NO. 90055-8
Court of Appeals No. 43033-9-II

SUPREME COURT OF THE STATE OF WASHINGTON

Mr. Michael & Mrs. Sue Griffith, et al,

Respondents

v.

Earl Iddings, et al,

Petitioner

ANSWER TO PETITION FOR REVIEW

Earl Morriss, WSBA #34969
Land Law Washington, PLLC
Attorney for Respondent

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I. IDENTITY OF RESPONDENT

The Respondents are Mr. Michael & Mrs. Sue Griffith, represented by R. Earl Morriss, Washington Bar Association No. 34969. Respondents Mason County are represented by other counsel.

II. ISSUES PRESENTED FOR REVIEW

1. Is the decision of the Court of Appeals in conflict with a previous decision of the Supreme Court?
2. Is the decision of the Court of Appeals in conflict with a previous decision of the Court of Appeals?
3. Does the decision of the Court of Appeals involve a significant question of law under the Constitution of the State of Washington or the Constitution of the United States?
4. Does the petition involve an issue of substantial public interest that should be determined by the Supreme Court?

II. STATEMENT OF THE CASE

Michael Griffith purchased a small piece of high-bluff waterfront property on Dewatto Beach Drive in 2006. RP (Vol. IV) 4, 16. The general lay of the property is that there is a rock sea wall along the water, then a paved, gravel and dirt road- Dewatto Beach Drive, and then a bluff which is nearly vertical in some places and approximately fifty feet high. RP (Vol. IV) 4. Generally, almost all of the Griffith property is either a part of the bluff or the area above the bluff. RP (Vol. IV) 4

The only way to access the property – without crossing any other property owned by the adjoiners – is to go up the bluff. RP (Vol. IV) 5. To gain vehicular access from the road, the Griffiths decided to build a driveway – and in preparation for that task they had the property surveyed, hired an engineer to design the driveway and started the application process with Mason County. RP (Vol. IV) 5-7. The design process caused the Griffith land surveyor – Sidney Bechtoldt, PLS – to attempt to calculate the right-of-way for the road. RP (Vol III) 57-59.

In the course of the survey research it was found that there was a "waiver"- a form of right-of-way deed – which called for a 40 foot wide right-of-way. RP (Vol. I) 10-11, 19; RP (Vol. III) 60-66, 73; Ex. 32. There was also a second waiver which was associated with the road – or at least kept in the same county file – the "Beebe Waiver" indicated a 60 foot wide right-of-way. RP (Vol. I) 17-18. The trial court found that the plaintiffs "failed to show that the Beebe Waiver was a dedication applicable to Dewatto Beach Drive at the location at issue."CP 653 (Finding of Fact No. 15). The trial court

found the right-of-way to be 20 feet on both sides of the road centerline, but also accepted testimony as to the historic use of the existing road.

The Griffiths surveyor showed that the maximum historical use of the road right-of-way was 22.55 feet. RP (Vol. III) 57-59. The trial court heard testimony concerning the use of the road and found that evidence disputing the 22.55 foot distance was "vague", inexact", or not based upon personal knowledge. CP 654 (Findings of fact 20, 21, 25, 28, 29). The court found that surveyor Bechtoldt was a credible witness. CP 655 (Finding of fact No. 32). Based on the Bechtoldt survey, admitted as Exhibit 12, and all evidence admitted at trial" the court found the right-of-way to be 22.55 from the centerline of the road. CP 654 (Finding of fact 22); CP 655 (Findings of Fact No. 31, 32, 33, 34).

IV. ARGUMENT WHY REVIEW SHOULD BE DENIED

A petition for review will be accepted by the Supreme Court only: (1) if the decision of the Court of Appeals is in conflict with a previous decision of the Supreme Court; or (2) if the decision of the Court of Appeals is in conflict with a previous decision of the Court of Appeals; or (3) if the decision of the Court of Appeals involve a significant question of law under the Constitution of the State of Washington or the Constitution of the United States; or (4) if the petition involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b)

1. **The decision of the Court of Appeals is not in conflict with a decision of the Supreme Court.**

Iddings argues that the decision is in conflict with other decisions of the Supreme Court. The argument amounts to a complete misreading of the cases cited. In addition, Iddings admits in his petition that the cases stated actually reached the same conclusion as the trial court and the Court of Appeals.

The Iddings argument revolves around the fact that as a matter of law the width of a prescriptive easement can extend to a larger area, but the actual width is a question of fact to be determined by consideration of the facts and circumstances peculiar to each case. *Yakima County v. Conrad*, 26 Wash. 155, 159-160, 66 P. 411 (1901); *City of Olympia v. Lemon*, 93 Wash. 508, 511, 161 P.363 (1916) The facts in this case showed a usage of 22.55 feet from the centerline is a right-of-way within that which is reasonably necessary for public travel as determined by the trial court's "consideration of the facts and circumstances peculiar to the case." *In re West Marginal Way* at 120, quoting *Yakima County v. Conrad* at 159, and citing *Olympia v. Lemon* at 510.

Therefore, review should not be granted on this basis.

2. **The decision of the Court of Appeals is not in conflict with another decision of the Court of Appeals.**

Iddings does not argue how the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals. Therefore, review should not be granted on this basis.

3. **The decision of the Court of Appeals does not involve a significant question of law under the Constitution of the State of Washington or the Constitution of the United States?**

Iddings does not argue that the decision of the Court of Appeals involves a significant question of law under the State or Federal Constitution. Therefore, review should not be granted on this basis.

4. **Does the petition involve an issue of substantial public interest that should be determined by the Supreme Court?**

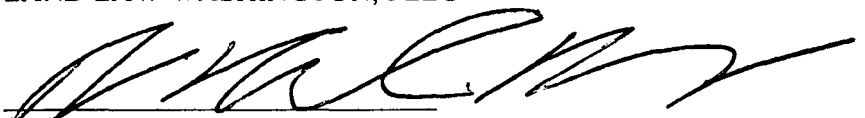
Iddings argues that there is, "*(2) the need to clarify for trial courts that evidence considered and relied upon to find prescriptive rights and common law dedications must be evidence of actual historical use and actual acceptance of common law dedications even if such findings are not immediately reducible to measureable distances with evidence before the court.*". For sake of argument, the Respondent looks at this supposed argument for review as stating a perceived or possible public interest – though Petitioner does not identify it as such. Whatever the intent of this argument by Petitioner, it fails to state a "public interest" to be decided. Further, it fails to state any argument which changes existing law. Therefore, review should not be granted on this basis.

V. CONCLUSION

For the above reasons, review should not be granted in this case.

Respectfully submitted this 23th day of April, 2014.

LAND LAW WASHINGTON, PLLC



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CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that this date I caused to be delivered, via first class mail and e-mail to:

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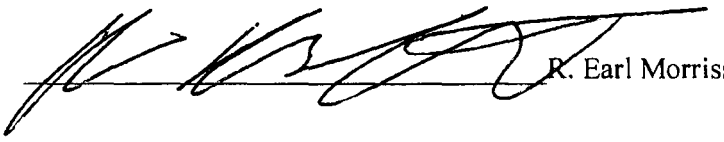
A true and correct copy of the ANSWER TO PETITION FOR REVIEW

SIGNED and DATED at Everett, WA on April 23, 2014



R. Earl Morriss WSBA # 34969

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Answer to Petition 90055-8

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