

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

RICHEL FAMILY TRUST, by Darleen  
Sheldon, Donald Richel and Marla Gray as  
Co-Trustees,

Appellants,

vs.

WORLEY HIGHWAY DISTRICT, a  
political subdivision of the State of Idaho;  
and JEANNE BUELL,

Respondents.

**Supreme Court No. 46172-2018**

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**APPELLANTS' REPLY BRIEF**

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Appeal from the District Court of the First Judicial District of the State of Idaho in and for the  
County of Kootenai, Honorable Richard Christensen, District Judge presiding

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## INTRODUCTION

This case involves the intersection of the statutory validation process that appears to allow a highway district to determine the legal status or location of a public right-of-way, and well-established Idaho law regarding the use of extrinsic evidence to determine the validity of a document purporting to convey real property. The district court described the central legal issue of this case as, “whether the [Highway] District is able to validate a road where, after passage of more than 100 years, the available evidence would be insufficient to prove that the real property was initially effectively transferred. This appears to be a case of first impression.”<sup>1</sup> The district court recognized that, without the viewer’s report or survey notes referenced in the Danforth deed, that deed would not be enforceable if executed today. However, the district court evaluated the sufficiency of the Danforth deed at the time it was executed (February 7, 1914), and concluded that, “the evidence in the record strongly infers that the viewer’s report and survey notes accompanied the deed and sufficiently identified the property conveyed at the time the deed was executed.”<sup>2</sup>

Citing the language of the validation statute, the district court found the validation process to be, “a distinct mechanism created by the legislature wherein a highway district may evaluate whether a highway or public right-of-way was previously established and may remove any doubt surrounding its establishment.”<sup>3</sup> Essentially, the district court concluded the statutory validation process allowed the Highway District to reform the Danforth deed by substituting a

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<sup>1</sup> R. p. 57-58.

<sup>2</sup> R. p. 58.

<sup>3</sup> R. p. 60-61.

new grantee for the grantee actually named in the deed, and by supplying a missing legal description for the property from extrinsic evidence outside of the deed. Although the Danforth deed may *appear* to be a perfect poster child for the validation process, the district court went too far when it inferred the existence of the missing surveyor's notes based on the record before the Highway District.

In support of the validation decision, the Worley Highway District claims that the numerous exhibits in the record purporting to depict Road 20 passing through the Northeast Quarter of Section 34 are consistent with the field notes of the W.T. Shepperd survey referenced in, but not recorded with, the Danforth deed. However, as detailed below, the various exhibits in this case do not depict one consistent location for Road 20 across the Northeast Quarter of Section 34 as would be expected if that location had actually been surveyed and established.

For her part, Jeanne Buell also claims the record documents show a consistent depiction of Road 20 across the Richel Trust property, and she argues that the statutory validation process takes precedence over the statute of frauds and more a century of Idaho case law regarding the interpretation and enforcement of deeds.

### **REBUTTAL ARGUMENT**

**1. Kootenai County was the grantee in the Danforth deed, not the Plummer Highway District.**

The Worley Highway District continues to claim that the Danforth deed granted right-of-way to its predecessor, the Plummer Highway District. The district court affirmed the Highway District's Finding of Fact #6 that the Danforth deed granted a 50 foot right-of-way to the

Plummer Highway District. The Highway District’s finding and the district court’s confirmation of that finding are objectively incorrect. The best copy of the Danforth deed is found at page 175 of the Agency Record. The Danforth deed clearly identifies the grantee as Kootenai County, not the Plummer Highway District. In its memorandum decision at page 6, the district court refers to the Danforth deed “reflected on p. 20 of the Record...”<sup>4</sup> The document at page 20 referenced by the court is the Release of Damages and Deed to Right-of-Way by Briggs, Wonnecott and Kiger to “the Plummer Highway District...”<sup>5</sup> The district court simply reviewed the wrong document. Danforth did not convey anything to the Plummer Highway District.

Assuming for argument the Danforth deed conveyed valid right-of-way to Kootenai County in February of 1914, there is no evidence in the record that the Worley Highway District is the successor-in-interest of Kootenai County to that right-of-way.

**2. The Record documents do not support a finding that the surveyor’s field notes referenced in the Danforth deed existed in February of 1914.**

In support of its confirmation of the Highway District’s Finding of Fact #6, the district court also quoted the August 2, 1913 Minutes of the Plummer Highway District which reflect the approval of the petition by George C. Danforth for a public highway. The district court saw that approval as “evidence that a writing containing a valid legal description of the right-of-way to be conveyed actually accompanied Danforth’s petition and the Danforth Deed.”<sup>6</sup> Assuming W.T.

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<sup>4</sup> R. p. 51.  
<sup>5</sup> AR p. 23.  
<sup>6</sup> R. p. 52.

Shepperd actually surveyed Road 20 across the Northeast Quarter of Section 34, according to the Danforth deed, that survey work was not performed until October of 1913, so it is not possible that a valid legal description of the right-of-way existed on August 2, 1913. Based on the chronology of events, it appears the Plummer Highway District approved Danforth's petition before the intended right-of-way was surveyed. Thus, the August 2, 1913 Minutes do not support the existence of a valid legal description when the Danforth deed was executed in February of 1914. Although it appears the Plummer Highway District approved Danforth's petition for a public highway, in fact, Danforth did not subsequently deed any right-of-way to the Plummer Highway District. The Highway District's Finding of Fact #6 is not supported by substantial evidence and the district court's confirmation of that finding was in error.

The Danforth deed is not the only deed in the record that references "field notes" of a survey performed by W.T. Shepperd between October 11 and 14, 1913. The deed executed by Briggs, Wonnecott and Kiger found at page 23 of the Agency Record included the same reference and states, "Said notes accompany this release and deed and are hereby made a part of this agreement and conveyance." The Briggs, Wonnecott and Kiger deed was executed on October 18, 1913, only 4 days after W.T. Shepperd purportedly completed his survey work, yet the Shepperd field notes were not recorded with that deed. The omission of the Shepperd field notes from both deeds calls into question the Highway District and district court's findings that those field notes existed when the Danforth deed was executed. The omission of the survey field notes from one deed could reasonably be considered a mistake. The omission of the survey field notes from both deeds, executed months apart, suggests the field notes were unavailable.

The district court upheld the Highway District Finding of Fact #7 that Road 20 was depicted in the Kootenai County Road Book found at page 24 of the Agency Record. That Road Book page shows a curving line passing across the north half of Section 34, but the page is not dated and the line is not labeled. Accordingly, there is no basis to conclude that the line depicts Road 20 as surveyed by W.T. Shepperd in October of 2013.

The district court also confirmed the Highway District's Findings of Fact #8 that Road 20 was maintained by the Plummer Highway District in 1914. On January 31, 1914, seven days before the Danforth deed was executed, the Plummer Highway District Commissioners and their "engineer," Warren T. Shepperd, reported on "the work, construction, maintenance and repair of the highways within said district; accompanied by a map thereof."<sup>7</sup> The report for Road 20 described the road as "slashed 25 feet wide and made passable three-fourths of a mile in section 33, T. 47. N, R. 4W, and one bridge 24 feet long."<sup>8</sup> There is no description or report of any existing portion of Road 20 in Section 34. The map that accompanied the January 31, 1914 report appears to include a curving line in Section 34, but that line is not labeled.<sup>9</sup> If Shepperd actually surveyed and established the location of Road 20 across Section 34 in October of 1913, one would expect contemporaneous maps to show Road 20 in a consistent location. Yet the line in Section 34 on the County Road Book page and the line on the map that accompanied the January 31, 1914 report are substantially different. The January 31, 1914 report is substantial evidence that Road 20 did not exist in the Northeast Quarter of Section 34 on that date. That

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<sup>7</sup> AR p. 65-68.

<sup>8</sup> AR p. 67.

<sup>9</sup> Maps disc: Amended Agency Record (Remanded Hearing) Exhibit K.

report also offers no support for a finding that the Shepperd field notes were attached to the Danforth deed or even existed on February 7, 1914 when that deed was executed.

The Highway District found and the district court upheld a “Plat” map purporting to show and approve Road 20 as a road allowed in restricted Indian lands.<sup>10</sup> However, that map, prepared by Warren T. Shepperd for the Plummer Highway District, only purports to show proposed roads as surveyed in May, June, July, August and September of 1913. By its own terms, the map offers no depiction of what W.T. Shepperd allegedly surveyed in October of 1913 and cannot support any conclusion that Shepperd’s field notes from that month accompanied the Danforth deed. If Shepperd surveyed Road 20 in Section 34 in October of 1913, why would Shepperd omit that survey work from his own official “Plat of Survey of Proposed Roads” approved by the Plummer Highway District in April of 1914? The omission of the alleged October, 1913 survey work from the April of 1914 Plat of Survey strongly rebuts the inference that Shepperd’s field notes existed when the Danforth deed was executed in February of 1914.

The district court misunderstood the chronology of events in the record in affirming some of the Highway District’s findings, the documents purporting to show what Shepperd surveyed in October of 1913 are not consistent, the minutes of the Plummer Highway District from 1913 make no mention of any portion of Road 20 in Section 34, the Shepperd field notes were omitted from the Danforth deed and the deed signed by Briggs, Wonnecott and Kiger, and Shepperd himself omitted the alleged October 1913 survey work from the Plummer Highway District Plat

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<sup>10</sup> Maps disc: Amended Agency Record (Remanded Hearing) Exhibit L.

of Survey of Proposed Roads approved in April of 1914. Based on this record, the existence of the Sheperd field notes on February 7, 1914 becomes very doubtful.

**3. The true location of the Road 20 right-of-way as deeded by Danforth is unknown.**

Assuming the district court correctly held that the Idaho validation statute allows a highway district to insert a legal description into a deed that otherwise lacks a valid description, the question in this case then becomes, how does the Worley Highway District or the district court determine the true, original location of Road 20 across the Richel Trust property in the Northeast Quarter of Section 34? The Highway District and Jeanne Buell insist that there are numerous maps that consistently depict Road 20 across the Northeast Quarter of Section 34.<sup>11</sup> These depictions are also claimed to be consistent with the alignment of Road No. 20 as surveyed by W. T. Sheperd between October 11 to October 14, 1913. Of course, there is no way to know if any document in the record is consistent with or similar to the alignment of Road No. 20 across the Northeast Quarter of Section 34, because we don't have Sheperd's field notes to compare to the documents in the record. Sheperd's survey and field notes for that portion of the Road 20 referenced in the Danforth deed are lost. Therefore, the accuracy or consistency of the record documents as compared to the Sheperd field notes simply cannot be verified, and it is disingenuous for the respondents to claim that any record document is consistent with field notes that do not exist. The respondents assert that the consistent depiction of Road 20 in the record

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<sup>11</sup> Respondent Buell's Brief, p. 8-14; Worley Highway District Brief, p. 9-12.

documents is somehow evidence that the record documents are also consistent with the missing Shepperd field notes. That assertion is obviously invalid, and it ignores the fact that there are significant inconsistencies among the various documents in the record. They do not all depict a roadway across the Northeast Quarter of Section 34 in the same location.<sup>12</sup> The respondents simply disregard the record documents that do not conform to their assumption. Even if the record documents were all consistent, they could all be consistently wrong; based on an initial error that propagated from one document to the next over time. Of course, it is pure speculation to assume all the record documents are incorrect, just as it is pure speculation to assume they are all consistent with the missing Shepperd field notes. That is certain which can be made certain, and the true, original location of the right-of-way that Danforth intended to convey to Kootenai County cannot be made certain without the Shepperd survey field notes referenced in the Danforth deed.

“Whether a description is such that the property can be 'exactly' identified is an objective determination made by the court. This objective determination is not affected by the understanding or intention of the contracting parties at the time they drafted the property description. Such considerations are irrelevant. They do not aid the court in determining whether the document itself, standing alone (including with any outside materials directly referenced therein), meets the necessary qualifications.”

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“Furthermore, Idaho precedent is abundantly clear that extrinsic evidence is not permitted in order to determine the sufficiency of a property description in a document purporting to convey real property (unless that extrinsic evidence is specifically referenced in the document itself).”

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<sup>12</sup> AR. p. 24; Maps disc: Exhibits K, L and P; and AR p. 29; all depict a road in different locations. Even the two Metsker Maps in the record (AR p. 37. and AR. p. 99.) show significant differences in their depiction of roads in Section 34.

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“Once the court determines that the property description in a document purporting to convey real property is ambiguous (a legal determination) the document becomes unenforceable and there is no reason for the court to resolve the ambiguity (which would be a factual determination).”

*The David and Marvel Benton Trust v. Dorothy B. McCarty*, 161 Idaho 145, 151-152 (2016).

It is an unavoidable fact that the true location of Road 20 across the Northeast Quarter of Section 34 that Danforth intended to convey in 1914 is unknown today. However, if this Court upholds the district court’s decision, this case must be remanded back to the district court to determine the location of the right-of-way that Danforth deeded; a determination not made by the Worley Highway District. On remand, the district court should be instructed to make that determination consistent with the statute of frauds and legal precedents. If the true, original location of that right-of-way cannot be determined from the Danforth deed or from extrinsic evidence referenced in the Danforth deed, the validation of Road 20 across the Northeast Quarter of Section 34 must fail. The statutory validation process does not allow for the creation of new public rights. *Halvorson v. North Latah County Highway District*, 151 Idaho 196 (2011).

**4. The validation statute does not take precedence over the statute of frauds and can be harmonized with Idaho case law.**

“Where it is possible to do so, it is the duty of the courts, in the construction of statutes, to harmonize and reconcile laws, and to adopt that construction of a statutory provision which harmonizes and reconciles with other statutory provisions.” *Sampson v. Layton*, 86 Idaho 453, 457, 387 P.2d 883, 885 (1963), quoting 50 Am.Jur. 367, Statutes, §363. Only when two statutes

are in irreconcilable conflict does the more specific statute prevail over the more general.

*Christensen v. West*, 92 Idaho 87, 88, 437 P.2d 359, 360 (1968).

Idaho Code §40-203A(1), allows a petition to initiate validation proceedings, “if any of the following conditions exist:

- (a) If, through omission or defect, doubt exists as to the legal establishment or evidence of establishment of a highway or public right-of-way;
- (b) If the location of the highway or public right-of-way cannot be accurately determined due to numerous alterations of the highway or public right-of-way, a defective survey of the highway, public right-of-way or adjacent property, or loss or destruction of the original survey of the highways or public rights-of-way; or
- (c) If the highway or public right-of-way as traveled and used does not generally conform to the location of a highway or public right-of-way described on the official highway system map or in the public records.”

Jeanne Buell argues that these conditions to *initiate* a validation proceeding also give the highway district the authority to cure or resolve any “omission or defect” that might cause doubt about the legal establishment of a public right-of-way, or to substitute a new legal description for one that has been lost or destroyed. Section 40-203A does not grant such authority to highway districts. Instead, highway district commissioners are directed to follow the procedure set forth in section 40-203. That section relates to the abandonment or vacation of highways and public rights-of-way, and includes typical provisions for an administrative agency hearing. No provision in section 40-203 indicates the legislature intended to grant special powers to allow highway districts to reform defective deeds or to supply missing legal descriptions in validation proceedings.

This Court has made it clear that the threshold question in any validation proceedings is whether a valid right-of-way exists. “In order to validate a public right-of-way under §40-203A,

the Board must first find that a right-of-way exists although there is some doubt about its current status.” *Galvin v. Canyon Highway District No. 4*, 134 Idaho 576, 579 (2000). The legal standards to make that determination can and should be the same whether the right-of-way is the subject of a validation proceeding or a judicial action. There is no irreconcilable conflict between the validation statutes and well-established Idaho law regarding the interpretation and enforcement of deeds. Accordingly, it is appropriate to construe the validation statutes in harmony with Idaho law regarding the use of extrinsic evidence to determine the sufficiency of a property description in a deed.

## CONCLUSION

It is undisputed that Danforth attempted to convey right-of-way to Kootenai County *somewhere* across the Northeast Quarter of Section 34. However, the Danforth deed, standing alone, is fatally ambiguous because it lacks a valid description of the property to be conveyed. Whether the surveyor’s field notes referenced in the Danforth deed existed in February of 1914 is a question that the record in this case does not answer. What is known is that those field notes were not recorded with the Danforth Deed and have been lost to history. The Danforth deed slumbered undisturbed for over 100 years until Jeanne Buell petitioned to validate public right-of-way across the land now owned by the Richel Family Trust. Richel does not challenge the validation of existing roadways over the Northwest Quarter of Section 34, but urges this Court to reverse the decision of the Worley Highway District validating right-of-way across the Northeast Quarter of Section 34 where no roadway exists. Although the Highway District could not

determine the true location of the Danforth deeded right-of-way, it nevertheless declared that right-of-way to exist based on extrinsic evidence not referenced within the 4 corners of the Danforth deed. The validation statute should be applied in harmony with the statute of frauds and should not be interpreted to grant extraordinary powers to highway districts. Otherwise, the validation statute would allow highway districts to create new right-of-way where none currently exists and to take private property for public use without just compensation.

Respectfully submitted this 29<sup>th</sup> day of August, 2019.

**SCOTT L. POORMAN, P.C.**

*/s/ Scott L. Poorman*

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Scott L. Poorman, attorney for appellants

#### **Certificate of Service**

I hereby certify that on the 29<sup>th</sup> day of August 2019, a true and correct copy of the foregoing **Appellants' Reply Brief** was served by iCourt email to:

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