

FILED

NOV 21 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By: _____

No. 314120

IN THE COURT OF APPEALS,
DIVISION III
OF THE STATE OF WASHINGTON

LEONARD N. BROWNING, a single person and
BARBARA L. DRAKE, a single person

Appellants,

v.

DOTY FAMILY TRUST, FOREST C. DOTY and LIL DOTY, husband and wife, and the marital community composed thereof; CHARLES C. AMBURGEY, SR. and SANDRA R. AMBURGEY, husband and wife, and the marital community composed thereof, STEVE GREENE, a married man, SUSAND BEAMER GREENE, a married woman, CHERITH FAMILY TRUST, and JAMES GIBSON and SYLVIA GIBSON, husband and wife and the marital community composed thereof,

Respondents.

BRIEF OF RESPONDENT; CHARLES C. AMBURGEY SR. and SANDRA A. AMBURGEY.

MICHAEL J. MCLAUGHLIN
ATTORNEY FOR RESPONDENT
CHARLES C. AMBURGEY SR. and
SANDRA A. AMBURGEY

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denied 117 WASH 2nd W24 820 P 2nd 510 (1991).

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Greenbank Club v Bunney 168 Wn App 517 2012.

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STATEMENT OF THE CASE

The respondents Mr. and Mrs. Amburgey (Lot 18) and Appellants' Mr. Browning and Ms. Drake (Lot 21) have an interest in adjacent Lots in Skookum Creek Development. CP 259-272 The Development is subject to covenants CP 169 DEF 103. The court held inter alia the covenants do not entitle Mr. Browning easement over the Southerly 10' of Lot 18 of the Amburgey property. CP 178. This appeal ensued.

ARGUMENT

Failure to take issue with findings admits them as accepted and exception cannot be raised in a reply brief. Lewis vs. City of Mercer Island 63 WA APP 29 817 Pend 408 review denied 117 WASH 2nd W24 820 P 2nd 510 (1991). The Appellants have failed to take issue with paragraphs 1.8, 1.10 and 1.17 of the findings of fact in their Notice of Appeal and or Appellate Briefs nor have they cited case law contrary to the trial court's ruling.

The Trial Court after reviewing the document and hearing the testimony of plaintiffs and defendants, CP 178 found;

1.10. All rights under Article C of the Declaration were reserved to the sellers; there is no stated mechanism for the reserved rights to devolve to the purchasers of property subject to the Declaration.

1.17. Plaintiff Browning alleges that Article C(4) of the Declaration provides him and/or plaintiff Drake with authority to utilize the Southerly ten (10) feet of Lot 18, owned by defendants Amburgey, for purposes of controlling drainage from Lot 18 to Lot 21, owned by Drake. No such right exists. While plaintiffs are free to modify Lot 21 along its border with Big Dog Drive in any way they see fit, be it to improve the quality of the road or drainage, they do not have any right to come upon Lot 18 for that purpose.

The trial court was proper in construing the covenants as a whole and giving effect to the intent of the parties by limiting the effect of the 10' easement to use of the developer, Greenbank Club v Brinney 168 Wn App 517 2012.

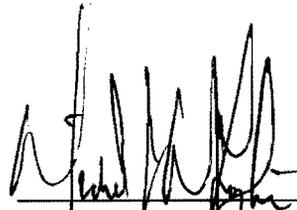
The findings are consistent and logical, the courts interpretations allows for the developers to install utilities (power, phone, etc) as needed and was done, then be maintained in place. The corollary is not logical. The developer would not provide for each individual lot owner to trench within ten (10) feet of any boarder in the development due to the disruption it would cause, hence the court correctly ruled.

¶5. It is further ordered, adjudged and decreed that the plaintiffs do not have any right to come upon Lot 18 for the purpose of improving the quality of the road or drainage. CP 178 ¶5

CONCLUSION

The Appellants have failed to object or raise the issues relevant to the Amburgey determination the findings of fact conclusions of law of the trial court are a verity. The courts findings and determination are supported by the plain meaning of the covenants and logic with regards to the orderly construction and maintenance of the development and should be upheld.

DATED this 15th day of November, 2013.



Respectively Submitted
Michael J. McLaughlin P.S.

DECLARATION OF SERVICE

I, Michael J. McLaughlin, declare as follows:

I am a resident of the City Newport and County of Pend Oreille , Washington. I am over the age of eighteen years and not a party to the within cause; my business address is

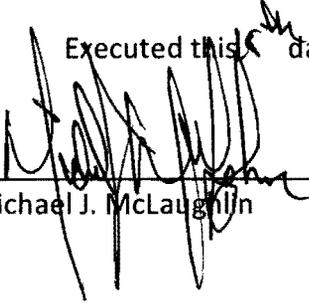
On 8 day of November, 2013, I mailed, by U.S. Mail, 1st class, postage prepaid, a true and correct copy of the

BRIEF OF APPELLANT

1. Leonard Browning PO Box 9 Priest River, ID 83856
2. Eric R. Shumaker Attorney at Law, 113 E Baldwin Ave Spokane, WA 99207
3. Steve and Susan Green 7501 S Greens Ferry Rd, Coeur D' Alene, ID 83814
4. James and Sylvia Gibson, Cherith Family Trust, PO Box 2208 Priest River ID 83856
5. Neil E. Humphries, 421 W Riverside Ave, Suite 830 Spokane, WA 99201

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

Executed this 8 day of November, 2013, at Spokane, Washington



Michael J. McLaughlin