

**FILED**

NOV 17 2017

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

NO. 349179

COURT OF APPEALS: DIVISION III  
OF THE STATE OF WASHINGTON

SUPERIOR COURT OF WASHINGTON  
COUNTY OF OKANOGAN  
14-2-00393-7

JOHN HARVEY CHAPMAN, and SALLY CHAPMAN, a married  
couple;

and JOHN CODELLA, JR, a single person, Respondents;

and WAYNE EVANS, a single person, Respondent;

v.

LESLIE CLOUGH, Appellant;

REPLY BRIEF OF APPELLANT

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I. Reply to Counter-Assignments of Error

1. The trial court did err by entering findings of fact 1-3, 5-17, 19-25, and 28-32.

2. The trial court did err by entering conclusions of law 2-13 and 15-17.

3. The trial court did err by entering judgement based on its findings and conclusions.

II. Reply to Counter-Statement of Case

1. Clough did argue why those findings of fact were erroneous and are thus not verities on appeal. RAP 10.3 (g) states in part "...or clearly disclosed in the associated issue pertaining thereto."

2. The trial court's findings 1-32, conclusions of law 17, and Judgement listed in the Brief of Respondents filed on Oct. 18, 2017 page 1-12 are in error as stated in Brief of Appellant and in this Reply as follows:

II. ARGUMENT

A. Clough's assignment of err to the trial court's findings has not been waived and the findings are not supported by substantial reliable

1  
2 evidence. Clough made an assignment of error for each finding of fact  
3 included with reference by number and “clearly disclosed in the associated  
4 issue pertaining thereto”; presented argument why the findings were  
5 erroneous with reference to record and citation of authority and therefore,  
6 should be considered and not waived or accepted as verities and the issues  
7 upon review are not limited to whether those findings of fact support the  
8 conclusions of law.  
9  
10

11 In an effort to comply with RAP 10.4 B 50-page limit and avoid  
12 repetition, and since the issues and arguments presented in Amended Brief  
13 of Appellant pertained to all the findings of fact listed were in err,  
14 Clough thought it was “clearly disclosed in the associated issue pertaining  
15 thereto” in the form presented. If this was not clear Clough will address  
16 each below. If that is not adequate Clough moves the Court to allow her to  
17 Amend her Brief to serve justice or RAP 10.7(1) or (7).  
18

19 The court erred in (Court’s Findings of Fact and Conclusions of  
20 Law from trial; Order P8-11 pp1-16, Christopher Culp, Okanogan County  
21 Superior Court WA (08-23-2017)  
22

23 FOF p1, pp 1, Clough thought all her exhibits had been formally  
24 offered and admitted because she offered exceptions to rules and witness  
25

1  
2 verifications Amended Brief of Appellant filed 7/17/2017 p 26, 13,14;  
3  
4 Reply Brief of Appellant, p iii, Appendix A, No. V.

5 FOF p2 No1 Evans no longer owns property before trial (see RBOA  
6 Id., App. B Evans Quit Claim Deed (ABOA p 17, Id). Chapman not owner  
7 of 657611 not on his deed, must be in writing Ex. 5 (ABOA p 13. Id.).

8 FOF p2 No2 The easement shown in 657611 that crosses clough  
9 property does not lead to or abate any of the Respondent's properties  
10 therefore it is not an ingress egress for them. (Ex. 8, 28, 29, 32, 41,) (ABOA  
11 p19, Id.) Access to all Respondents properties have historically been, and  
12 they are still using Knox Road Ext. and Pine Ridge road which are shown  
13 connecting with 657611 easements that do lead through their properties and  
14 are adequate, legal access. Alleged "Evans Ranch Road" did not exist when  
15 Clough bought property, could not be traveled, and still can only be driven  
16 with off road unlicensed recreational vehicle even after excavation in 2008,  
17 while Respondents continue to access their properties without interruption  
18 through the two former routes. (Ex. 44, 52, 53, 54, 55, 56, 59, 62, 67, 72)  
19 (ABOA p 14, 15, 16,17, Id.)

20  
21  
22 FOF p2 No 3 Chappmans legal description does not depict an access  
23 or easement, it states "lack of" which means he does not have one Ex 5, 8.  
24  
25

1  
2 The old abandoned easement is not shown on 657611 to turn south at a 90-  
3 degree angle, but through Clough due west joining Pine Ridge Road just  
4 below codella's property, therefore it is not an access road because it does  
5 not meet any legal elements to be, not in writing see App. A p iii No. II.  
6 (ABOA p12, ,17,19, Id.)  
7

8 FOF p3 No 5 No reliable evidence was offered to prove this, only  
9 testimony by witness himself with monetary interest in outcome, and prior  
10 inconsistent statements See App. A, piii No. V; (ABOA p20-33, Id.; Exhibit  
11 Index 1-78, 2-3-2017)  
12

13 FOF p3 No 6 Mr. Codella does not know which route he was on  
14 Clough had to show him where his property was when they met. No  
15 evidence was offered only testimony by witness with monetary interest and  
16 prior inconsistent statements App. A No V;(ABOA p20-33, Id., Ex. 1-78,  
17 Id.)  
18

19 FOF p3 No 7 No reliable evidence was offered to prove this as fact,  
20 Evans laughed in court when he made that statement App. A NoV. Ex. 16  
21 shows no road at all, Ex. 45 proves logged common knowledge skid trail  
22 created in 1993 so Ex. 14, 15 show the logging skid trail, but Ex. 10 from  
23 1998 shows it already fading from non-useEx.62 no road, Ex. 52 2005 no  
24  
25

1  
2 road, 2015 from non-use, Ex 27, 28 does not show alleged “Evans Ranch  
3 Road” skid trail, Ex 33 is the survey that does not show the alleged road,  
4 Ex. 59, 72 are descriptions of the “road” when Clough showed, all the maps  
5 show the logging road fading with time after 1993 until 2008 when  
6 Chapman excavated the skid trail, then after 2008 it fades again Ex. 11 from  
7 2011 already faded since only ATV could travel the traffic pattern was to  
8 the bottom of skid trail turn around still on Clough property and go back, or  
9 down from Knox Rd. Ext. turn around and back up with ATV’s, and the  
10 other two routes more worn Ex. 63, 55, 44, 52, 53, 54, 56, Clough and  
11 witnesses did not see him or anyone using and no sign of use in 2005 when  
12 viewing property until after Clough sent out road naming letter in 4/2007  
13 and excavated a driveway to her home and turn around beneath the skid trail.  
14 The route had a huge water runoff ditch, rocks, brush, fallen trees, a cow  
15 trail, and a field of tall grass, there is no way that anyone was using this as  
16 a “road” without being visible, contractor vehicles parked which is  
17 circumstantial evidence. There must be proof of “actual use” and there is  
18 none. App A NoII,IV,V,VI.VII; Ex. 28, 29, 30, 31, 32, 33, 34, 44, 49,  
19 52,53,54,59,62,63,67,68,69,72;ABOAp20, 13, Id.)  
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2 FOFp3No. 8 Clough shares a boundary with Chapman, but not with  
3  
4 Codella or Evans and Clough is not between any of them and the closest  
5  
6 county road “Knox Road Extension”. Chapman shares a common boundary  
7  
8 with Codella and Evans who are in between Chapman and the nearest  
9  
10 county road “Knox Road Extension” It is common knowledge that an  
11  
12 ingress egress easement is the shortest to the county road. Ex. 67, 68, 69;  
13  
14 ABOA p19, 20, Id.)

15 FOF pg3 No 9 Clough’s Quit Claim deed states “Together with all”  
16  
17 which means all easements and other together with the original deed Ex.  
18  
19 6,7. Clough’s Deed of Trust filed in Okanogan county Auditors File No.  
20  
21 3116866 on 4/11/2007 page 4 pp 1 “and all easements” page 3 shows  
22  
23 address “350 Knox Road” Baines Title gave Clough 657611 with her title  
24  
25 documents Appendix C (ABOA p36 at 19).

FOF pg. 4 No 11 Since the easement through Clough is shown  
leading to her property it is considered ingress egress and therefore it is an  
easement right for Clough Ex. 8. Clough had permission from the owners,  
Fanning, and the realtor to view the property. Carol Algie gave permission  
also, Ex. 73. Clough and the realtor had to leave the course of the  
abandoned looking easement due to a large washout hole, rocks, brush,

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fallen trees Ex. 72, 59, 52, 28, 27 . And had to walk for 6 months while she worked on renovation. Alleged “Evans Ranch Road” is not the same as Ex. 8 because it ended at the site she built her house and was just a field of tall grass. The realtor said, “This is the end of the road.” Clough said “Perfect, that’s what I’m looking for!” Clough knew the term ingress easement, but thought the 60 feet was to herd cows due to the trail ABOA p 14 .at 9-22, Id.) App A No VII,II

FOF pg. 4 No. 12 By the time George Conkle saw the alleged “road” Clough, family, friends, had been fixing and traveling for 7 months and turning around at the bottom of the skid trail, that’s why it looked like a “road” to Conkle when he finally arrived to build. It did not turn and go South up the skid trail, however and is not the same as depicted in ex. 18, and not the same as 657611, it follows the logging road made in 1993, the 657611 was abandoned when the 1993 logging road was made. Since it looked so abandoned none of the contractors could tell a “road” had ever been there therefore had no reservations with where they put the house. Conkle did not choose the spot, Badger Excavation did. A sketch drawn by a contractor of a trail on a site analysis does not give away an easement right . This sketch is what may have led the county to send the letter to

1  
2 Clough telling her to name the “road. (ABOA p 20-33, 13-171919, Id.) Just  
3 because someone draws a “road” on a map or names a road does not mean  
4 there is an easement over the “road”.  
5

6 FOF pg. 4 No. 13 Clough had already cleared the “road” in her 7  
7 months of visiting property before Conkle arrived p 14 at 11-22, p 25 at 22,  
8 29 at 11.  
9

10 FOF pg. 4 No. 14 Clough did not sign anything that granted  
11 “easement” which must be in writing App.A No.II, Since there was no sign  
12 of an “easement”, “road”, or anyone wanting to use it did not occur to  
13 anyone involved that it could have been and “easement” or “road” It is  
14 irrelevant because when she did read her title documents she saw there was  
15 no easement that went to Chapman, Codella, or Evans in it Ex. 8,28, 29,  
16 ABOA p 13-17, p25,26,29,30, 33, Id) App. A No I,II,IV,VI  
17

18 FOF pg 5 No. 15 All the documents, the realtor listing, Clough’s  
19 loan documents, the GPS,an more listed 350 Knox road, a driveway off  
20 from Knox Road, vacated over a mile below when Knox Road Extension  
21 took its place. This proves Evans made a prior inconsistent statement when  
22 he said “ it has always been Evans ranch road, I named it Evans Ranch road.  
23 Clough was misled into naming a “road” by the erroneous letter  
24  
25

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2 Ex 34, 33, ABOA p 13-17, 25,26,29,30,33, Id).

3  
4 FOF pg 5 No. 16 When Clough found out the road naming letter  
5 Okanogan County Planning Department sent 3/2007 was in err because  
6 there were not 3 residences and no legal easement, she tried to get Perry  
7 Houston to reverse the naming of the road but Houston refused and was  
8 rude and disrespectful to Clough but very helpful to Chapman. Houston  
9 said he didn't receive faxes and took pictures of abandoned road out of files  
10 before he admitted as evidence, kept drawing in more and more roads, and  
11 took the rest of Pine Ridge Road off the map, made maps that did not show  
12 Knox road Extension or Pine Ridge, or the other roads in the area that  
13 Chapman uses. Houston told Clough she had to hire an attorney. Ex. 34,  
14 33, 67, 68, 69, 28, ABOA p 13,17,25,26, 29,30,33, Id.

15  
16  
17 FOF pg 5 No 17 Just because a "road" has a name does not mean it  
18 is a public road or that Chapman, Codella, or Evans have a legal easement  
19 right over it. Clough did not at any time give written deed for easement, Id.  
20 Since the 657611 easement does not lead to their properties for ingress  
21 egress and the skid trail is not included on 657611, Chapman's deed does  
22 not list 657611, therefore Chapman, Evans, or Codella are not subject to or  
23 benefiting from the alleged "road" they would like to call "Evans Ranch  
24  
25

1  
2 Road” which Clough has filled out paperwork to correct the err and reverse  
3 name back to a driveway off from the vacated end of Knox Road. App A  
4 No I,II,III,VI, VII, . Ex. 34, 33, 67, 68, 69, 28, ABOA p 13,17,25,26,  
5 29,30,33, Id.

6  
7 FOF pg 5 No. 19 There is no reliable evidence or witness that  
8 Clough ever threatened anyone with harm, she did not threaten anyone with  
9 harm and would never. Chapman’s and Evans invites are the ones who were  
10 threatening and harassing Clough Ex. 40. Clough revoked her permission  
11 to Chapman when she caught his Grandson hunting on her property Ex. 61  
12 is the business card he gave Clough and said “you had better watch out” but  
13 he is the one who threatened her not the other way around. Chapman’s hire  
14 Alexander threatened to bull doze Clough’s house down. Sherriff’s reports  
15 show that clough never threatened any of them, but they constantly harassed  
16 her Ex. 40. There is no evidence offered or admitted that Clough ever  
17 threatened with harm she did not and would not. The witnesses have a  
18 monetary interest in the outcome, have made prior inconsistent statements,  
19 so they should be impeached and are not reliable witnesses or evidence.  
20 Clough asked them to help pay for the renovation and maintenance of the  
21 alleged “road” and said on the phone an idea of maybe a per use percentage  
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1  
2 of the maintenance because it was costing a fortune and a lot of work when  
3 they tear up the road with off road unlicensed vehicles and it is only fair for  
4 them to help pay if they ruin. Their response was to try to put a restraining  
5 order on Clough, when all she did was ask them to help pay maintenance  
6 and tell their invites to slow down, no hunting or parking, etc. Clough had  
7 never met or seen or set an appointment to meet with Chapman, had a very  
8 friendly meeting with Codella years later, and Evans and his invites are the  
9 ones who threatened Clough, not the other way around. There are sheriff  
10 reports that show Evans invites harassing Clough in Ex. 40 but no arrests  
11 were made on Clough and she at no time threatened any one with harm.  
12 Clough kept full ownership rights of her property by legal means App A No  
13 VII. The Respondents are still harassing Clough to present with sexual  
14 gyrations every time they pass and stalking her in town. I put up gates and  
15 locked them and fell a tree legal rights by legal means App a No IX,VII;  
16 Ex. 59, 58, 57, 56, 46, 39, 38, 37, 66, 74; ABOA p 36-39, 39-42, 42-46, 20-  
17 33, 19,20, Id.) .

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20  
21 FOF page 5 No 20 The third parties causing the problems are known  
22 they are J. Harvey Chapman and invites Ex. 61, 65, Ryan Burkett, Jake  
23 Evans, Michael Evans, Adam McNall, their families and invites Ex. 40.  
24  
25

1  
2 Clough “asserted ownership rights” and was within the law in protecting  
3 her life and her property by legal means since they did not have a legal right  
4 to easement App A No VII, IX,IV, II; Ex. 60, 59, 58, 57, 56, 48, 70, 39,  
5 ABOA p 36-39, 39-42, 13-17, 19, 20, Id.)  
6

7 FOF pg6 No 21 The Respondents have accessed and are accessing  
8 their properties without interruption via legal express right shown on  
9 657611 connecting with Knox Road Extension, a county road, a shorter,  
10 less steep, and more feasible, adequate, reasonable route, and Pine Ridge  
11 Road , right through Codella and Evans border to Chapmans shown on  
12 Evans quit claim deed as “subject to easements which are apparent” and  
13 shown in Ex. 56, and a passenger car in 2 wheel drive in video Ex. 30, 63,  
14 67, 68, 69, 44, 52, 53, 54, which are better roads than the alleged Evans  
15 Ranch Road that still cannot be traveled by passenger vehicle but only  
16 recreational vehicle App A No IX,II (ABOA p 13-17, 19,20, 42-46).  
17  
18

19 FOF page 6 No 22 Clough’s house sits 5 feet in the easement Ex.  
20 48 shows measuring tape 25 feet to where the centerline most likely was.  
21 Conkle and all the other contractors did not know there was an “easement”  
22 or “road” it did not look like it, and they saw no one want to use so it did  
23 not occur to them to set back from anyplace but the property line, this is  
24  
25

1  
2 circumstantial evidence that Conkle, Badger, well driller Hubbard, PUD,  
3 Clough, Sadowsky, all Conkle's hires did not consider the driveway an  
4 access road therefore had no reservations about putting in the services.  
5 Clough's well is 20 feet inside, the PUD underground is 20 feet inside or  
6 more Ex. 48, 27, 28, 29, 48, 60, 70, ABOA p 12,13, 36-39, 42-46. App A  
7 No. VII, I,IX  
8

9  
10 FOF pg 6 No 23 Schedule B does not show the course of the  
11 "alleged" "road" which takes an entirely different route. Ex. 20 only shows  
12 a sketch not drawn or seen by Clough. Ex 26 is a "guess" where there may  
13 have been an easement 38 years ago. Ex. 26 does not show anything even  
14 close to what is really there, were done for profit specifically for trial to  
15 prove, are inaccurate, wrong measurements, were not receiving a signal,  
16 were not on centerline, did not measure where "easement" actually may  
17 have been, done in a hurry, and not disclosed in pretrial statement, should  
18 not have been allowed on property, were not impartial, and were only  
19 admitted for illustrative purposes. Ex. 15 and 16 show the logging road  
20 created in 1993 one-time permission, and abandoned which did not follow  
21 the true course of the 657611 easement. (ABOA p19, 20,20-33, 13-17)  
22  
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2 FOF pg 6 No 24 There is not adequate distance on Clough property  
3 to relocate “easement” (Ex. 28, 41, 48, 50, 70, ABOA p 42-46) App A No.  
4 IX. proposed route leads right through clough’s wood shed, tool shed, fire  
5 pit, turn around parking, yard, extremely dusty Clough sensitive to dust,  
6 travelers look right in clough’s huge solar windows, no privacy, hardship to  
7 Clough.  
8

9  
10 FOF page 6 No 25 Chapman, Codella, and Evans had access to their  
11 properties without interruption through their express legal and more  
12 adequate rights connecting with Knox Road Extension and Pine Ridge Road.  
13 Berringer admitted in court that he obtained permission to remove timber  
14 through Knox Road Extension and Pine Ridge Road. The DNR and Forest  
15 Service and others used those routes yearly to check for lightning fire,  
16 Berringer used those routes, McNall used those routes, Erickson used those  
17 routes to survey Codella, more...The respondent’s timber was small  
18 diameter due to neglect and was not worth logging or they would have. This  
19 was a ploy to waste all the time at trial, confuse the issues, and delay. Ex.  
20 30 shows Pine Ridge Road through Codella and Evans to Chapman with a  
21 sign saying “Evans” on the tree next to the road and Evans entry way. Ex.  
22 44,52, 53, 54, 55, 56, 68, 69, 67, all show Chapman, Codella, Evans well  
23  
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1  
2 used adequate access routes, shown in 657611 therefore legal for Codella,  
3 Evans, and used by Chapman. In comparison, the following Exhibits show  
4 non-use through Clough property Ex. 29, 31, 35, 41, 48, 52 59, 62, 70, 71,  
5 72, 75; ABOA p 12,13,13-17, 19,20, 20-33, 36-39, 39-42, 42-46)

6  
7 FOF page 7 No 28 The other access routes to Chapman, Codella,  
8 Evans have more rights than through Clough's, are better, cheaper to  
9 maintain, not as steep, shown in 657611, and lead directly to the county  
10 road shorter and wider. Ex. 44,52, 53, 54, 55, 56, 68, 69, 67, ABOA p  
11 12,13,13-17, 19,20, 20-33, 36-39, 39-42, 42-46) App A No II,V,

12  
13 FOF page 7 No 29 The "various unknown individuals" are Ryan  
14 Burkett, Jacob Evans, Michael Evans, Wayne Evans, Chapman's Grandson  
15 J. Harvey Chapman, Chapman's hire Monte Alexander and Adam McNall,  
16 and all their invites. Exhibits 40, 56, 57, 58, 61, 74 and witnesses Sadowsky,  
17 Audrey Conkle, and Clough all prove the hostile, harassment and nuisance  
18 improper acts, emotional harm, aimed at Clough App A No VIII, ;ABOA p  
19 39-42.

20  
21 FOF page 8 No 30 Contact could be avoided if they turned around  
22 at the "no trespassing" signs and stayed on their own legal access Pine Ridge  
23 Rd. Clough has a yard and a fence for her dog. Clough had locked gates  
24  
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2 App A No IX and no trespassing signs after she was threatened and harassed  
3 but the people listed above cut the gates or walked to Clough's home  
4 without being invited and often to her sliding glass door. McNall told the  
5 Sherriff he was working for Evans, then he told the court he was working  
6 for Chapman which is a prior inconsistent statement, he had monetary  
7 interest in obtaining an 87,000. Contract to fix the skid trail so he should be  
8 impeached as a witness. Walking up to Clough's door is not trying to avoid  
9 contact it is trying to nuisance and harass Clough with a hidden tape  
10 recorder in their hand. They knew they could not ingress egress the route,  
11 but kept harassing clough in her own yard. Ex. 40, 39, 40, 46, 50, 56, 57,  
12 58, 59, 61, 65, 71, 72, 67, 68, 69, 44 ABOA p 13-17, 20-33, 36-39, 39-42,  
13 42-46)

14  
15  
16  
17 FOF pg.8 No. 31 Chapman, Codella, and Evans suit are the direct  
18 cause of Clough's attorney bills incurred in order to defend, with examples  
19 shown in Appendix B. The expense of attorney is common knowledge. Ex  
20 66, 38 ABOA p 39-42, 13-17, 42-46; App A No VIII

21  
22 Any FOF above that is more properly characterized as a conclusion  
23 of law shall be treated as such.  
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3           The trial court erred in Finding of FACTS are listed that have no  
4 evidence to prove them. Appellant Clough thought she had impeached the  
5 witnesses by proving they had capitol interest in the outcome of the issues,  
6 had been harassing Clough, and had no evidence to prove what they said to  
7 be true, and made several conflicting statements, obvious that they were not  
8 telling the truth when their testimony was well rehearsed as they all pointed  
9 at a large orange rectangle around Clough property and a bright yellow line  
10 which depicted where they want the alleged "Evans Ranch Road" to follow.  
11 They said they used it once with the realtor but that does not make it an  
12 easement, not in writing, how do they know which route they took, I have  
13 to show them where my driveway was and the forest service had to show  
14 Codella where his property was. There is no evidence that Clough ever  
15 threatened any Respondents with bodily harm so it should not be listed as a  
16 fact. Everything the Respondents said at trial was listed as fact without any  
17 evidence to prove, but nothing Clough said was listed as fact even when  
18 there was evidence to prove. This was not impartial or equitable. Since the  
19 Overcolored were based on misinformation from impeached witnesses and  
20 no reliable evidence was offered the court erred in relying on these as facts  
21 and Crandall confused the issues to use up all the time in the trial so Clough  
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2 did not have enough time to present her case or answer to all the  
3 misinformation then the erred facts should be stricken from the record. (Id.  
4 Answer p1-24; Id. Reply p1-34; Id. Ex. 1-78; VRP ABOA p 20-33 )  
5

6 B. The trial court erred when it based its Conclusions of Law on  
7 erroneous Findings of Fact based on unreliable evidence and impeached  
8 witnesses when Clough proved a preponderance of reliable evidence and  
9 witness. (Court's Findings of Fact and Conclusions of Law from trial; Order  
10 P1-8 pp.1-31, Christopher Culp, Okanogan County Superior Court WA (08-  
11 23-2017) (Id. Answer p1-24; Id. Reply p1-34; Id. Ex. 1-78; VRP  
12

13 Conclusions of Law page 8 No 2 is in err because Codella or Evans  
14 property does not lie on or abate an easement across Clough property shown  
15 on 657611, therefore to cross Clough property would not be ingress egress  
16 is commonly known, and they do not have legal or equitable right to  
17 easement over Clough property (Ex. 28, 27, 29, ABOA p 19,20, Id.) App A  
18 No II  
19

20 COL pg 8 No 3 Since Codella or Evans do not have legal right to  
21 ingress egress easement over Clough property, Clough's property was  
22 vacant Ex.33,unenclosed Ex. 42 when she bought, Clough gave permission  
23 Ex. 51, 34, and Clough's deed and tax records show Clough has exercised  
24  
25

1  
2 full ownership rights of her property from 2006 until 2017 Ex. 60, Clough  
3 does have legal right to revoke under neighborly accommodation, adverse  
4 possession and otherwise. (ABOA p 33-36, 36-39,13-17, 19,20,12,13, 17-  
5 19) There was not an existing roadway in 2000 or 2006 over Clough and it  
6 was not proven Ex. 29, 62 shows abandoned, 52 page 1 shows no road dated  
7 2005 before Clough bought, and faded in 2015 , 7 years after excavation in  
8 2008, but shows other routes becoming more worn, 59 tells sensory  
9 memories of how abandoned the alleged “road” looked to 4 different people,  
10 all maps before the 1993 logging Ex 45 do not show any “road” Ex 16, and  
11 maps after 1993 show the logging skid trail fade with non-use Ex. 29,62,  
12 (ABOA p 14,15, 20-33, ) App A No I, II, III, IV, V, VI, VII, VIII, IX

13  
14  
15  
16 COL pg 8 No. 4 is in err because Ex 5 does not sufficiently identify  
17 and must be inwriting on a deed. ABOA p 13-17; App A No II

18 COL pg 9 No 5 is in err because Chapman does not fulfill the  
19 elements to gain an implied easement because his deed in Ex. 5 shows he  
20 bought from A and M Northland, Ex. 7, 6, show Fanning and Tunk Valley  
21 Ranch Whom Clough purchased from which are not the same, therefore,  
22 unity of title has not been proven. 657611 does not show unity of title and  
23 does not show clear intent to grant chapman easement, it is not necessary  
24  
25

1  
2 because chapman fulfills all the elements necessary for WA Spec. Easement  
3 by necessity in which the court will determine the shortest to the county  
4 road, most feasible, least expensive route which is the route he has been  
5 using without interruption through codella/Evans line to Pine Ridge Road  
6 connecting to easements shown in 6 57611 connecting to Knox road  
7 Extension, shorter, less steep, already travelable by passenger car, less  
8 costly, least expensive, and most equitable Ex. 53, 54, 52, 30, 67, 68, 69,  
9 ABOA p . 13-17, 20-33 Chapman's property is not shown inside the 657611  
10 boundaries, no easement was intended, it is not necessary with more  
11 adequate routes available, if no legal access then WA Spec. Ease. By  
12 Necessity. The 100 plus feet of Clough property is a substantial amount  
13 and there is no legal or equitable right over for anyone. App A No II

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16  
17 COL pg 9 No 6 is in err because chapman, Codella or Evans does  
18 not fulfill the elements required by law for prescriptive easement because  
19 he purchased his property in 2000, Clough put Chapman's deed 2000,  
20 Clough house in 2006 which took full possession of ownership and stopped  
21 Chapman and invites from using in 2008 as shown in Sherriff records Ex.  
22 40, therefore not fulfilling 10 years required by law. Clough's property was  
23 vacant, undeveloped, open and unenclosed before 2006 Ex. 42, 60, owners  
24  
25

1  
2 lived in Olympia Ex. 33, therefore presumed permissive and no easement  
3 made. Clough also gave them neighborly accommodation to use the 2 years  
4 used. Prior use was not proven with reliable evidence or witness while a  
5 preponderance of evidence otherwise. Ex. 5, 6,7,60, 51, 33 ABOA p 33-36,  
6 36-3913-17 ; App A No VI, VII  
7

8 COL p 9 No 7 Clough has legal right to revoke permission and  
9 claim her property rights by law. Clough has the right by law to a locked  
10 gate on her property and needs one for safety, cattle on rangeland, hunters,  
11 robbers, partiers, recreational trespassers, more No law or evidence proves  
12 Clough cannot lock her gate. Ex. 40, 56, 39, 57,58,61, ABOA p 12,13,13-  
13 17, 18, 19, 20-33, 33-36, 36-39, 39-42; App A No IX, VII, VI, V, IV, III,  
14 II, I  
15

16 COL pg 9 No 8 is in err because Chapman, Evans, Codella were  
17 using the other routes all along and kept and are still using them and  
18 enjoying their properties without interruption Ex. 30, 44, 52 pg 1, 4,5, Ex.  
19 53, 54, 55, 56, 67,68,69,. They did not have any legal or equitable right  
20 over Clough property in the first place, Ex 27,28,29 it was not proven that  
21 they ever actually used the route. ABOA p 13-17, 17-19, 18-20, 20-33, 33-  
22 36, 36-39, 39-42 ; App A No II, III, IV, V, VI, VII  
23  
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3 COL pg 9 No 9 is in err because their other routes are relevant to  
4 prove necessity, and WA Spec. the court will choose the best route, and  
5 they do not have legal right to cross Clough's property, while the other  
6 routes are shown on 657611 that do lead to Respondents' properties for  
7 ingress egress, therefore Respondents have adequate legal access joining  
8 with knox ext. and over Clough property is not necessary. Ex. 27,28, 30,  
9 44, 52p1,p4,p5, 53, 54, 55, 56, 63, 67, 68, 69, ABOA p13-17, 17-19, 19-20,  
10 20-33, 33-36, 36-39, 39-42, 42-46, 12,13; App A No II,VI,VII, VIII  
11

12 COL pg 10 No 11 is in err because they are not entitled to a judgment  
13 quieting title they do not have a legal easement right or to a permanent  
14 injunction because they do not have legal right to cross Clough property  
15 because it is not in Chapman's title deed and it does not lead to Evans or  
16 Codella property therefore not ingress egress ABOA p 12, 13-17, 17-19,  
17 19,20,20-33, 33-36, 36-39, 39-42, 42-46; App A No I, II, III, IV, V, VI, VII,  
18 VIII, IX  
19

20 COL pg 10 No 12 is in err because Clough is liable to replace since  
21 there was no "road" when Clough made one in 2006 Ex. 29, 32,33,34,35,  
22 48, 52p259, 62, 70, 72, ABOA p13-17, 19,20,20-33, 33-36, 36-39, 39-42,  
23 42-46; no damage has been done, the Respondents did not have a right to  
24  
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1  
2 legal easement over Clough property has not been proven, and it would be  
3 inequitable, unreasonable, unnecessary and cause undue hardship upon  
4 Clough App A No IX, VIII, VII, VI, IV, III, II, I

5  
6 COL pg 10 No 13 is in err because no legal easement right has been  
7 proven with reliable evidence or witness, Id. , no damage has been done, Id.,  
8 it is unnecessary, Id., it would not be equitable, it would cause undue  
9 hardship upon Clough, completely change the private and safe character of  
10 Clough's home, violate clough's constitutional rights, and cost Clough  
11 thousands of dollars Ex. 28, 39, 46, 47, 50, 56, 59, 60, 62, 70, 72 ABOA p  
12 42-46, 39-42, 36-39, 33-36, 20-33, 19,20, 17-19, 13-17, 12,13; App A No  
13 I, II, III, IV, V, VI, VII, VIII, IX

14  
15 COL p 10 No 15 Clough has not claimed others or Okanogan  
16 County are responsible for her decisions or lack of understanding, Clough  
17 merely asserted that her house passed all inspection while being built and  
18 no one complained it was on an "easement" because it looked so abandoned  
19 no one could tell it might have once been one, no one was seen, Id, and she  
20 was misled into naming a "road" by the erroneous letter they sent her , but  
21 she did not sign and give away an easement in writing as required by law.  
22 Clough's lack of understanding only shows her good faith because when  
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2 she did research about easements she found the Respondents do not have  
3 one and revoked her permission due to misconduct Ex. 33, 34, the problem  
4 lies in that the planning department refused to correct the mistaken name  
5 App A No V, II, VII  
6

7 COL p10 No 16 is in err because Chapman identified his grandson's  
8 business card in trial as one of the hunters who threatened Clough gave her  
9 Ex. 61, McNall testified that he was working for Chapman when he cut  
10 through her gates, drove through her no trespassing signs and harassed her  
11 when he was hunting Ex. 40 picture, Evans on ATV parked hiding watching  
12 Clough out walking Ex. 40 picture, Ex. 74 Evans invites Burkett walked up  
13 to Clough's home when she was gone when they knew they could not  
14 ingress egress through her yard and harassed Sadowsky then taped Clough  
15 without permission while she was having anxiety attack then played it in  
16 court right before closing statements even though it was not disclosed at  
17 pre-trial causing Clough extreme emotional distress unable to deliver  
18 closing statements in trial, Ex. 40 contains Sherriff reports of partying, back  
19 and forth past Clough in the hot tub, gun shots in which Evans invite Burkett  
20 was later arrested evans testified, destroyed Clough's gates, Ex. 56 Burkett  
21 hate video on Facebook slander calling Clough a "hippie" and showing a  
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3 gun, spinning huge clouds of dust, yelling obscenities at Clough in the  
4 middle of the night, littering and burning cigarette butts during fire season,  
5 damage to roadway and refusal to help pay or help with maintenance, sexual  
6 gyrations at Clough, aggressive driving 2 inches behind her even in town,  
7 park 2 inches behind her if they see her in town, back and forth past the  
8 school where she works, comes up to her table unwanted and uninvited  
9 saying creepy things if Clough goes out to dinner in town, parking on  
10 Clough property for guide hunters, partyers, and left vehicle on Clough  
11 property for 3 months, more, Ex. 39, 38, 59, 58, 57; App A No VIII

13 Exhibit 40 shows a preponderance of evidence of Evans and invites  
14 with Sherriff reports, pictures, and 3 reliable witnesses testified to When  
15 Chapman filed suit it caused Clough to hire an attorney which cost  
16 15,000.00 (Ex. 38) and more so it is direct result incurred from this suit. All  
17 the above should be responsible to help pay renovation and maintenance for  
18 the 3 years they used the driveway tearing up with unlicensed off-road  
19 vehicles with permission, especially the recent damage from the snow cat  
20 Clough had to take out a 4,000.00 loan to fix and Chapman Evans refused  
21 to help pay. Clough is entitled to damaged direct result caused by  
22 Respondents and directly related and caused by this suit and the harassment  
23  
24  
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2 non-payment of maintenance incurred by Respondents. ABOA p 39-42, 42-  
3 46, Clough is still having nightmares, anxiety, bad health, her work is  
4 suffering and at risk of being terminated as a direct result of the nuisance,  
5 harassment, of the Respondents therefore, Clough is entitled to damages for  
6 road renovation and maintenance, attorney fees, damages for emotional  
7 harm, and market value of home and easement if awarded to Respondents  
8 as well as relocation costs, loss of profession and medical bills all direct  
9 result of Respondents and this suit. App A No VIII, IX  
10  
11

12 COL pg 11 No 17 Any Conclusion of Law more properly  
13 considered as a Finding of Fact shall be treated as such.  
14

15 The trial court erred in Order filed August 23, 2016

16 Order p11 pp1 This order violates Clough's U.S. Constitutional  
17 Right to "Life, liberty, and happiness" because her safe and private home is  
18 her life, liberty and happiness ABOA p42-46. When I read my title  
19 documents I did understand that it showed a loop that did not lead to  
20 Chapman, Evans, Codella and saw they had no right to cross my property  
21 to use the skid trail ABOA p 19,20 . It is chapman, codella Evans that did  
22 not understand their deed or easement rights ABOA p13-17, 19,20. Clough  
23 had permission from the realtor and owners Fanning's to view property and  
24  
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1  
2 the 657611 easement does lead to Clough property so she has the right to  
3 use it Ex. 27,28,6.7. Chapman codella evans are and have been enjoying  
4 their property by their better, closer legal accesses Id. Clough has a legal  
5 right to assert ownership rights over her property ABOA p 36-3912,1313-  
6 17, 17-19, 20-33, 33-36, . WA Spec. Easement by Necessity provides the  
7 court to choose the route which fulfills the elements in granting easement  
8 to landlocked parcels such as chapman Id. App A No I, II, III, IV, V, VI,  
9 VII, VIII, IX Clough has not performed any improper acts, it is Chapman,  
10 codella, who have performed improper acts which a preponderance of  
11 evidence shows and Finding of Fact, Conclusions of Law, are in err, the  
12 Order is not equitable, fair, or impartial, and should be revoked, reversed,  
13 or modified, if the court pleases. Id.

14  
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16  
17 B. Brief of Respondent page 17 in err because 657611 shows a  
18 proposed easement through Clough does not lead or abut to Codella,  
19 Chapman, or Evans, therefore it is not an express ingress/egress easement  
20 legal right, not shown in writing for any of the respondents . The easements  
21 connecting with a county road “Knox Road Extension” and are adequate  
22 and used regularly, and are shown on 657611 to lead directly through  
23 Codella and Evans to Chapman property. Id.

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2  
3 RCW4.16.20 Clough took possession of easement in 2006 and it is  
4 now 2017, after the 10-year statutory period is over; 7.28 Clough claims  
5 adverse possession by color of title is applicable because Clough's house,  
6 PUD, and well blocked the easement in 2006 when Clough full ownership  
7 rights but the respondent's actions were not filed until after the 7 years  
8 required, but filed 8 years after in 2014, too late to recover any rights if they  
9 had in the easement. The court erred in determining the respondents had an  
10 express easement right over Clough's property. Id.  
11

12 Clough had a right to revoke usage under theories of neighborly  
13 accommodation, adverse possession and otherwise and these theories do  
14 apply. Clough moved things out and allowed the respondents to pass but  
15 they had to turn around on Clough property at the bottom of the skid trail  
16 where her renovation stopped and go back. The skid trail was impassable  
17 until Chapman's hire Alexander excavated it in 2008 after which it was  
18 usable by off road vehicles for one year, then washed out again. Clough  
19 only revoked her permission after repeated requests for respondents to stop  
20 speeding, spinning dust, hunting, guide hunting, parking, threatening,  
21 swearing, partying while driving, ATV and off-road recreational touring,  
22 back and forth all day for days , littering, burning cigarette butts, parking  
23  
24  
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1  
2 near home and turning on recordings of police radio, trying to run over  
3 Clough, her dog, and guests, looking in Clough's door, secretly recording  
4 Clough after provoking, and much, much, more. Clough allowed Chapman  
5 and Codella for 2 years, Evans for 4 years, then just like Gamboa vs. Clark  
6 revoked her neighborly accommodation since they did not have express  
7 right or other. Id.  
8

9  
10 The court did err in determining that "lack of a recorded easement  
11 providing access" means that Chapman has an easement both in findings  
12 and conclusions. Id.

13 There was no such thing as Evans Ranch Road and no existing  
14 roadway before Clough excavated and named it such. It did not exist and  
15 no one was using it. There was only a cow trail that had not been used in  
16 over 20 years. There is no evidence that Chapman used the skid trail or the  
17 easement. The over 100-foot distance from the easement to Chapman's  
18 property is a substantial amount of property large enough for a city lot and  
19 it does not show an easement. There is no evidence that Chapman used this  
20 route to visit his property. It was not usable or fine and still is not. Clough  
21 had to walk up to her property until she cleared and filled the abandoned  
22 looking easement/trail. Id.  
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Implied easement was not proven because Unity of Title was not met or proven because no deed was shown with a common owner between Clough and Chapman. Chapman deed seller A and M Northland Holdings, Cloughdeed Sadowsky, Fanning. “lack of recorded easement for access” shows an intent, extent and character that there is no easement to the property. The alleged “Evans Ranch Road” through Clough property is the “impractical” route, but the legal, express easements shown in 657611 connecting the respondents to Knox road Extension, and Knox road, both county roads, are practical, feasible, shorter, less steep, and all the respondents have been and still are using them. shown on the 657611 easement map, making it an express access that leads directly through their properties. Implied easement elements have not been met, court was in err. Id.

The court was in err when granting an easement by prescription because Chapman bought in 2000, Clough bought in 2006, that is 6 years, not the required 10, Clough’s property was vacant unenclosed before 2006, Clough stopped Chapman in 2008 when she called the Sherriff. Chapman did not use continuously was not proven, no evidence, owners prior

1  
2 Fannings did not know lived in Olympia therefore the court abused its  
3 discretion in finding these facts. Id.

4  
5 Clough has not engaged in improper actions. No one was using and  
6 there was not any “road” there when Clough bought her property in 2006.  
7 Clough thought it was abandoned. Clough made a “road” to the bottom of  
8 the skid trail to turn around. Clough and other witnesses saw no one for a  
9 year while they purchased and built. Clough sent out road naming  
10 documents not an easement. After Clough made the road and named it then  
11 the respondents tried to use it, but could not make it up the skid trail. The  
12 trial court was in err because the respondents were using their other routes  
13 before Clough bought in 2006 and only started using after she paid for,  
14 worked and made her route passable. Clough has pictures of 30-year-old  
15 trees in the abandoned easement route through her property that she would  
16 like to offer into evidence if this issue is remanded to trial. Id.

17  
18  
19 The trial court’s remedy is not equitable to Clough, she did provide  
20 argument, and cited authority on the issue in Amended Brief of Appellant  
21 and Appendix A of this Reply Brief of Appellant. The remedy is unduly  
22 costly to Clough, completely changes the character of her property, gives  
23 away over 60,000 square feet of her property which contains areas she  
24  
25

1  
2 already has leveled and prepared to rebuild her barn and tool shed that burnt  
3 down in the fire of 2015 and a large handmade rock fire pit that has  
4 sentimental value, the route is still too close to Clough's home leaving her  
5 no room to park or turn around in front of her house, and Clough is sensitive  
6 to dust which billows in a huge cloud through her home, it causes Clough  
7 irreparable harm by depriving her of her constitutional right to "happiness"  
8 which is her private and safe home from which she commutes 1 ½ hours a  
9 day to work just for peace and quiet. Clough will not be able to live there  
10 if the respondents are awarded an easement right past her huge picture  
11 windows and yard. Id.

12  
13  
14 Clough did not claim that others are responsible for her lack of  
15 understanding of legal issues she only claimed that she was sent a letter  
16 from the planning department that gave her false information which misled  
17 her into naming the trail into a "road". Id.

18  
19 It is irrelevant if Clough knew there was an easement or not because  
20 the easement does not lead to the respondents' property, therefore it is not  
21 a legal easement right for them. Id.

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Clough did show a preponderance of evidence that the Respondents and their invites actions harassing and inflicting emotional distress were the direct cause of Clough’s counterclaims. Id.

The court did err in entering the November 8, 2016 Judgement Because it was based on erroneous findings of fact and conclusions of law.

The court did err when it abused its discretion in making evidentiary rulings. The trier of fact shows without a doubt that the credibility of the witnesses was in question, biased, and unreliable, as well as the evidence the respondents offered which Clough thought would be obvious to the court and their misconduct, inconsistent statements, and monetary interest in the outcome prove it. Id. The letters Clough admitted as exception to Hearsay Rules, and electronic transmission, also Because they were a sensory memory, digital communication, signed and notarized, Clough could not get them to court, and should count as evidence. Id.

Clough felt pressured into continuing with the trial because she was desperate for help from the court to make the Respondents stop harassing her. Since the surveys were “illustrative” “limited admissibility” and “limited purpose” incorrect, and untimely they should not be counted as

1  
2 reliable evidence or included in the Judgement documents. The admission  
3 of these exhibits abuse discretion because it is obvious they are not correct.  
4 Ex 35, 48, 70 show what is really there, nothing close to Ex.24,25,26 done  
5 for profit solely for trial in a hurry and not disclosed at pretrial. Since the  
6 Respondents have not offered argument on the remaining issues in Clough's  
7 Brief, they are without argument and therefore verities, ruled for Clough by  
8 default.  
9

10  
11 Since Evans has abandoned the suit this proves he does not care  
12 admits to Clough's statements, and he has no further rights in the suit or  
13 Clough's property by default.

14 V. Conclusion: Since prima facia evidence has been disproved,  
15 common knowledge and circumstantial evidence in favor of Clough, 14  
16 pieces of evidence and 3 reliable witness show no "road" when Clough  
17 bought property, 4 pieces show loop does not lead to Respondents property,  
18 11 show other adequate routes well used, 3 show nonuse to present, 6 pieces  
19 show no unity of title, 10 show proof of misconduct by Respondents, 2 show  
20 no damage has been done to Respondents, a preponderance of evidence and  
21 judicial theories applied has been proven by Clough; but Respondents show  
22 only unreliable witness who have committed specific instances of  
23  
24  
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1  
2 misconduct, inconsistent statements, untruthfulness, monetary interest in  
3 outcome and unreliable evidence which was admitted as “illustrative”  
4 “limited weight”, were not disclosed at pretrial and did not follow court  
5 rules, therefore Respondents have not proven a legal or equitable right to  
6 any kind of easement over Clough property and are liable for damages to  
7 Clough.  
8

9  
10 Based on the foregoing facts and authorities, Clough respectfully  
11 urges this Court to revoke, reverse, or modify the trial court decision and:

12 No. 1 Vacate/reverse/modify the Judgement and Order; Award  
13 Chapman WA Spec. Easement Necessity; select route via Knox Road  
14 Extension to Pine Ridge through Codella’s to Chapman’s, determine scope  
15 to be 30 feet, and calculate/award future market value payment for  
16 easement, order a maintenance costs and manners agreement  
17

18 No. 2 Award Wayne Evans, Jake Evans, Michael Evans and  
19 Burkett the same easement via Knox Ext./ Pine Ridge and name this route  
20 “Evans Ranch Road”  
21

22 No. 3 Quiet Clough title; Vacate abandoned easement and log  
23 “road” through Clough/Nelson and order Clough’s address back to 350  
24 Knox Road  
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No. 4 Award damages to Clough and Remove Lis Pendens

No. 5 Grant Clough Permanent injunction against Wayne Evans,  
Jake Evans, Ryan Burkett, Michael Evans, Chapman, McNall, Codella and  
their invites from harassing, trespassing over Clough property

DATED this 15<sup>th</sup> day of November, 2017.

Respectfully submitted,



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## Appendix A - Authorities

I. RCW 4.16.020 Actions to be commenced within ten years –  
Exception: “The period prescribed for the commencement of  
actions shall be as follows: “Within 10 years: (1) For actions for  
the recovery of real property, or for the recovery of the possession  
thereof; and no action shall be maintained for such recovery unless  
it appears that the Plaintiff, his or her ancestor, predecessor or  
grantor was seized or possessed of the premises in question within  
10 years before the commencement of the action.

RCW 7.28.050 Limitation of actions for recovery of real property-  
Adverse possession under title deducible of record that “all actions  
brought for the recovery of any lands,” must be within 7 years.

RCW 7.28.190 Verdict where plaintiff’s right to possession  
expires before trial. ...expire after...verdict according to fact,  
judgement only for damages:

II. RCW64.04.010 rules: “an easement must be in writing”

RCW64.04.020 rules “in the form of a deed” and RCW65.08.070 rules “a  
conveyance of real property must be recorded”

Landberg v. Carlson, 108 Wn. App. 749, 33P.3d 406 (2001)

“To establish an implied easement the following elements are  
required: 1) a landowner conveys part of his land and (2) retains  
part, usually an adjoining parcel; (3) before the conveyance, there  
was a usage existing between the parcel conveyed and the parcel  
retained that, had the two parts then been separately owned, could  
have been an easement appurtenant to one part; (4) this usage is  
reasonably necessary to the use of the part to which it would have  
been appurtenant; and (5) the usage is “apparent.”

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4 Chapter 8.24 Washington's Special Statutory Way of Necessity  
5 providing for private Condemnation due to the State Constitution (Wash.  
6 Constitution art. I, €16)

7 "An owner or one entitled to the beneficial use, of  
8 land...proper use and enjoyment....to have and maintain a  
9 private way of necessity ... or through the  
10 land of such other...may condemn and take lands of such  
11 other sufficient in area for the construction and  
12 maintenance of such private way of  
13 necessity....and the condemner must pay compensation and  
14 attorney fees and expert witness costs..." RCW 8.24.030  
15 RCW 8.24.025 "the court will select the route" which is  
16 "least productive land" The Supreme Court is "strict in  
17 fixing the scope..." "no wider than is strictly required"  
18 Brown v. McNally  
19 "the condemner has the burden of proof of the absence of  
20 another feasible route" Sorenson v. Czinger 70 Wn. App.  
21 270, 852 P.2d 1124 (1993)  
22 "condemnation is not available if "adequate access" under  
23 existing easement already exists" Hellberg v. Coffin Sheep  
24 Co., 66 Wn.2d 664, 404 P.2d  
25 770 (1965)  
"condemnation is not available if "adequate access" under  
existing easement already exists" Hellberg v. Coffin Sheep  
Co., 66 Wn.2d 664, 404 P.2d  
770 (1965)

20 III. Okanogan County Superior Court Local Court Rules LR 4.3 Pro Se  
21 Appearance

22 "All Pro Se litigants (being those individuals representing  
23 themselves) shall be required to file a Pro Se Notice of Appearance".  
24 "Parties who fail to comply with this order may have sanctions  
25 imposed by the court, including their pleadings be stricken, or other  
court action without notice."

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2  
3 CR 10 Forms of Pleadings and other papers (1) Names of parties “shall  
4 include the names of all the parties” (2) unknown names amended  
5 accordingly (3)

6  
7 V. Washing State court rules LR16 Pretrial Procedure and  
8 Formulating Issues (27) Pre-trial Conference (A) Pre-trial statement “each  
9 party shall serve on the other party and file with the court a written summary  
10 setting forth a brief statement of the issues in dispute...Failure will result  
11 in sanctions”

12  
13 LCR 16 Pretrial procedure(9) Exhibits LR4 “submit to the court at  
14 the pretrial conference all proposed trial exhibits...”

15  
16 “ LCR 16 Prerial procedure (1) Preparation and attendance “not less  
17 than 3 days prior to the date of the settlement conference serve on the  
18 assigned judge or commissioner ant the attorney for the other party a  
19 letter.... (d) fails to obey pretrial order (1) is prohibited from introducing  
20 evidence (2) striking pleadings (3) staying process (4) dismiss the action (5)  
21 render default judgement (6) contempt of court award of fees, expenses”

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23 CR 15 Amended and Supplemental Pleadings (a) “If a party moves to  
24 amend a pleading, a copy of the proposed amended pleading denominated  
25 “proposed” and unsigned shall be attached to the motion.” “If a motion to  
amend is granted the moving party should thereafter file the amended  
pleading and pursuant to rule 5, serve a copy thereof on all other parties.”

VI. “Prescriptive rights are not favored in the law, and the burden  
of proof is upon the one who claims such a right.” Todd v. Sterling,  
45 Wn.2d 40, 42, 273 P.2d 245(1954) The claimant must prove that  
his use of the land has been open, notorious, continuous, and  
uninterrupted for 10 years over a uniform route adverse to the owner.  
Id. At 42-43. The claimant has the burden to prove all of the  
required elements. N.W.Cities Gas Co. v. Western Fuel Co., 13  
wn.2d 75, 84,123 P.2d 771 (1942) Where the land is vacant, open,  
unenclosed, and unimproved, use is presumed permissive. Todd, 45  
@n.2d at 43. In such a case,evidence is required indicating that the

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3 user was indeed adverse and not permissive. *Id.* This rule springs  
4 from the modern tendency to restrict the right of prescriptive use to  
5 prevent mere neighborly acts from resulting in deprivation of  
6 property. *Roediger v. Cullen*, 26 Wn.2d 690, 711, 175 P.2d 669  
(1946)

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Todd v. *Sterling*, 45 Wn. 2d 40 44 273 P2d 245 (1954) (which  
relied on *Granite Beach Holdings* 103 Wn. App) Todd states:

Mere travel over unenclosed land is all that Plaintiff has  
shown to establish his right. This is insufficient. Travel  
over wild, unoccupied land is not notice to absent owner  
and cannot be relied upon to change a use regarded as  
permissive in its inception to one which could be said to be  
adverse to the owner in support of the establishment of a  
roadway by prescription.

This has been the law in Washington for over a century. E.g., *Brandt vs.*

*Orrock* 106Wash. 593, 181 Pac. 35 (1919); *Watson v. County*

*Commissioners*, 38 Wash. 662, 80 Pac. 201 (1905).

*Northwest Cities Gas Co. v. Western Fuel Company*, 13 Wn. 2d 75, 123

P.2d 771 (1942). Vacant land doctrine

Washington State Court in *Roediger v. Cullen*, 26 Wn.2d 690, 175 P.2d

669 (1946) “neighborly accommodation” doctrine

If “an owner could not allow his neighbor to pass and  
repass over a trail upon his open, unenclosed land without  
danger of having an adverse title successfully set  
up against him,” “neighborly courtesy would be defeated.”

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Granite Beach Holdings, LLC v. Dep't. of Natural res., 103 Wn. App. 186, 200, 11P.3d847(2000) provides that:

the use of roadway for “two or three times” during 20-year period was not “continuous” enough. Isolated or occasional acts of trespass do not constitute “continuous use.”

In Murray v. Bosquet, 154 wash. 42, 280 P. 935 (1929) the court held that

seasonal use of high-mountain grazing lands that were snowed in during the winter was not continuous.

Cullier v. Coffin, 57 Wn. 2d 624, 627, 358 P.2d 958 (1961) rules:

“if the owner maintains a road or path and the easement claimant is merely a co-user of the road or path the presumption is that the use is permissive and that the owner is granting neighborly acquiescence or accommodation”

VII. Restatement of Property, §504, Comment d (1944) states in part that

“absent an express declaration of abandonment...nonuse does constitute relevant evidence which may justify a finding of abandonment.”

In Barnhart v. Gold Run, Inc.,

“a residence and other permanent structures...were built in the easement and existed for the requisite period, adverse possession was established and the easement was extinguished.” (Barnhart v. Gold Run, Inc., 68 Wn. App. 417, 423 n. 2, 843 P.2d 545

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3 “the construction of a retaining wall, the erection of fences,  
4 and the planting of grass and flowers by the owner of the  
5 servient estate was wholly inconsistent with an  
6 easement...” “Consistent with the assertion of ownership”  
7 Slak v. Porter Id. , and Barnhart v. Gold Run, Inc. 68 Wn.  
8 App. 417, 423 n. 2, 843 P.2d 545 (1993) “a residence and  
9 other permanent structures, not just a mere concrete slab,  
10 were built in the easement...the easement was  
11 extinguished.” “An easement will be extinguished where  
12 the intention to make no use of it is clearly evidenced by  
13 the parties, usually an affirmative act by the owner of the  
14 dominant tenement to permanently not use the easement.”  
15 Schumacher v. Brand, 72 Wash 543, 130 P. 1145 (1913);  
16 McCue v. Bellingham Bay Water Company, 5 Wash. 156,  
17 31 P. 461 (1892)

18 to Hickerson v. Bender, 500 N. W. 2d 169 (Minn. Ct. App. 1993), no  
19 objection to numerous obstructive improvements being placed on the  
20 easement, held sufficient evidence of abandonment.

21 RCW7.28 Extinguishment Abandonment/Estoppel

22 Schumacher v. brand, 72 Wash. 543, 130 P. 1145 (1913); McCue v.

23 Bellingham Bay Water Company, 5 wash. 156, 31 P. 461 (1892); Abbott

24 v. Thompson, 641 P.2d 652 (Or. Ct. app. 1982);

VIII. Buck Mountain Owners' Association v. Prestwich Wash.

Court of Appeals, 1<sup>st</sup> Div. 2013

“Absent an agreement, joint users of a common roadway are obligated to contribute to the costs reasonably incurred for repair and maintenance of the roadway. In this declaratory judgment action, Barbara Bentley and Glenn Prestwich (Bentley-Prestwich) contend they have no obligation to share repair and maintenance costs for a roadway they indisputably use for ingress and egress. In the alternative, they argue that any obligation imposed should be calculated based on their actual use of the roadway. After a six-day bench trial, the trial court entered judgment against Bentley-Prestwich for past maintenance and repair costs, including interest, late fees, and construction impact fees. It also obligated Bentley-Prestwich to share 62.5 percent of a full share of future maintenance and repair costs and ordered them to execute a binding covenant.”

by the life expectancy of the person incurring noneconomic damages, as the life expectancy is determined by the life expectancy tables adopted by the insurance commissioner. For purposes of determining the maximum amount allowable for noneconomic damages, a claimant's life expectancy shall not be less than fifteen years. The limitation contained in this subsection applies to all claims for noneconomic damages made by a claimant who incurred bodily injury. Claims for loss of consortium, loss of society and companionship, destruction of the parent-child relationship, and all other derivative claims asserted by persons who did not sustain bodily injury are to be included within the limitation on claims for noneconomic damages arising from the same bodily injury.

(3) If a case is tried to a jury, the jury shall not be informed of the limitation contained in subsection (2) of this section.”

1986 c 305 § 301.

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2 Sophie v. Fibreboard Corp. 112 Wn. 2d 636 (1989), and Kloepfel  
3 v. Bokor, 149Wn. 2d , 192,194, 66P. 3d 630 , 202 -203(2003) where the  
4 victim recovered \$60,000.00 for “nervousness, sleeplessness,  
5 hypervigilance, and stomach upset” due to her aggressor “driving past her  
6 house at all hours disturbing her privacy.”  
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9 The specific nature of the actual use will ultimately define the nature and  
10 scope of a prescriptive easement as it is pursuant to Northwest Cities Gas  
11 Co. V. Western Fuel Co., 13 Wn. 2d 75, 123 P.2d 771 (1942) where the  
12 “prescriptive roadway easement was only 20 feet wide based upon actual  
13 use, even though the owner of servient tenement had fenced in a 40-foot  
14 strip”

15 Lingvall v. Bartmess, 97 Wn. App. 245, 982 P.2d 690 (1999) states that if  
16 there is more than one person claiming prescriptive easement that they  
17 must make a complaint “independent of the others”  
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19 IX. Standing Rock Homeowners Assn. v. Misich, 23 P. 3d 520 – Wash:  
20 court of Appeals, 3<sup>rd</sup> Div. 2001  
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22 “In Standing rock, the plaintiff, an association of property owners in  
23 a Chelan County development, had placed a number of gates on an easement  
24 passing through it’s property, as well as on the land of an adjoining nonparty,  
25 to deter trespass and vandalism. Id. At 236, 23 P.3d 520. The holder of the  
easement repeatedly entered onto the Standing Rock land and destroyed the  
gates. Id. At 242, 23 P.3d 520. The court held that the gates were  
reasonable burdens on the easement and that the defendant holder of the  
easement was liable for all the damages caused by his actions.”

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3 RCW7.28.180

4 Snyder v. Haynes, 217 P. 3d 787-Wash: Court of Appeals, 3<sup>rd</sup> Div. 2009

5 "If an easement is appurtenant to a particular parcel of land, any extension  
6 thereof to other parcels is a misuse of the easement." Brown, 105 Wash.2d  
7 at 372, 715 P.2d 514.

8 Case law confirms that unlicensed vehicles are considered Non-  
9 Conforming Uses and the trial court erred in allowing them on Clough  
10 property:

11 The issue is whether the trial court erred in enjoining the  
12 Woodburys' use of the easement road by ATVs, ORVs, and  
13 unlicensed vehicles. Notably, the mutual easement was created for  
14 ingress and egress. Since ATVs, ORVs, and other unlicensed  
15 vehicles cannot legally travel beyond the easement road onto a  
16 public road, these types of vehicles were not contemplated by the  
17 parties to the 1982 agreement. The trial court found the ATV and  
18 ORV use was nonconforming recreational touring. While increased  
19 use of an easement by a dominant estate holder is acceptable, a  
20 changed use by a dominant estate holder is unacceptable."

21 In deciding whether to grant or deny a request for a permanent  
22 injunction, a trial court must make a comparative appraisal of all of the  
23 factors in the case, including the following:

24 The character of the interest to be protected, the relative  
25 adequacy to the plaintiff of injunction and of other available remedies  
such as damages; plaintiff's delay in bringing suit, plaintiff's misconduct,  
if any; the relative hardship likely to result to defendant if the injunction is  
granted and to plaintiff if it is denied; the interest of third parties and of  
the public, and the practicability of framing and enforcing the order or  
judgment." xii

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3 782\*782 Seattle v. Nazareus, 60 Wn.2d 657, 669, 374 P.2d 1014  
4 (1962). See Lenhoff v. Birch Bay Real Estate, Inc., 22 Wn. App. 70, 75,  
5 587 P.2d 1087 (1978); Restatement (Second) of Torts § 936 (1979).

6 *Kucera v. Dep't of Transp.*, 140 Wash.2d 200, 209, 995 P.2d 63  
7 (2000) ("[I]njunctive relief will not be granted where there is a plain,  
8 complete, speedy and adequate remedy at law").

9 "In contrast, the Huntingtons' hardship from the mandatory  
10 injunction would be considerable because it would require them to destroy  
11 their sizeable family home and build elsewhere. In sum, the trial court  
12 properly considered Proctor's arguments and properly found an enormous  
13 disparity between the parties' hardships."  
14 *Proctor v. Huntington*, 192 P. 3d 958 - Wash: Court of Appeals, 2<sup>nd</sup> Div.

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*Shaw v. Merritt*, Wash: Court of Appeals, 1<sup>st</sup> Div. 2004

"The only necessity offered by Shaw is the avoidance of an additional  
7 to 12 miles of driving. Although driving the additional miles may  
be inconvenient, it does not provide the degree of necessity required  
to establish the easement....."

*Gamboa v. Clark*, 321 P. 3d 1236- Wash: Court of Appeals, 3<sup>rd</sup> Div. 2014

"there had been no dispute over use between the two families  
before 2008." "We view *Roediger v. Cullen*, 26 Wash. 2d 690,  
175 P.2d 669 (1946) and *Cuillier v. Coffin*, 57 Wash.2d 624, 358  
P2d 958 as controlling."

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3 Also:

4 “If the owner of an easement, by his nonuse and its  
5 accompanying circumstances, has misled the owner of the  
6 property to believe the easement does not exist and into  
7 materially changing his position on that assumption, the  
8 easement owner may be estopped from asserting rights in  
9 the easement.”

10 Goo Leong Shee v. Young Hung, 36 Haw. 132 (Haw.1942)

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12 Hickerson v. Bender, 500 N.W.2d169(Minn. Ct, App. 1993) “ non-use of  
13 an ingress-egress easement, with no objection to numerous obstructive  
14 improvements being placed on the easement, was held sufficient evidence  
15 of abandonment.” Also, Comeau v. Manzelli, 182 N.E. 2d 487  
16 (Mass.1962) “abandonment was found where a right of way was not used  
17 for over 20 years and the way was made impassible by trees and iron  
18 posts.” More rulings apply: Howell v. King Count, 16 Wn.2d 557, 559-  
19 60, 134 P.2d 80 (1943); Lewis v. City of Seattle, 74 Wash. 219, 223-25,  
20 24 P2d427 (1993), aff’'d, 27 P.2d 1119 (1993) “The same principles that  
21 govern acquisition of title by adverse possession and acquisition of an  
22 easement by prescription would apply to the fee owner’s claim.” City of  
23 Edmonds v. Williams, 54 Wn. App. 632, 634, 774 P.2d 1241 (1989);  
24 Burkhard v. Bowen, 32 Wn.2d 613, 203 P.2d 361 (1949); and Shelton v.  
25 Boydston Beach Association, 641 P.2d 1005 (Idaho Ct. App. 1982), the  
court held

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CERTIFICATE OF SERVICE

I certify that on 11-16-2017,

Mike Sadowsky served a copy of

the REPLY BRIEF OF APPELLANT and MOTION TO EXCEED PAGE  
LIMIT by USPS on Kenneth H. Kato, 1020 N. Washington Spokane, WA  
99201; and Wayne Evans, 304 S. Main, Omak, WA 98841.

Wendy Sweeney 11/16/17

Leslie Clough 11-16-17