutes the transfer of a real property interest which can only be accomplished via deed. R. at 53 – 55. While the District Court disagreed with the Fischer's statute of frauds argument, it still held that the parties did not enter into a subsequent oral agreement concerning their mutual property line. R. at 249. The Fischers do not disagree with the District Court's ultimate finding, but still question whether a boundary line by agreement can be contemporaneous. Accordingly, this case provides the Court with an opportunity to address this fact if it so wishes.

to bind the Crostons in contract. R. at 70. Instead, the Crostons have only asserted that Penning is their attorney in fact. R. at 131. For these reasons, it was impossible for Jim to enter into an agreement with the Fischers that directly impacted the Crostons' property rights. *See Huyett*, 140 Idaho at 909-910, 104 P.3d at 951-952 (affirming that no binding contract between I.S.U. and a head coach existed because, *inter alia*, I.S.U. lacked authority to enter into a multi-term employment contract).

The fact that Penning testified that she was present when the alleged oral agreement does not remedy the foregoing issue. Specifically, Penning testified that she was "present" when Mrs. Fischer and Jim allegedly entered into an oral agreement regarding the boundary line. R. at 165. However, Penning did not testify that she personally spoke with Mrs. Fischer concerning the terms of the agreement neither did Penning declare that she accepted the alleged agreement on behalf of the Crostons in her capacity as their attorney in fact. *See* R. at 165. Rather, all Penning states she was "present" and nothing more. R. at 165.

Contrary to the Crostons contentions, Penning's presence at the alleged inception of the oral agreement **does not** convey power or authority to Jim to enter into a binding contract concerning the Croston Property. For there to be any possibility of a binding agreement between the Fischers and the Crostons, Ms. Fischer would have had to of spoken directly with Penning as the Crostons' named agent. However, there is no evidence in the record that this ever occurred. Accordingly, Jim's statement is not sufficient evidence to demonstrate the existence of an actual oral agreement between the Fischers and the Crostons, regardless of whether or not Penning was present.

Again, boundary line by agreement requires an agreement between "coterminous owners" *Flying Elk Inv.*, 149 Idaho at 13, 232 P.3d at 334. Because Jim was neither a

coterminous owner nor vested with authority to enter agreements on behalf of the Crostons, the District Court was correct in finding that there was "no evidence to support a claim that [the parties] reached an actual agreement...regarding a new fence line and boundary." R. at 249.

2. *Jim's Statement Does Not Create a New Boundary Line by Agreement.*

Assuming, *arguendo*, that Penning's presence at the creation of the alleged oral agreement somehow bestowed Jim with the requisite authority to bind the Crostons in contract, there is still no evidence in the record of an enforceable contract. The District Court correctly stated that "the evidence as to [Mrs.] Fischers' alleged agreement is ambiguous at best." R. at 249. This extreme ambiguity prevents any reasonable inference that the parties ever intended to move the property line.

As described above, Penning only states that she was "present" at the conversation that occurred between Jim and Mrs. Fischer. R. at 165. She provides a conclusory description of what occurred, claiming that "the new fence would be placed on the new survey line." R. at 165. However, this conclusory "scintilla of evidence" is not sufficient to create a genuine issue of material fact. For a substantive description of Mrs. Fischer's conversation with Jim, the only evidence relied upon by the Crostons is Jim's statement.

Analyzing his statement, Jim explained that he was "marking and measuring where **the original fence** had been." R. at 127 (emphasis added). While doing that, Mrs. Fischer approached and asked him what he was doing. R. at 127. Jim explained that he "was determining where **the fence line** used to be," which is to say he was determining where the Old Fence had been located. R. at 127 (emphasis added); *see also* R. at 71, 79 (showing a photograph of the spray-painted line Jim drew to trace the line of the Old Fence). In response, Jim stated that Mrs. Fischer said that the Fischers intended to replace the Old Fence and that the

Fischers were "going to get a survey to find out where **the line** is at." R. at 127 (emphasis added). Given the course of the conversation described by Jim, the only "line" that Mrs. Fischer could be referring to is the line of the Old Fence, which Jim was in the process of marking and discussing with Mrs. Fischer. *See* R. at 127. There is no reasonable inference from Jim's statement that Mrs. Fischer was referring to some new boundary line, unrelated to the Old Fence. Because the only evidence submitted by the Crostons fails to raise a genuine issue of material fact regarding the existence of an oral agreement to change the boundary line between the Fischer Property and the Croston Property, the District Court must be affirmed.

3. *The Alleged Oral Agreement Lacks the Requisite Elements of a Binding Contract.*

Assuming again, for the sake of argument, that Jim was somehow authorized to contract on the Crostons' behalf, Jim's statement still lacks the necessary elements of a legal contract. Specifically, Jim's statement does not contain definite terms, describe the property involved, or evidence that there was mutual assent between the parties. Lacking these elements, there can be no enforceable contract.

For an agreement concerning the sale or transfer of land to be specifically enforced, "the contract must typically contain the minimum provisions of the parties involved, the subject matter thereof, the price or consideration, a description of the property, and all the essential terms of the agreement." *Chapin v. Linden*, 144 Idaho 393, 396, 162 P.3d 772, 775 (2007). As stated above, the only evidence of an agreement between the parties is Jim's unsworn statement. R. at 127. Moreover, Jim's statement does not provide all of the "minimum provisions" of an enforceable contract as described by this Court in *Chapin*. 144 Idaho at 396, 162 P.3d at 775. Because of this, the Crostons' argument that a valid contract exists between the parties is without foundation.

As the District Court correctly stated, "the evidence as to Ann Fischers' alleged agreement is ambiguous at best." R. at 249. Even when Jim's statement is viewed in the best light to the Crostons, there is no evidence of an offer-and-acceptance resulting in a meeting of the minds. *Shapley v. Centurion Life Ins. Co.*, 154 Idaho 875, 878, 303 P.3d 234, 237 (2013) ("A meeting of the minds is evidenced by a manifestation of intent to contract which takes the form of an offer and acceptance"). Nor is there any evidence of mutual assent on the terms of the alleged contract between the parties. *Intermountain Forest Mgmt., Inc. v. Louisiana Pac. Corp.*, 136 Idaho 233, 237, 31 P.3d 921, 925 (2001). Finally, nothing within Jim's statement provides an adequate description of the property being agreed upon. *Chapin*, 144 Idaho at 396, 162 P.2d at 775.

Jim's statement merely reflects that the Fischers were planning on replacing the Old Fence on the original line through the assistance of a surveyor. R. at 127. There is no evidence that the Fischers made an offer or otherwise sought approval from Jim on this matter. Accordingly, there is no offer-and-acceptance or mutual assent. Indeed, the fact that the Fischers sent the Crostons a demand letter concerning Tract 1 prior to the construction of the New Fence belies that there was any meeting of the minds between the parties sufficient to create an enforceable contract. R. at 11.

For the same reasons given above, there is no evidence of consideration. *McColm-Traska v. Valley View, Inc.*, 138 Idaho 497, 501, 65 P.3d 519, 523 (2003) ("When consideration supports a distinct and common understanding of the parties, the understanding becomes an enforceable contract"). The District Court was correct in its Decision when it stated as follows:

> [T]o the extent the Fischers made comments to the effect that they had unilaterally intended to move the fence line further onto their property, there would be no enforceable agreement to that effect

since there was no consideration given by the Crostons. Idaho Jury Instruction No. 6.04.1 provides as follows:

> A promise is not enforceable as a contract unless something of value was given or was agreed to be given in exchange for it. In law, the giving of value or agreement to give value is called "consideration." Consideration is the benefit given or agreed to be given by one party in exchange for the other party's performance or promise to perform.

There is nothing in the record to suggest the Crostons gave up anything of value in exchange for the alleged decision of the Fischer to move the fence line northward thereby giving the Crostons more property.

R. at 250.

Because the alleged oral agreement in the record lacks the "minimum provisions" required for a contract regarding the transference of real property, no valid/enforceable agreement could exist between the Fischers and the Crostons. *See Chapin*, 144 Idaho at 396, 162 P.2d at 775.

4. *The Crostons' Argument That Their Construction of the New Fence Constitutes Valid Consideration Is Contradicted by Their Counterclaim.*

Within Appellants' Brief, the Crostons argue that the District Court erred in finding that there was no evidence of consideration within the record to support the existence of an oral agreement between the parties concerning their mutual boundary line. Appellants' Brief, at p. 12 – 13. Specifically, the Crostons claim that, because they "supplied all of the materials and work for the new fence," they provided adequate consideration for a binding contract. Appellants' Brief, at p. 12. Right away, this claim fails on the basis that the Crostons provided no evidence concerning the terms of the oral agreement, a description of the property, or evidence of mutual acceptance between the parties. While it is undisputed that the Crostons unilaterally constructed the new fence with their own money, there is no evidence in the record that building this fence

somehow satisfied their obligations under a contract whose terms are unknown and uncertain. However, even if the Court focuses solely on the Crostons' contention that their construction of the New Fence was adequate consideration, this argument falls under the weight of the Crostons' prior representations in the record.

Specifically, at the District Court, the Crostons alleged within their Counterclaim that the Fischers owed them one-half of the cost of the New Fence. R. at 24. However, the Crostons have since pivoted on appeal, arguing that their construction of the New Fence constitutes adequate consideration for the alleged oral agreement between the parties. Appellants' Brief, at p. 12. As a result, the Crostons essentially make the following demand – they want the Court to find that they provided legal consideration to the oral agreement by merit of building the New Fence while at the same time, request that the Court order that the Fischers pay back at least half of the consideration that the Crostons supposedly tendered. This argument flies in the face of any inference that the New Fence was constructed in consideration for an agreement between the parties. Instead, the better explanation is that, the Crostons saw that they could gain more property by constructing the New Fence on the recently marked survey line, ignored the Fischers protestations not to construct the fence, and have since invented the notion that their actions were solely predicated on a mutual agreement between the parties.

Altogether, the Crostons' argument that they provided valid consideration is "so far outside the realm of reasonability" that it might warrant Rule 11 sanctions. *See Bettwieser v. New York Irrigation Dist.,* 154 Idaho 317, 330, 297 P.3d 1134, 1147 (2013) (citation omitted) ("We have haled that 'Rule 11 Sanctions are appropriate where an argument on appeal 'was so far outside the realm of reasonability that it warrants a sanction.'"). There is simply no rational or reasonable explanation as to why the Fischers would enter into a contract with the Crostons

wherein they would lose a significant portion of their property and have to pay for half of the cost of the New Fence which deprived them of this property. This fact, coupled with the numerous instances where the Fischers warned the Crostons not to construct the New Fence[7] eliminates any possibility that there was ever a legally binding agreement between the parties.

5. *The District Court Properly Found That the Crostons Committed Trespass Pursuant to I.C. § 6-202.*

Below, the Fischers argued that they were entitled to treble damages and their reasonable attorneys' fees and costs incurred in this action against the Crostons for waste and trespass pursuant to Idaho Code § 6-202. R. at 60 – 62. Specifically, the Fischers argued that the Crostons willfully and intentionally entered upon the Fischers' Property that had "No Trespassing" signs staked on its boundary, removed the signs, and constructed the New Fence upon it and that the New Fence constituted a continuing trespass upon the Fischer Property. R. at 60 – 61. The District Court agreed with the Fischers that the evidence "establishes that the Crostons, through their agents, crossed the old fence line into the Fischers' property and installed a fence" and that such actions constituted trespass pursuant to I.C. § 6-202. R. at 251.

On appeal, the Crostons argue that they could not have committed trespass because ownership in Tract 1 was "never quieted title in the [Fischers]." Appellants' Brief, at p.14. This argument is meritless as it ignores both undisputed facts in the record and established case law.

First, it is undisputed that the Fischers posted "No Trespassing" signs along the Old Fence Line, providing notice to the Crostons and the public of their claim of ownership. R. at 251. Indeed, evidence within the record shows that the Crostons willfully removed these "No Trespassing" signs when they constructed the new fence. R. at 147 – 148. As such, the Crostons committed trespass under I.C. § 6-202 which states that "[a]ny person who, without

[7] R. at 11, 131 – 132, 138.

permission of the owner...willfully and intentionally enters upon the real property of another person which property is posted with "No Trespassing" signs...is liable to the owner of such land...for treble the amount of damages which may be assessed therefor or fifty dollars ($50.00), plus a reasonable attorney's fee which shall be taxes as costs, in any civil action brought to enforce the terms of this act if the plaintiff prevails."

Second, the fact that ownership of Tract 1 had not been formally quieted in the Fischers' favor is immaterial to their trespass claims against the Crostons. As stated above, Tract 1 was absorbed by the Fischer Property long before the dispute between the parties arose. *See Stafford*, 136 Idaho, at 225, 31 P.3d at 247 ("[i]f a boundary by agreement is established, the parties to the agreement are no longer entitled to the amount of property provided for in their deeds and must absorb the effect of any increase or decrease in the amount of their property as a result of the new boundary."). A quiet title action is not needed for this automatic absorption to occur. Therefore, as a matter of law, the Fischers owned Tract 1 exclusively and posted "No Trespassing" signs along its southern border to reinforce their ownership. Accordingly, when the Crostons willfully and intentionally entered into the Fischer Property and constructed the New Fence, the District Court properly concluded that the Crostons committed trespass under I.C. § 6-202.

E. The District Court Properly Awarded the Attorney's Fees to the Fischers under I.C. § 6-202.

Because the District Court found that the Crostons committed trespass under I.C. § 6-202, it was required to award the Fischers their reasonable attorney's fees. On appeal, the Crostons do not address this fact, but erroneously argue that the Fischers should not have been awarded fees under I.C. § 12-121. Appellants' Brief, at pp. 14 – 16. However, the District Court specifically did not award attorney's fees under §12-121, but rather under I.C. § 6-202. R. at

292–293. For this reason alone, the Crostons' argument on appeal addressing this issue is foundationless. Nevertheless, in an abundance of caution, the Fischers will demonstrate why the District Court did not err in awarding them their attorney's fees under I.C. §6-202.

Idaho Code § 6-202 states that any person who commits trespass "is liable to the owner of such land...for treble the amount of damages which may be assessed therefor or fifty dollars ($50.00), plus a reasonable attorney's fee which shall be taxed as costs, in any civil action brought to enforce the terms of this act if the plaintiff prevails." In applying this statute, Idaho case law clearly holds that "in a trespass action...I.C. § 6–202 **mandates** that a reasonable attorney fee be awarded to the prevailing 'plaintiff.'" *Bubak v. Evans*, 117 Idaho 510, 512, 788 P.2d 1333, 1335 (Ct. App. 1989) (emphasis added); *see also Akers v. Mortensen*, 156 Idaho 27, 36, 320 P.3d 418, 427 (2014).

Given the foregoing, the District Court properly awarded the Fischers their reasonable attorney's fees in accordance with I.C. § 6-202. R. at 293. Again, because the Crostons violated I.C. § 6-202 and because the Fischers were the prevailing party at summary judgment, the District Court was required to award the Fischers' their attorneys' fees as a matter of law. *Buback*, 117 Idaho at 512, 788 P.2d at 1335. On appeal, the Crostons provide no counterargument on this issue.

F. The Fischers Are Entitled to Their Reasonable Attorneys' Fees and Costs on Appeal.

As discussed in Section E, *supra*, a party that prevails on an action for trespass under I.C. § 6-202 shall be granted their reasonable attorney's fees. *Bubak*, 117 Idaho at 512, 788 P.2d at 1335. If the Court finds that the Fischers prevail on this appeal, I.C. § 6-202 also entitles the Fischers to their reasonable attorney's fees on appeal. *Weitz*, 148 Idaho at 868, 230 P.3d at 760

(Having found that I.C. § 6–202 applied, the Court granted Respondents their attorney's fees on appeal).

In addition to attorney's fees under I.C. § 6-202, the Fischers are also entitled to their attorney's fees pursuant to I.C. § 12-121. "Idaho Code § 12-121 permits an award for attorney's fees to the prevailing party if 'the appeal was brought, pursued, or defended frivolously." *Flying Elk Investment, LLC*, 149 Idaho at 16, 232 P.3d at 337 (citation omitted). "When an appeal simply disputes the trial court's factual findings, which are supported by substantial although conflicted evidence, the appeal is considered frivolous and an award of attorney fees is proper under I.C. § 12-121." *Id.* (citation omitted).

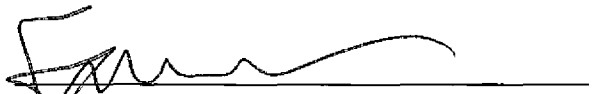
This Court in *Teton Peaks Investment Co. v. Ohme* and *Flying Elk Investment, LLC v. Cornwall* upheld summary judgments finding a boundary by agreement on facts that are similar to this case. 146 Idaho at 397, 195 P.3d at 1210; 149 Idaho at 16, 232 P.3d at 337. Indeed, the Fischers relied heavily upon this Court's decision in *Flying Elk* in its motion for summary judgment below. R. at 49-52. However, despite these clear and recent cases addressing boundary by agreement, the Crostons persisted with their appeal, but failed to provide any legal reasons as to why the District Court erred. Instead, the Crostons have "simply asked this Court to second guess the district court" in the same fashion as the respective appellants in *Teton Peaks* and *Flying Elk*. 146 Idaho at 397, 195 P.3d at 1210; 149 Idaho at 16, 232 P.3d at 337. As a result, this Court should find that the Crostons brought their appeal frivolously and should award the Fischers their reasonable attorney's fees under I.C. § 12-121, as the Court similarly did against the appellants in *Teton Peaks* and *Flying Elk*.

CONCLUSION

The District Court properly found that the Fischers were legally entitled to quiet title to Tract 1 through operation of boundary line by agreement. Furthermore, the District Court properly ruled in favor of the Fischers, dismissing the Crostons' counterclaim that the parties allegedly entered into an oral agreement fixing a new boundary line between their respective properties. Although the Crostons challenge the District Court's Decision in general terms, they provide little to no legal argument or authority as to how the District Court erred in its findings and conclusions. Instead, the Crostons' appeal is simply a naked disagreement with the District Court's Decision with no substance.

Based on these facts, the Fischers respectfully request that this Court affirm the District Court's Decision below. Furthermore, the Fischers respectfully request that this Court award them their reasonable attorney's fees and costs against the Crostons under I.C. § 12-121.

DATED this 23 day of August. 2017August, 2017.



W. Forrest Fischer
Holden, Kidwell, Hahn & Crapo, P.L.L.C.

G:\WPDATA\WFF\18611-001 Fischer Property Appeal\Brief v5.docx:sm

CERTIFICATE OF MAILING

I hereby certify that on this 23 day of August, 2017, two true and correct copies of *Appellants' Brief* were served via Email and Federal Express, on the following:

Robin D. Dunn, Esq. # 2903
DUNN LAW OFFICES, PLLC
477 Pleasant County Lane
P.O. Box 277
Rigby, ID 83422

Attorney for Defendants/Appellants

W. Forrest Fischer, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

CERTIFICATE OF COMPLIANCE

The undersigned does hereby certify that the electronic brief submitted is in compliance with all of the requirements set out in I.A.R. 34.1, and that an electronic copy was served on each party at the following email address(es):

Robin D. Dunn, Esq. # 2903
DUNN LAW OFFICES, PLLC
Email: rdunn@dunnlawoffices.com

Attorney for Defendants/Appellants

Document Emailed: ***Respondents' Brief***

Dated and certified this 23 day of August, 2017.

W. Forrest Fischer, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.