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## I. INTRODUCTION

An easement is not limited or extinguished simply because the size of the benefitted property increases. But that is what Appellant Stephanie Adams essentially argues in this appeal. The trial court's judgment quieted title to the easement for the benefit of the *original* Ingold Property. The judgment did not allow – and the Ingold Trust does not seek – access to the property added in the boundary line adjustment. Ms. Adams ignores this undisputed fact in asserting that the Ingold Trust is attempting to expand the easement. Because there is no expansion of the easement, and no genuine issues of material fact, this court should affirm the trial court's judgment quieting title to the easement in favor of the Ingold Trust.

The court should likewise affirm the trial court's judgment concerning Ms. Adams's fence. It is undisputed that the fence completely blocks access to the Ingold Property from the fenced portion of the easement. Despite this interference, the trial court's judgment permits Ms. Adams to maintain her fence on the easement because the easement is not currently being used by the Ingold Trust. Ms. Adams is only required to remove the fence upon 30 days' written notice from the Ingold Trust that it intends to use the easement for its stated purposes. The trial court's

remedy is consistent with longstanding Washington precedent and was proper on the undisputed facts of the case.

## **II. RESTATEMENT OF THE ISSUES**

1. Whether the trial court properly granted summary judgment in favor of the Ingold Trust on its quiet title claim where the language of the easement is unambiguous and where the Ingold Trust seeks access only to property expressly benefitted by the easement.

2. Whether the trial court properly granted summary judgment in favor of the Ingold Trust on its ejectment claim where it is undisputed that the fence completely obstructs access to the Ingold Property from the fenced portion of the easement and where Ms. Adams is permitted to maintain her fence until the Ingold Trust gives written notice that it intends to use the easement for its stated purposes.

## **III. STATEMENT OF THE CASE**

Plaintiff-Respondent, the Randall Ingold Trust, and Defendant-Appellant, Stephanie Adams (formerly Stephanie Armour), own adjoining parcels of real estate in Gig Harbor, Washington. (CP 1-2, 18.) The beneficiary of the Ingold Trust, Randall Ingold, and his wife, Leslie Ingold, reside in a home located on the Ingold Property. (CP 44.) A map showing the arrangement of the properties, as well as the locations of the easement and fence, is attached as Appendix A.

**A. The Easement.**

The Ingold Property and the Adams Property share a common predecessor in interest, Charles Sinding. (CP 66, 63, 95.) In 1962, Sinding sold a portion of his property along with the following easement:

GRANTING to the Purchasers, his heirs, successors and assigns, a perpetual non-exclusive easement for road purposes, over, through and across the East 30 feet of the Northeast quarter of the Southeast quarter of Section 21, Township 21 North, Range 1 East of the Willamette Meridian.

(CP 63 (Pierce County Auditor's No. 1959704), copy attached as App'x B.) The Ingold Trust currently owns the property sold under this deed, which is benefitted by the above easement ("Easement"). (CP 48-53.) Subsequently, Sinding sold the land burdened by the Easement, which is now owned in relevant part by Ms. Adams.<sup>1</sup> (CP 66, 95, 60-61 (copy attached as App'x C.)

Ms. Adams does not challenge the Easement's existence or validity on appeal. The Easement appears in numerous documents transferring title to both the Ingold and Adams Properties and in at least two surveys of the Ingold Property. (CP 55, 133 (surveys); CP 66-124 (title documents).) Moreover, Ms. Adams's deed expressly states that her property is subject

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<sup>1</sup> The Easement also extends farther south to a property currently owned by Jeffrey and Melissa Stephens. That portion of the Easement is not at issue in this lawsuit. (See App'x A; CP 44.)

to the “Easement and the terms and conditions thereof disclosed by Statutory Warranty Deed No.1959704.” (CP 61, copy attached as Appendix C.) Therefore, it is undisputed that the Easement encumbers the eastern 30 feet of the Adams Property for the benefit of the Ingold Property legally described above.

**B. The Boundary Line Adjustment.**

In 1991, the prior owners of the Ingold Property adjusted the property’s boundary line farther east. (CP 126-31, 166-69.) As an initial matter, Ms. Adams misstates the adjustment by claiming that it approximately doubled the size of the Ingold Property. (App.’s Br. 4.) According to the Boundary Line Revision Agreement, the original Ingold Property was approximately 10 acres, while the revised Ingold Property is approximately 15 acres. (CP 126-27; *see also* CP 130-31 (map illustration)). Thus, the revision did not “double” the original Ingold Property. Rather, the 1962 Easement benefits approximately two-thirds of the current Ingold Property – ten of the total fifteen acres – not merely one-half of the Ingold Property, as Ms. Adams claims.

In any event, the Ingold Trust does not seek access from the fenced portion of the Easement to the property added in the boundary line adjustment, as discussed more fully in Section IV.A.2., below. The Ingolds’ driveway access to their home, which they purchased with the

Ingold Property in 2008 and which straddles the line where the boundary adjustment occurred in 1991, has not been disputed by Ms. Adams. (CP 44, 177.)

**C. The Dispute Over Ms. Adams's Fence.**

Ms. Adams's obstruction of the Easement has been an ongoing problem for both the Ingolds and their immediate predecessors-in-title, Craig and Rose Brubaker. In 2005, counsel for the Brubakers contacted Ms. Adams regarding her interference with the Easement. (CP 135-36.) The Brubakers objected to Ms. Adams's placement of a "corral" on a portion of the Easement, obstructing its use for road purposes, which had been built there after the Brubakers had twice cautioned Ms. Adams not to interfere with the Easement. (*Id.*) Counsel later sent Ms. Adams's former attorney documents demonstrating the existence of the Easement. (CP 138-39.)

In 2008, Ms. Adams was again contacted about interfering the Easement – this time by counsel for the Ingold Trust. Specifically, the Ingold Trust sought an agreement from Ms. Adams to remove a hog wire fence meandering through the Easement and any other obstructions if and when requested in the future. (CP 141-42.) Unable to reach an agreement, counsel sent a second letter to Ms. Adams's counsel, requesting that all encroachments be removed and specifically objecting to

the installation of “any fence or other improvements that would prevent or impair access from the thirty foot easement to any portion of the Ingold Trust Property.” (CP 144; *see also* CP 18 (admitting ¶ 15 of the Complaint).)

Despite the Ingold Trust’s warning to Ms. Adams to refrain from blocking use of the Easement, in late 2009, Ms. Adams built a permanent, wood-log style fence along the property line between the Ingold and Adams Properties. (CP 18 (admitting ¶ 16 of the Complaint); App’x A.) This permanent fence runs to the edge of the Ingold Property’s northern boundary line, completely blocking access to the Ingold Property from the fenced portion of the Easement. (CP 45; App’x A, D; CP 13-15.) Although there is a gate at the southern end of the fence, this gate does not allow access to the Ingold Property because once you have entered the gate, there is no exit to the Ingold Property, which is completely fenced off. (CP 45; App’x A, D.)

Because Ms. Adams refused to acknowledge the Easement and refused to remove her encroachments, the Ingold Trust filed its Complaint for Quiet Title, Ejectment, Declaratory Judgment and Damages in Pierce County Superior Court on December 14, 2009. (CP 1-15, 45-46.)

**D. Trial Court Proceedings.**

Based on the undisputed facts, the Ingold Trust moved for partial summary judgment on its quiet title and ejectment claims and requested that Ms. Adams's unsupported affirmative defenses be dismissed as a matter of law. Following oral argument on August 13, 2010, the trial court granted the Ingold Trust's motion. (CP 196-97.) Specifically, the court found that "easement is very clear" and that there was not "any doubt what it means and what the purpose is." (RP 11-12.) The trial court further found that Ms. Adams would not need to remove her fence until the Ingold Trust intends to use the Easement for its stated purposes and upon 30 days' written notice to Ms. Adams. (RP 12; CP 216.)

After the entry of partial summary judgment, the parties stipulated to the dismissal of the Ingold Trust's remaining claims without prejudice. (CP 215.) The trial court entered final judgment in favor of the Ingold Trust and awarded it statutory attorneys' fees and costs. (CP 214-17.) This appeal followed. (CP 210-11.)

**IV. ARGUMENT**

**A. The Trial Court Did Not Err In Quieting Title To The Easement In Favor Of The Ingold Trust.**

The court reviews an order of summary judgment *de novo*. *Campbell v. Ticor Title Ins. Co.*, 166 Wn.2d 466, 470, 209 P.3d 859

(2009). Summary judgment should be granted when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. CR 56(c); *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008). Not every factual dispute precludes summary judgment. *See Swinehart v. City of Spokane*, 145 Wn. App. 836, 844, 187 P.3d 345 (2008) (explaining that a “material fact” is one upon which the outcome of the litigation depends). The non-moving party must set forth specific facts that sufficiently rebut the moving party’s contentions and disclose the existence of a genuine issue as to a material fact. *Ranger Ins. Co.*, 164 Wn.2d at 552.

**1. There Is No Dispute That The Easement Encumbers The Adams Property For The Benefit Of The Original Ingold Property.**

Ms. Adams does not challenge the existence or validity of the Easement on appeal. The Easement appears in numerous documents transferring title to both the Ingold and Adams Properties, including Ms. Adams’s deed specifically, and in at least two surveys of the Ingold Property. (App’x C (Adams deed); CP 55, 133 (surveys); CP 66-124 (title documents).)

It is likewise undisputed that the Easement benefits the original Ingold Property – that is, the property as it existed prior to the 1991 boundary line adjustment. (*See* CP 177.) While Ms. Adams incorrectly

asserts that the Ingold Trust is attempting to expand the Easement, she has never disagreed that the plain language of the Easement states that it benefits the original Ingold Property. Accordingly, there is no genuine issue of material fact that a “perpetual non-exclusive easement for road purposes” has existed over the east 30 feet of the Adams Property for the benefit of the original Ingold Property since 1962. (*See* App’x B.)

**2. The Easement Has Not Been Expanded By The Trial Court Or The Ingold Trust.**

Ms. Adams continues to argue on appeal that the Ingold Trust is attempting to expand the Easement and that the trial court quieted title “in favor of the expanded Ingold Property.” (App.’s Br 1.) This misstates both the trial court’s judgment and the Ingold Trust’s position.

The Ingold Trust has never sought to expand the Easement, but has only requested access to the original Ingold Property, consistent with its Easement grant. In particular, it desires access to the northwest portion of the Ingold Property, where at one point it had plans to construct an equestrian barn and arena. (CP 45-46.) Access to this part of the Ingold Property would require utilization of the Easement, which is currently blocked by the fence. (*Id.*) However, the Ingold Trust has never sought access to the property added in the boundary line adjustment, as expressly

stated by the Ingold Trust on summary judgment. (CP 27 (at n.8), 189-90; *see also* CP 45-46.)

Moreover, access to the original Ingold Property is all that the trial court granted in this case. As set forth in the final judgment:

The easement exists for the benefit of the following legally described real property: the Northwest quarter of the Northwest quarter of the Southwest quarter of Section 22, Township 21 North, Range 1 East, W.M., in Pierce County, Washington. This property is currently owned by Plaintiff and *is part of* Pierce County Assessor's Parcel No. 0121223108.

(CP 215-16 (emphasis added).) The legal description above is the same as the one used in the 1962 deed. (App'x B (CP 63).) It does not include the property added in the 1991 boundary line adjustment. The judgment further acknowledges this by stating that the benefitted property is only "part of" the Ingold Property tax parcel, which encompasses the entire Ingold Property, including the boundary line adjustment. Thus, the judgment does not expand the Easement beyond what was granted in the 1962 deed and does not give the Ingolds any additional access rights.

Because there is no expansion of the Easement, there is no misuse or overburdening to assess. The two cases relied on by Ms. Adams, *Brown v. Voss* and *Visser v. Craig*, do not dictate a different result. In *Brown*, the servient estate owners had counterclaimed for damages and injunctive relief against the plaintiffs to prevent them from using the

easement to access their home, which straddled the boundary line between the property benefitted by the easement and a different parcel. *Brown v. Voss*, 105 Wn.2d 366, 369, 715 P.2d 514 (1986). Thus, access to the non-benefitted land was directly in issue. The same was true in *Visser*. *Visser v. Craig*, 139 Wn. App. 152, 155-57, 159 P.3d 453 (2007).

That is not the case here. Ms. Adams often references the fact that the home the Ingold Trust purchased straddles the line where the boundary adjustment occurred in 1991. While this is indeed similar to one of the facts in *Brown*, it ignores the critical point that Ms. Adams is *not* disputing the driveway or seeking to enjoin access to the Ingold home. (CP 177; *see also* CP 18-19.) Thus, there is no actual dispute over access to property not benefitted by an Easement. Ms. Adams cites no authority for the proposition that an easement is *per se* expanded because the dominant estate has increased.

Because there was no dispute over access to the property added in the 1991 boundary line adjustment, there was no need for the trial court to assess any misuse or overburdening of the Easement. On these undisputed facts, it was proper for the trial court to quiet title to the easement in favor of the Ingold Trust for the benefit of the original Ingold Property.

**3. No Remaining Genuine Issues Of Material Fact  
Precluded Summary Judgment For The Ingold Trust.**

Ms. Adams incorrectly asserts that the trial court should have looked to extrinsic evidence in interpreting the Easement. Such an inquiry was unnecessary, however, as Ms. Adams did not argue that the Easement was ambiguous in any respect.

“The intent of the original parties to an easement is determined from the deed as a whole.” *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003). If the plain language is unambiguous, extrinsic evidence, such as that showing the parties’ intentions, the circumstances surrounding execution, and the practical interpretation given the parties’ prior conduct, will not be considered by the court. *Id.* (citing *City of Seattle v. Nazaremus*, 60 Wn.2d 657, 665, 374 P.2d 1014 (1962)). As summarized by the court in *Beebe v. Swerda*:

[T]he parties concede that the language was not ambiguous. Thus, the intention of the parties must be determined from the language used. The words are to be construed in their ordinary and popular sense. Extraneous circumstances may not be considered.

58 Wn. App. 375, 379-80, 793 P.2d 442, *rev. denied*, 115 Wn.2d 1025 (1990).

Here, Ms. Adams never argued that the Easement was ambiguous, nor did she identify any ambiguities in the language that would permit

consideration of extrinsic evidence. Indeed, there are no such ambiguities, as the scope of the Easement is readily discernable from the deed itself, granting “a perpetual non-exclusive easement for road purposes, over, through and across the East 30 feet of the [Adams Property].” (App’x B (CP 63).) The dimensions, location, and purpose of the Easement are all expressly set forth in this language. The trial court agreed, finding that “easement is very clear” and that there was not “any doubt what it means and what the purpose is.” (RP 11-12.)

Moreover, as explained above, the Ingold Trust’s proposed use of the Easement does not expand or otherwise modify the original grant. The Ingold Trust would use the eastern thirty feet of the Adams Property for a road to access portions of the Ingold Property that are benefitted by the Easement. (CP 45-46.) That is precisely what is contemplated by the Easement language. The deed does not restrict access to any particular point on the Ingold Property. Because the language of the deed is unambiguous, the legal standard Ms. Adams advocates is inapplicable.

Finally, Ms. Adams cites no legal authority in support of her position that summary judgment should not have been granted because the Ingold Trust “has no need for the remainder of its easement.” (App.’s Br. 11.) An easement does not contract in size because only a portion of it has been used. This principle was explained by the court in *810*

*Properties*, a case cited by Ms. Adams in her summary judgment briefing (CP 182):

Next, Ms. Jump contends that the Eaton/810 access to the roadway should be limited to 15 feet because the existing roadway is currently 15 feet in width. Again, her contention is without merit. *Generally, the dimensions of an easement do not contract merely because the holder fails to use the entire easement area.* When one enters upon land under color of title, and possesses only part of the land, he or she will be deemed to have possession of the entire tract. *Yakima Valley Canal Co. v. Walker*, 76 Wash.2d 90, 94, 455 P.2d 372 (1969). In this case, the 1931 and 1941 deeds specifically delineate 40 and 30 foot easements. Accordingly, the trial court did not err in concluding that property owners to the south of Ms. Jump's property have a right to access easements of those respective widths.

*810 Props. v. Jump*, 141 Wn. App. 688, 699, 170 P.3d 1209 (2007) (emphasis added).

Such is the case here. The size of the relevant portion of the Easement is 30 feet wide and 1,342.42 feet long (approximately one-quarter mile), as delineated in the deed. (CP 55, 63.) The fact that the entire Easement has not previously been used for a road does not mean that the remainder of the Easement has been forfeited.<sup>2</sup> *See 810 Props.*,

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<sup>2</sup> Ms. Adams also references a second "road" she alleges was used by the Ingolds' predecessors, the Brubakers, occasionally to race motorcycles or drive other vehicles. (CP 172.) No such road appears on the 2007 survey of the Ingold Property. (CP 55.) What appears to be the Brubakers' (primarily recreational) use of their private property has no bearing on the Ingold Trust's right to use the Easement in this case. Ms. Adams has never argued abandonment of the Easement or cited any legal authority in support of such an argument.

141 Wn. App. at 699; *c.f. Roggow v. Haggerty*, 27 Wn. App. 908, 913, 621 P.2d 195 (1980) (“Mere nonuse of an easement does not constitute abandonment.”). Moreover, whether the Ingold Trust has a “need” for the Easement is immaterial. The Easement is a property right, granted by statutory warranty deed and purchased by the Ingold Trust. It should not be limited or extinguished simply because Ms. Adams disagrees that the entire Easement is necessary. She cites no authority for such a proposition.

In sum, the trial court did not err in quieting title to the Easement in favor of the Ingold Trust. The existence and validity of the Easement is undisputed. Ms. Adams did not identify any ambiguities in the Easement’s language and there are none. Therefore, the trial court was correct not to consider extrinsic evidence. *Sunnyside Valley Irrigation Dist.*, 149 Wn.2d at 880; *Beebe*, 58 Wn. App. at 379-80. Finally, there was no expansion of the Easement because the Ingold Trust does not seek access to the property added in the boundary line adjustment; access to the Ingolds’ home is undisputed; and the trial court’s judgment quiets title only for the benefit of the original Ingold Property. The order granting summary judgment should be affirmed.

**B. The Trial Court Did Not Err In Requiring Ms. Adams To Remove Her Fence At A Later Date Upon Notice From The Ingold Trust That It Intends To Use The Easement.**

Ms. Adams asserts that an abuse of discretion standard of review applies to the court's order concerning ejectment, under which the court's decision will be upheld unless it is manifestly unreasonable, exercised on untenable grounds, or for untenable reasons. *See CHD, Inc. v. Taggart*, 153 Wn. App. 94, 101, 220 P.3d 229 (2009); App.'s Br. 8. Ms. Adams wholly fails to demonstrate how the court abused its discretion in this case. However, even if a *de novo* standard of review is applied to the court's summary judgment, equitable relief was properly granted here on the undisputed facts. *See, e.g., Beebe*, 58 Wn. App. at 384-85 (upholding summary judgment granting injunctive relief where servient estate holder was required to remove improvements from easement upon 30 days' notice from easement holder of intent to use easement).

**1. It Is Undisputed That The Fence Completely Obstructs Access To The Ingold Property.**

As an initial matter, Ms. Adams has never disputed that her fence completely blocks access to the Ingold Property from the fenced portion of the Easement. This fact is also illustrated by photographs of the property, described in the declaration of Curtis G. Young, and depicted in Appendix A. (App'x A, D; CP 45, 13-15.) Although Ms. Adams attempts to deflect

the issue by referencing the gate across the southern portion of the Easement, this gate does nothing to allow access to the Ingold Property. The gate provides access to the Easement and the Adams Property; it does not allow access from the Easement to the Ingold Property, which is completely fenced off. (CP 45; *see* App'x A, D.)

**2. Ms. Adams's Cited Cases Concerning Gates Are Inapposite.**

To state it plainly, this is not a "gate" case. Cases involving gates across easements make entry more burdensome, but the easement holder still has *access* to the benefitted property. *See, e.g., Steury v. Johnson*, 90 Wn. App. 401, 403-04, 957 P.2d 772 (1998) (plaintiff could still access the property from the easement after gate placed across easement entrance, albeit less conveniently); *Rupert v. Gunter*, 31 Wn. App. 27, 29-30, 640 P.2d 36 (1982) (same). That is not the situation here. Access has not merely been hindered by a gate; it has been completely blocked by a permanent fence. The Ingolds cannot enter through Ms. Adams's gate and access their property. It is this obstruction created by the fence that is at issue in this lawsuit, not whether Ms. Adams may maintain a gate across the Easement.

Moreover, the cases cited by Ms. Adams involved some type of problem faced by the servient estate owner not originally anticipated, and

the gate was erected for the servient owner's protection. *See, e.g., Steury*, 90 Wn. App. at 403-04 (increased use of the easement to 50 to 60 times per day, primarily by the public); *Rupert*, 31 Wn. App. at 31 (general public entering the easement and speeding down the road). Here, however, Ms. Adams offered no evidence of any increased burden like those experienced by the defendants in *Rupert* or *Steury*.

And, in any event, there can be no genuine issue of material fact that Ms. Adams's fence, which permanently and undisputedly blocks access to the Ingold Property, is an unreasonable interference with the Ingold Trust's use of the Easement. *See id.* This is wholly distinct from a mobile gate through which the benefitted property can still be accessed. Ms. Adams's cited authority is therefore distinguishable.

**3. Consistent With Washington Precedent, Ms. Adams Is Being Permitted To Maintain Her Fence Until The Easement Is Opened.**

In granting the Ingold Trust relief on its ejectment claim, the trial court did not order Ms. Adams to remove her fence immediately, although that was the Ingold Trust's stated preference given Ms. Adams's conduct (CP 194.) Rather, the court found it more appropriate to require removal only after the Ingold Trust determined it would begin using the Easement for its stated purposes, and after 30 days' written notice to Ms. Adams.

(CP 216.) This result is consistent with longstanding Washington precedent.

Washington law recognizes that a servient owner may enjoy reasonable use of her property during a period of nonuse of an easement, including fencing the land. *Thompson v. Smith*, 59 Wn.2d 397, 408-09, 367 P.2d 798 (1962); *City of Edmonds v. Williams*, 54 Wn. App. 632, 636, 774 P.2d 1241 (1989). However, any interferences must be removed from an easement when the period of nonuse ends. *Thompson*, 59 Wn.2d at 409; *Beebe*, 58 Wn. App. at 385.

In *Thompson*, the owner of the servient estate placed a concrete slab on an unused roadway easement. *Thompson*, 59 Wn.2d at 403. The court held that the slab could remain during the nonuse, but that it would have to be removed when the roadway was opened. *Id.* at 409-10. The court also approved of requiring the servient owner to guarantee that the slab would be removed. *Id.* Finally, the court observed:

While we have upheld the legal rights of the defendant Gail Smith to make limited use of the ten-foot strip reserved for road purposes, and to the ownership of his land lying between the easement and the established road, we have also upheld the right of the plaintiffs to the use of the eight-foot graveled road; and *those rights, together with the right of their existing access to that road, must be protected; and any attempt to impair or impede its proper use should be severely dealt with.*

*Id.* at 411 (emphasis added).

Here, it is undisputed that the fence completely obstructs access to the Ingold Property from the fenced portion of the Easement. Therefore, Ms. Adams cannot be permitted to keep the fence on the Easement once the Ingold Trust needs to use it for road purposes. *See id.* at 409-11. However, because that time has not yet arrived, the trial court properly allowed Ms. Adams to keep her fence on the Easement. *See id.* Ms. Adams will then receive 30 days' notice when the Easement will be opened before she must take action to remove her encroachments.

The facts of this case are highly similar to those in *Beebe v. Swerda*, 58 Wn. App. 375, 793 P.2d 442, *rev. denied*, 115 Wn.2d 1025 (1990). In *Beebe*, the plaintiff brought a complaint for injunction, quiet title, and declaratory relief against the defendant for interference with a road easement and moved for summary judgment. *Id.* at 377-78. The trial court granted the motion, and ordered that the defendant would need to remove all improvements from the easement upon 30 days' notice from the plaintiff that he intended to commence work on the easement. *Id.* The court of appeals affirmed, holding also that the owner of an easement need not state the use he intends to make of the easement or obtain governmental permits before commencing work. *Id.* at 384-85. The relief in *Beebe* is essentially identical to the relief granted here.

Ms. Adams's arguments that the Ingold Trust has no immediate plans to use Easement are similarly irrelevant. She is not required to move her fence at this time, and when the Ingold Trust plans to open the Easement for actual use, it does not need to provide any such plans to Ms. Adams under Washington law. *Id.*

Ms. Adams fails to show any abuse of discretion by the trial court or why summary judgment on the ejectment claim was improper given the undisputed facts of this case. Consistent with Washington law, she is being permitted to keep her fence on the Easement while the Easement is not in use. However, Washington law is also clear that she cannot continue to block the Easement when the Ingold Trust needs to use it. *Thompson*, 59 Wn.2d at 409-11. Since it was undisputed that her fence completely obstructs access to the Ingold Property, summary judgment on the ejectment claim was proper.

**C. The Court Should Award The Ingold Trust Its Reasonable Attorneys' Fees And Costs For Responding To This Frivolous Appeal.**

Pursuant to RAP 18.9(a), the court may award terms or compensatory damages including reasonable attorneys' fees and costs as a sanction for filing a frivolous appeal. "An appeal is frivolous if there are no debatable issues upon which reasonable minds might differ and it is so totally devoid of merit that there [is] no reasonable possibility of reversal."

*State ex rel. Quick-Ruben v. Verharen*, 136 Wn.2d 888, 905, 969 P.2d 64 (1998) (internal quotes omitted).

Here, the basis for Ms. Adams's appeal of the quiet title judgment is an expansion of the Easement that was never sought and did not occur. The Ingold Trust expressly stated in its opening summary judgment brief, the declaration of Curtis Young, and in its reply brief, that it did not seek access to the portion of the Ingold Property added in the boundary line adjustment. (CP 27 (at n.8), 45-46, 189-90.) Yet Ms. Adams persisted in arguing that the Easement was being expanded. Then, after the trial court quieted title to the Easement only for the benefit of the original Ingold Property, Ms. Adams filed this appeal, still asserting that the Easement had been expanded. (App. Br. 1.) Ms. Adams's disregard for the undisputed facts of this case and the plain language of the court's judgment, as well as her appeal of these issues without legal basis warrants sanctions under RAP 18.9.

Similarly, there are no debatable issues with respect to the ejectment claim. An appeal of a discretionary ruling simply because the appellant disagrees with it, without making a debatable showing of abuse of discretion, is deemed frivolous. *See, e.g., Johnson v. Jones*, 91 Wn. App. 127, 137-38, 955 P.2d 826 (1998). Ms. Adams never disputed that her fence completely blocks the Easement, and she is still permitted to

maintain her fence on the Easement while it is not in use by the Ingold Trust. She has not shown any abuse of discretion, or pointed to any disputed fact or legal authority that would have precluded summary judgment. To the contrary, the court's order is entirely consistent with Washington precedent. *See Thompson*, 59 Wn.2d at 409-11; *Beebe*, 58 Wn. App. at 384-85. An award of attorneys' fees and costs is warranted.

## V. CONCLUSION

There is no dispute that the Easement exists for the benefit of the original Ingold Property and that the Ingold Trust seeks access to only the original Ingold Property. The trial court did not grant the Ingold Trust additional access beyond the 1962 Easement grant or otherwise expand the Easement. No remaining genuine issues of material fact precluded summary judgment. This court should therefore affirm the trial court's judgment quieting title to the Easement in favor of the Ingold Trust for the benefit of the original Ingold Property.

There was likewise no abuse of discretion in the trial court's judgment granting the Ingold Trust's claim for ejectment. And, even if this court applied a *de novo* standard of review, summary judgment was proper on the undisputed facts of this case. It is undisputed that Ms. Adams's permanent fence completely blocks access to the Ingold Property from the fenced portion of the Easement. Therefore, it must be

removed when the Ingold Trust needs to open the Easement as a road. *See Thompson, 59 Wn.2d at 409-11.* Consistent with Washington law, Ms. Adams is being permitted to maintain her fence on the Easement during its period of nonuse. *See id.*

For the foregoing reasons, this court should affirm the trial court's order granting summary judgment in favor of the Ingold Trust on its quiet title and ejectment claims.

DATED this 22nd day of February, 2011.

Respectfully submitted,

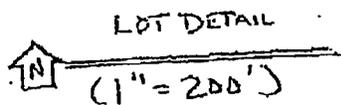
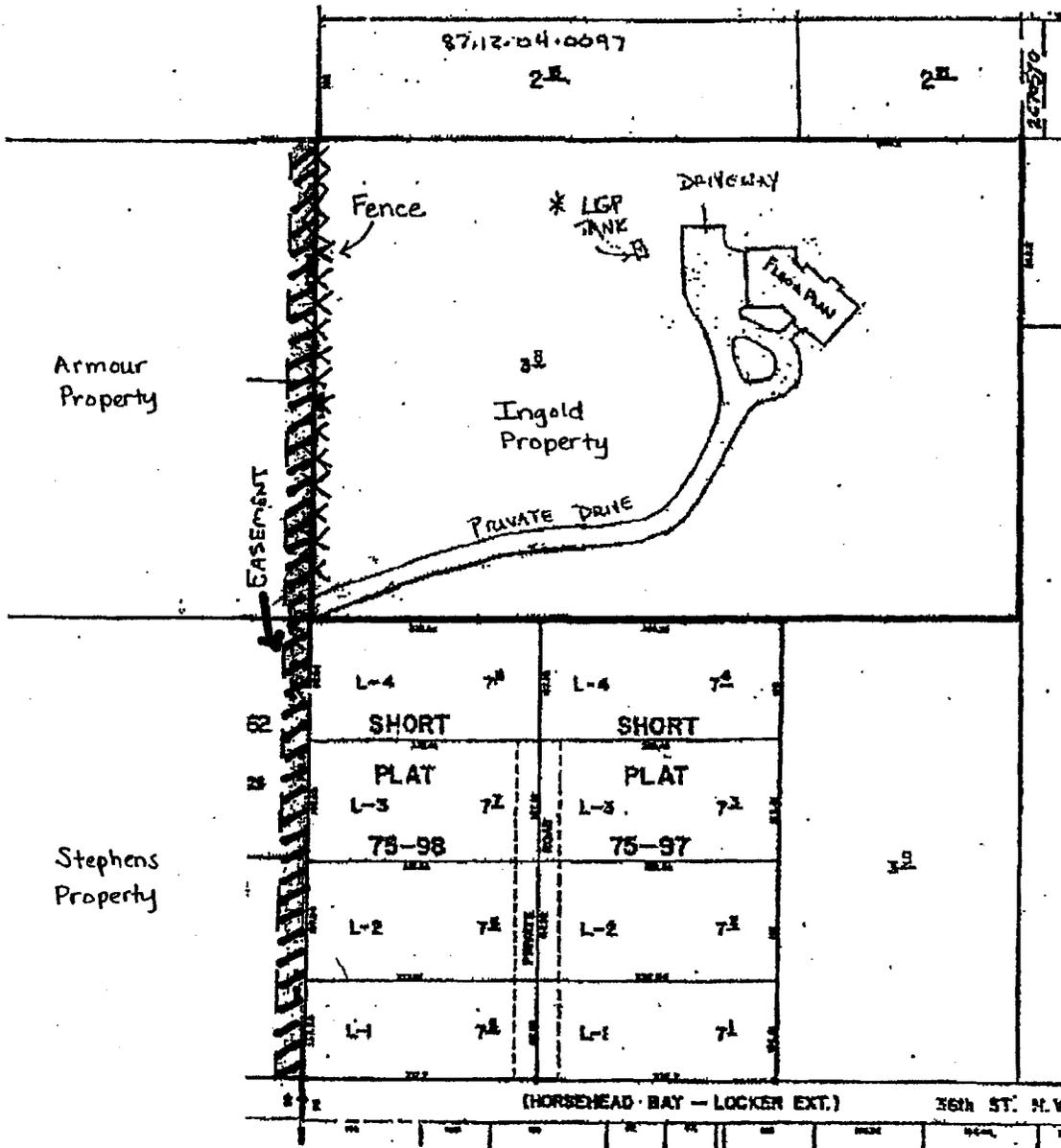
FOSTER PEPPER PLLC

  
\_\_\_\_\_  
Rodrick J. Dembowski, WSBA #31479  
Adrian Urquhart Winder, WSBA #38071  
Attorneys for Respondent

# **Appendix A**

5

Parcel No: R 0121223108



Property Owner: Craig & Rose Brubaker  
 Address: 10125 36th St. NW

# **Appendix B**

STATUTORY WARRANTY DEED

135328

Statutory Warranty Deed

1353704

WARRANTY DEED SECTION 338 COMPASS

RECORD REAL ESTATE DIVISION P. O. BOX 10000 SEASIDE, WASH. DATED: 3-21-62

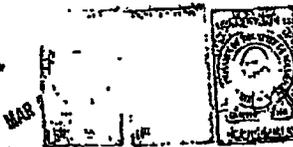
Statutory Warranty Deed

THE GRANTOR CHARLES E. SINDING, as his separate property

for and in consideration of TEN DOLLARS (\$10.00) and other valuable considerations in hand paid, conveyed and assigned to DURWARD M. LOWELL II, a single man, the following described real estate situated in the County of Pierce Washington:

The Northwest quarter of the Northwest quarter of the Southwest quarter of Section 22, Township 21 North, Range 1 East of the Willamette Meridian, GRANTING to the Purchaser, his heirs, successors and assigns a perpetual non-exclusive easement for road purposes, over, through and across the East 30 feet of the Northeast quarter of the Southeast quarter of Section 21, Township 21 North, Range 1 East of the Willamette Meridian.

RCMR TAX PAID \$ 140.47 L. R. JOHNSON, Pierce Co. Treas.



Dated this 14th day of March, 1962

Charles E. Sinding

STATE OF WASHINGTON, County of Pierce

On this day personally appeared before me Charles E. Sinding to me known to be the individual described in and who executed the within and foregoing instrument, and

Handwritten notes: 2-20, 21-21-18, 53, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

**Exhibit B**

Subject to: Terms, covenants, conditions and/or provisions contained in easement recorded under APN 9102840327; Terms and conditions of Notice of Moratorium on Non-Forestry Use of Land recorded under APN 9710148622

# **Appendix C**

200005300658 2 pg  
5-30-2000 02:48pm \$9.00  
PIERCE COUNTY, WASHINGTON

BRADLEY L ARMOUR  
STEPHANIE L ARMOUR  
7518 41ST ST CT NW  
GIG HARBOR, WA 98335

**RAINIER TITLE COMPANY**

**STATUTORY WARRANTY DEED**

RE: Escrow No.: 3014277G, Title Order No.: 103014277 *etc*

Legal Description: LOT 5 & 6 OF LL SURVEY #599  
Full Legal on Page 2  
Assessor's Tax Parcel I.D. No. 012121-4-088 & 4-089

THE GRANTOR JOHN C FRAZIER and JULIE E FRAZIER, husband and wife

for and in consideration of Ten Dollars (\$10.00) and other valuable consideration in hand paid, conveys and warrants to

BRADLEY L ARMOUR and STEPHANIE L ARMOUR, husband and wife

the following described real estate, situated in the County of PIERCE, State of Washington:

See "EXHIBIT A" attached hereto and by this reference made a part hereof.

Dated: May 22, 2000

*[Signature]*  
JOHN C FRAZIER  
*[Signature]*  
JULIE E FRAZIER

State of WASHINGTON

County of PIERCE

I certify that I know or have satisfactory evidence that JOHN C FRAZIER and JULIE E FRAZIER, ~~is/are~~ the person(s) who appeared before me, and said person(s) acknowledged that ~~he/she~~ they signed this instrument and acknowledged it to be his/hers/their free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: *May 25, 2000*  
Notary Public in and for the State of Washington

Residing at *Grain*

My appointment expires *9-17-01*



200005300658

LFB - 10

(Form 571)

ETN: 1030527 5-30-2000  
Excise Tax Collected: \$2249.10  
Cathy Pearsall-Sipek CPO Pierce County Auditor  
BY: EXCISE CLERK *[Signature]*

For reference only, not for re-sale.

**EXHIBIT A:**

**PARCEL A:** Lots 5 and 6, PIERCE COUNTY LARGE LOT SUBDIVISION NO. 599 ENTITLED MCGILL HEIGHTS SUBDIVISION, according to map thereof recorded in volume 6 of Surveys, Page 99, records of Pierce County Auditor.

**PARCEL B:** A non-exclusive easement for, but not limited to ingress, egress, drainage and utilities, as established in instrument recorded under Auditor's No. 2999248.  
**EXCEPT** any portion lying within said premises.

Situate in the County of Pierce, State of Washington.

**SUBJECT TO SPECIAL EXCEPTIONS:** Covenants, conditions, restrictions, reservations, easements or other servitudes disclosed by Pierce County Large Lot No. 599; Easement and the terms and conditions thereof disclosed by Statutory Warranty Deed No. 1959704; Easement and the terms and conditions thereof recorded June 23, 1980 under recording no. 2999248; Matters set forth by survey recorded February 6, 1984 under recording no. 8402060299; Covenants, conditions and restrictions imposed by instrument recorded on May 21, 1990 under recording no. 9805210307.

For reference only, not for re-sale.

# **Appendix D**



FILED  
COURT OF APPEALS  
DIVISION II

11 FEB 24 PM 12:16

STATE OF WASHINGTON

BY \_\_\_\_\_  
DEPUTY

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

RANDALL INGOLD TRUST, by )  
and through its trustee, )  
BANK OF AMERICA, N.A., )  
Respondent, )  
v. )  
STEPHANIE L. ARMOUR, )  
DOES 1-5, )  
Appellant. )

No. 41115-6-II

DECLARATION OF  
SERVICE

I, Elizabeth Whitney, hereby state that on this 22nd day of  
February 2011, I caused to be served true and correct copies of the  
following:

- 1. Brief of Respondent; and this
- 2. Declaration of Service as follows:

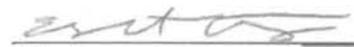
Daniel C. Montopoli  
James A. Krueger  
Lucy R. Clifthorne  
Vandenberg Johnson & Gandara, LLP  
1201 Pacific Avenue, Suite 1900  
Tacoma, WA 98401-1315

- Via Hand Delivery
- Via Facsimile
- Via Messenger
- Via Email

FILED  
COURT OF APPEALS DIV. #1  
STATE OF WASHINGTON  
2011 FEB 22 PM 4:40

I declare under penalty of perjury under the laws of the State of  
Washington, that the foregoing is true and correct.

Executed in Seattle, Washington this 22nd day of February 2011.

  
Elizabeth Whitney