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IN THE SUPREME COURT OF THE STATE OF IDAHO

GLORIA PALMER, TRUSTEE OF
THE PALMER FAMILY TRUST
dated March 26, 2004,
Petitioner-Appellant,
v.

EAST SIDE HIGHWAY DISTRICT,
a political subdivision of the State of
Idaho; RANDE ALVIN WARNER
and DEBRA JANE WARNER,
husband and wife; STEFFEN A.
TEICHMANN and ALLYSON Y.
TEICHMANN, husband and wife;
DOES 1-10,

Respondents.

Supreme Court No. 47548-2019

Kootenai County District Court
CV-28-18-5678

RESPONDENT RANDE ALVIN
WARNER AND DEBRA JANE
WARNERS' BRIEF

Appeal from the District Court of the
First Judicial District for the State of Idaho,
In and for Kootenai County
Honorable Rich Christensen, District Judge

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Table of Contents

- I. INTRODUCTION 1
- II. ISSUES ON APPEAL 2
 - 1. The district court did not err in refusing to reverse the District based upon the appellate issues raised by the Palmer Family Trust in the Introduction section of its opening appeal brief (and raised again in separate section).. 2
 - 2. The district court did not err by holding that substantial and competent evidence supported the District’s conclusion that the validation of Road No. 231 was not in the public interest. 3
 - 3. The district court did not err in holding the District had cause as defined by applicable statutory provisions to initiate validation proceedings. 3
 - 4. The district court did not err in holding the Palmer Family Trust showed no injury suffered by the denial of hearing the Warner’s motion to continue the validation hearing to allow their petition for abandonment to be heard at the same time. 3
 - 5. The district court did not err in holding quasi-estoppel did not preclude the District from refusing to validate Road No. 231 as a public road. 3
- III. ARGUMENTS 4
 - A. Arguments on First Issue on Appeal 4
 - B. Arguments on Second Issue on Appeal 5
 - C. Arguments on Third Issue on Appeal 5
 - D. Arguments on Fourth Issue on Appeal..... 5
 - E. Arguments on Fifth Issue on Appeal 6
- VI. CONCLUSION..... 6

I. INTRODUCTION

Respondents RANDE ALVIN WARNER and DEBRA JANE WARNER, are in an odd procedural position because the Palmer Family Trust is appealing an adverse decision of the East Side Highway District in declining to validate Leonard Road #2. Ordinarily, neither the Warners nor the Teichmanns would be a party to the appeal of an administrative decision, but when the Palmer Family Trust appealed ESHD's ruling that Leonard Road #2 had been abandoned in 1910, the Palmer Family Trust named the Warners and Teichmanns as respondents. The Warners and Teichmanns have thus participated in the appeal of the administrative decision and have introduced evidence and arguments to protect their positions as a matter of right.

The Warners acknowledge ESHD's role as the administrative agency with the primary duty and authority to defend its actions. ESHD has responded to the appeal and defended its actions. The Warners agree with the arguments submitted by ESHD in its brief and join in those arguments.

For the sake of protecting their separate interests, the Warners submit this brief to clarify their position, since many of the Palmer Family Trust's arguments surround whether ESHD should have acted on the Warner's petition to abandon Leonard Road #2 before ESHD undertook its validation proceedings. The Warners brief addresses issues particular only to the Warners.

II. ISSUES ON APPEAL

1. The district court did not err in refusing to reverse the District based upon the appellate issues raised by the Palmer Family Trust in the Introduction section of its opening appeal brief (and raised again in separate section).

2. The district court did not err by holding that substantial and competent evidence supported the District's conclusion that the validation of Road No. 231 was not in the public interest.
3. The district court did not err in holding the District had cause as defined by applicable statutory provisions to initiate validation proceedings.
4. The district court did not err in holding the Palmer Family Trust showed no injury suffered by the denial of hearing the Warner's motion to continue the validation hearing to allow their petition for abandonment to be heard at the same time.
5. The district court did not err in holding quasi-estoppel did not preclude the District from refusing to validate Road No. 231 as a public road.

III. ARGUMENTS

A. Arguments on First Issue on Appeal

The Warners join in ESHD's response. The Palmer Family Trust's arguments on appeal are that ESHD improperly refused to process the Warners' Petition for Abandonment. However, the Palmer Family Trust glosses over the fact that it was the one that requested the road validation in the first place. The ESHD Resolution to validate the roadway was at the Palmer's Request. R. Vol 1 pp 3, 89.

The Palmer Family Trust has no standing to allege any harm on behalf of Warners. Further, the Warners ability to seek abandonment of the roadway was not prejudiced by having the road validation hearing performed first. Just as happened, the Warners' road validation request became moot once the validation proceeding determined that any public roadway had already been abandoned. Nor did the Palmer Family Trust raise any issue of prejudice in the proceedings below.

Second, the Warners did not argue that there was any public interest in having public access to the Palmer's property. Palmer Brief at 17-18. The Warners argued to ESHD in their Opposition to Reconsideration of re-opening the hearing, that if ESHD found that there were any public interest in the

roadway, the public interest would be better served with a roadway over existing public lands rather than through the Warner's property. R. Vol. 2, p. 480.¹

Further, the arguments made by the Warners in opposition to the road validation were that even if the roadway were public, there would be no public benefit because there is no access to Rose Lake from the roadway as anyone using the roadway would then need to cross private property to get to the lake.²

B. Arguments on Second Issue on Appeal

The Warners join in ESHD's response.

C. Arguments on Third Issue on Appeal

The Warners join in ESHD's response.

D. Arguments on Fourth Issue on Appeal

The Warners join in ESHD's response. The Warners also assert that the Palmer Family Trust has no standing to make any substantive arguments as to any potential injury suffered by the Warners.

¹ Palmer Family Trust cites to R. Vol. 2, p. 480. However, that does not appear to be the official record filed with the District Court. The page for the District Court record filed in Odyssey on September 19, 2018 is Part 3, p. 440.

² Palmer Family Trust cites to R. Vol. 1, p. 142. However, that does not appear to be the official record filed with the District Court. The page for the District Court record filed in Odyssey on September 19, 2018 is Part 2, p. 145.

E. Arguments on Fifth Issue on Appeal

The Warners join in ESHD's response. The Palmer Family Trust also misstates the Warners' arguments as to whether Government Lot 8 is landlocked. Palmer's Brief at 41-42. As explained by Warners to ESHD, Government Lot 8 is not landlocked as it has public waterfront access. See R. Vol 3 p 438. The fact that it is not the *convenient* access the Palmer Family Trust would like is irrelevant. They still have access via public land and waterways.

Further, The Palmer Family Trust initiated the validation proceeding that it now claims was erroneous. This is invited error and should not be considered.

VI. CONCLUSION

The decision of the District Court should be affirmed.

Dated: April 20, 2020

/s/ Matthew Cleverley

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CERTIFICATE OF SERVICE

On the date given below I served an electronic copy of the foregoing document on the following individuals in the manner indicated:

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<p>Susan P. Weeks James, Vernon & Weeks, PA 1626 Lincoln Way Coeur d' Alene, Idaho 83814 sweeks@jvwlaw.net <i>Attorney for Respondent East Side Highway District</i></p>	<table border="1"> <tr><td><input type="checkbox"/></td><td>U.S. MAIL</td></tr> <tr><td><input type="checkbox"/></td><td>LEGAL MESSENGER</td></tr> <tr><td><input checked="" type="checkbox"/></td><td>EMAIL</td></tr> <tr><td><input type="checkbox"/></td><td>HAND DELIVERED</td></tr> <tr><td><input type="checkbox"/></td><td>EXPRESS DELIVERY</td></tr> <tr><td><input type="checkbox"/></td><td>FACSIMILE</td></tr> <tr><td><input checked="" type="checkbox"/></td><td>ECF</td></tr> </table>	<input type="checkbox"/>	U.S. MAIL	<input type="checkbox"/>	LEGAL MESSENGER	<input checked="" type="checkbox"/>	EMAIL	<input type="checkbox"/>	HAND DELIVERED	<input type="checkbox"/>	EXPRESS DELIVERY	<input type="checkbox"/>	FACSIMILE	<input checked="" type="checkbox"/>	ECF
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Dated: April 20, 2020

/s/ Matthew Cleverley
 Matthew Cleverley