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NO. 349179

COURT OF APPEALS: DIVISION III
OF THE STATE OF WASHINGTON

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

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;

AMENDED BRIEF OF APPELLANT

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AMENDED BRIEF OF APPELLANT

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2
3
4 I. INTRODUCTION: “Love thy Neighbor” and “Do unto Others”

5 II. ASSIGNMENTS OF ERROR:

6 No. 1 The trial court erred in Judgement page 2 number
7 1,2,3,5,6, and 7, entered on Nov. 8, 2016; and Court’s Finding of Fact and
8 Conclusions of Law from trial; Order pages 1-8 No.
9 1,2,3,5,6,7,8,9,10,11,12,13,14,15,16,17,19,20,21,22,23,24,25,28,29,30,31,
10 32 and pages 8-11 No. 2,3,4,5,6,7,8,9,10,11,12,13,15,16,17; and pages
11 11,12 ex. A and B; filed on August 23, 2016. (Judgement P2 pp1
12 Christopher Culp, Okanogan County Superior Court (11-08-2016);
13 Court’s Findings of Fact and Conclusions of Law from trial; Order,
14 Christopher Culp, Okanogan County Superior Court (8/23/2016).

15
16
17 II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

18 No. 1 Should the court grant an easement to Chapman,
19 Codella, and Evans through Clough property after the 10-year statutory
20 period to file a claim have passed pursuant to RCW4.16.020? (Assignment
21 of Error No. 1)

22
23 No. 2 Should the court grant Chapman an easement
24 through Clough’s property under “657611 Declaration of Easements ”

1
2 when RCW64.04.010 and RCW64.04.020; 64.08.070 rule an easement
3 must be in writing on a deed but Chapman's deed does not list the
4 easement; no unity of title proven pursuant to legal authority Landberg v.
5 Carlson(2001) elements not met including previous usage not apparent to
6 Clough when she bought vacant, open, and unimproved land pursuant to
7 the "vacant land doctrine" Todd v. Sterling considered permissive,
8 especially when it is not necessary because there is an adequate more
9 direct to the county road, Knox Road Extension, available that leads
10 through "least productive" property pursuant to RCW8.24.030 without
11 homes, a "plain, complete, speedy, and adequate remedy at law pursuant
12 to Kucera v. Dep't of Transp.? (Assignment of Error No. 1)

13
14
15 No. 3 Should Wayne Evans be awarded an easement
16 when his name is not on the deed of property pursuant to 4.16.020, his
17 heirs Ryann Burkett, Jake Evans, Michael Evans are not listed in the suit
18 pursuant to CR10, did not file pro-se appearance LR4.3, or any pleadings
19 including pre-trial statement and did not disclose evidence
20 LR16(27)(A)2015 or LR16 Appendix A-7 2016, even while they continue
21 to harass Clough displaying misconduct? (Assignment of Error No. 1)
22
23
24
25

1
2 No. 4 Does RCW4.16.020 or legal authority and the 657611
3 Declaration of Easements give Chapman, Codella, and Evans the right to
4 leave the main ingress/egress easements Knox Road Extension/Pine Ridge
5 Road that lead directly to their undeveloped properties and travel further
6 an abandoned “loop” that leaves from Pine Ridge Road east/west through
7 Clough and Nelson, and goes back to Pine Ridge Road without abutting or
8 entering to their properties, then leave the course of the easement at a 90
9 degree angle south over 75 feet of Clough property in order to access a
10 logging skid trail not shown on the Declaration even though there is a
11 more direct, adequate, legally enforceable for Evans, Codella to the county
12 road available and shown in the Declaration that they are still using?

13
14
15 (Assignment of Error No. 1)

16
17 No. 5.1 Should Chapman, Codella, Evans unreliable
18 evidence and unreliable witnesses be admitted that was not disclosed in
19 the pre-trial statement or conference and was not made available before
20 the trial pursuant to LCR16, did not follow court rules LR4, and/or
21 objected to with “improper procedure” “insufficiency of process” and
22 “unreliable” CR26(b)(1)(A)(B)(C); 9.73.030; prejudicial; ER106;
23 ER902(f); CR15; ER607; ER608(a)(b)?
24

1
2
3 Should Clough's evidence be admitted that adheres to the rules of
4 evidence or that was thought to be admitted pursuant to ER901(4);
5 ER904(6);ER901(a); ER904(c); ER902; ER902(f) ? (Assignment of Error
6 No. 1)

7 No. 5.2 Should Erickson's drawing/sketch be admitted and
8 relied on as evidence and included in a judgement that was not disclosed
9 in the pre-trial conference pursuant to LCR16, was objected to in trial as
10 incorrect, unreliable and admitted for illustrative purposes, and called a
11 "survey" when it is not a survey? (Assignment of Error No. 1)

12
13 No. 5.3 Should Finding of Fact Conclusions of Law; Order
14 and Judgement be based on errors, unreliable evidence, and witnesses who
15 have monetary interest and made inconsistent and untruthful statements
16 pursuant to ER607b; ER403;ER607; ER608, but items not listed as facts
17 for Clough even when evidence and truthful witness is shown?
18 (Assignment of Error No. 1)

19
20 No. 6 Since Clough's property was vacant unenclosed
21 when bought it without any sign of apparent prior usage, but after Clough
22 excavated a driveway and gave permission to use in an effort to be
23 neighborly would the "vacant land doctrine" and the "neighborly
24

1
2 accommodation theories apply pursuant to Gamboa v. Clark; Roediger v.
3 Cullen; and Cuillier v. Coffin and no easement granted? (Assignment of
4 Error No. 1)
5

6 No. 7 Should the old abandoned easement and the logging
7 road of 1993 on Clough property be extinguished by abandonment
8 estoppel theories and pursuant to RCW 7.28.050 and/or 7.28.080; and/or
9 7.28.070 since she took possession in good faith in 2006, title says
10 “together with all”, has paid all taxes, and continues possession until
11 present 2017 fulfilling the 7 years before suit was filed in 8/2014 and if it
12 has not been used since 1993 logging, not maintained, owners used Knox
13 Road Extension and Pine Ridge Road for access instead, not apparent to
14 Clough upon buying renovated a driveway, put underground PUD, a well,
15 her home, yard, landscaping, a shed, a woodshed, all right in the logging
16 road 11 years? (Assignment of Error No. 1)
17
18

19 No. 8 Should Clough be awarded damages pursuant to
20 Buck Mountain Owners’ Association v. Prestwich, RCW4.56; and
21 RCW8.24.025 since Chapmans hires, invites, grandson, Evans and all
22 their invites have used her driveway for hunting and recreation with
23 unlicensed vehicles for 2 ½ years during permission, damaging after she
24
25

1
2 has spent a lot of money on renovation maintenance, paid attorney fees for
3 this suit, and suffered emotional distress due to the other parties'
4 misconduct, actions, use of her driveway, and incurred by this suit?
5

6 (Assignment of Error No. 1)

7 No. 9 Should the "balance of hardships" test ruled in
8 Seattle v. Nazareus be granted for Clough and a "plain, complete,
9 speedy, and adequate" ruled by Kucera v. Dep't of Transp., which is
10 neighborly, equitable, impartial, and reasonable remedy be taken instead
11 of a remedy that is inequitable, partial, cost Clough thousands of dollars,
12 causes Clough irreparable harm, extreme hardship, violate her
13 Constitutional Rights, devalues her home, and neglects provisions such as
14 payment of maintenance, scope, timber loss, unlicensed recreational
15 vehicle use, recreational touring, overuse, misuse, nuisance, and
16 harassment to Clough? ? (Assignment of Error No. 1)
17
18

19 III. STATEMENT OF THE CASE

20 1. Clough had permission from Fannings and realtor to view and
21 bought the 20 acres of undeveloped, unenclosed property in 2006 for
22 \$50,000.00. (Defendant's Answer to Plaintiffs' Second Amended
23 Complaint 5/25/2016, p1; Exhibit List 7/14/2016 No. 42, 60)
24
25

1
2
3 2 Clough's deed states "together with all" which means all
4 attachments and rights, owns the "Declaration of Easements Schedule B"
5 filed in 1979 in the Okanogan county Auditors file 657611, states in part
6 "ingress/egress", "follows centerline" "right to relocate expires 5 years
7 from 1979" schedule B map which is fairly accurate except a few small
8 discrepancies, shows spurs. (Id. Answer p7pp2; Id. Ex 27, Ex 28)

9
10 3 The old, abandoned looking easement shown through the
11 Clough's property does not lead to any of the Respondents properties, or
12 county road, but forms a loop from Pine Ridge Road and back to Pine
13 Ridge Road. (Id. Answer p7,8 pp1,2; Exhibits 27, 28, 29, 32, 37, 41)

14
15 4 Clough and witnesses thought the easement through her property
16 was long abandoned because it had not been maintained, showed no signs
17 of use, and had a huge water run off ditch down the center, tall grass and
18 bushes growing up, and could hardly be traversed, and there was no traffic
19 or any sign of traffic. (Id. Answer, p16 pp1; Exhibits, 59, 72, 36,
20 48,52,60,62,67,72)

21
22 5 Clough renovated part of the abandoned looking easement into a
23 driveway and started to build a home unknowing that it is encroaching on
24 an old abandoned logging road from 1993 which replaced the old

1
2 easement. She had an underground PUD electric, a power box, and a well,
3 and home all on the easement, all with the address of 350 Knox Road. (Id.
4 Answer p1pp1,2; Exhibits 60, 34)
5

6 6 Clough did not know anyone wanted to use, or see anyone
7 using the easement until 4/2007 when the house was almost finished, and
8 the driveway renovated, snowplowed and sanded. (Id. Answer p16;
9 Ex.59,72)
10

11 7 Clough gave Evans and Chapman's hire permission to use the
12 newly excavated driveway and across her property without easement to an
13 old skid trail in an effort to be neighborly. (Id. Answer p10pp4; Ex. 51, 31,
14 45, 33, 34,37)
15

16 8 Clough complied with a letter sent out by the Okanogan County
17 Planning Department to name her driveway "Evans Ranch Road" in
18 5/2007. The letter said it "provides legal access to 3 or more structures"
19 even though it did not. Clough did not sign anything granting an easement.
20 Prior to that her address was 350 Knox Road, which is shown on her loan
21 documents, Deed of Trust, and more. (Reply to Pla's Replay p2pp4
22 (6/29/2016); Id. Exhibits 33,34, 37)
23
24
25

1
2
3 9 Monte Alexander, hired by Chapman, excavated the skid trail in
4 spring 2008 making it show up on maps and threatened to run over
5 Clough's home. Clough called the Sherriff, kicked him off the property,
6 none of Chapmans invites since have used. (Id. Reply p13pp1; Id. Ex. 40)

7
8 10 Evans invites started engaging in misconduct and harassment
9 to Clough including hunting on her property, threatening, parking and
10 partying in middle of the night, trying to run over, showing up at her
11 sliding glass door uninvited, swearing, flipping off, spinning tires in dust,
12 speeding, destroying gates and no trespassing signs, and more. One of the
13 hunters gave Clough Chapman's business card. Clough called sheriff and
14 kicked them out. (Id. Answer p12,12 pp 2; Id. Ex. 61,59, 72,40)

15
16 11 Chapman and Evans refused to help or pay for renovation and
17 maintenance of driveway; snowplow, grade, water bars, weeds, brush
18 removal, more or damage they caused during their 2 ½ years of use with
19 permission for which the Clough has been damaged. (Id. Answer p14 pp1
20 and p22 pp2; DRPRAC; Id. Ex. 47, 38, 66, 40)

21
22 12 Clough felt threatened and could not use her property for
23 intended purposes so she made sure she was legal and Evans was using
24 other legal, adequate routes, Clough wrote a letter, locked her gates, and

1
2 no one has used since 2010.(Id. Answer; Defendant's Counterclaim p3
3 pp2, pg 10 pp 1, p 17 pp 3, p 19 pp1 (July 27, 2015); Id. Ex. 40, 39,61,58,
4 59 56) (Id. Reply p17 pp4; Ex. 40, 27, 28, 46) (Id. Reply p20 pp1; Id. Ex.
5 29, 31, 35, 40, 48,46, 70)
6

7 13 Codella told Clough he had not been to his property in over 20
8 years. Clough showed him where his property was. (Id. Reply p18 pp3)
9

10 14 Clough has never seen Chapman use the route. She met
11 Chapman first time at settlement conference. (Id. Reply p19; Ex. 59, 72)
12

13 15 Chapman's 10 20acre parcels do not lie within the 657611
14 easement jurisdiction and 657611 is not listed on his deed. (Id. Reply p24
15 pp3; Id. Ex. 27, 28, 43, 49) Clough does not have a common boundary
16 line with Codella or Evans.

17 16 Chapman, Codella, Evans have been enjoying their recreational
18 properties without interruption using their adequate, direct to county road,
19 reasonable, legally enforceable for Evans, Codella, shortest, least steep,
20 cheapest to maintain, well-used, adequate, legally enforceable for Codella
21 and Evans shown in the Declaration of Easements leaves from Knox Road
22 extension, a county road for 1.38 miles from the sign at the Y where it
23 leaves from Knox Road, then joins the 657611 travels southeast one mile
24

1
2 where it arrives through Codella property past the shack Ryan Burkett
3 built on Codella property, continues through to Chapman's. The
4 properties on that route are only worth 20,000 each and no homes. (Id.
5 Answer p18 pp4, p4 pp1, p5 pp2; Id. Reply p21; Id. Ex.47, 40, 44, 45, 52,
6 53,54,55,67,68, 69; Verbatim Report of Proceedings at June 26, 2017)
7 The Plaintiffs also use Pine Ridge Road, shown in the Declaration. (Id.
8 Answer p19 pp1; Id. Reply; Id. Counterclaim; Ex.
9 27,28,30,43,44,45,47,49, 52, 53,54, 55, 56, 58, 59)

10
11
12 17 Clough cannot move her home, yard, PUD, well, and more has
13 been on the easement from 2006 until 2017 for over 10 years, all the taxes
14 have been paid by Clough, and all the maintenance of driveway have been
15 done and paid for by Clough in good faith, has exercised full ownership
16 rights fulfilling all the elements required by law to extinguish Chapman,
17 Codella, Evans claims by 7.28 Abonnement and Estoppel case law and
18 judicial theories and claims full ownership power over property by title .
19 (Id. Answer 15-18; Id. Ex. 60, 66, 70, 48, 53, 38, 34, 33, 59)
20
21

22 18 Clough has suffered undue emotional distress damage due to
23 the harassment, nuisance, misuse, trespass, hunting, and unlicensed off-
24 road vehicles of and by Chapman, Evans and their hires and invites. (Id.
25

1
2 Answer p21 pp1; Id. Counterclaim; Id. Ex.39, 40, 50, 56, 57, 58, 59, 61,
3 65)
4

5 19 Chapman, Codella, Evans, and Crandall has used every trick in
6 the book to try to gain an easement without paying Clough for it including
7 stalling for time, delaying, confusing the issues with irrelevant issues,
8 taking up all the time in the trial, not letting Clough speak, yelling at
9 Clough, knowing Clough's highly sensitive and anxiety health conditions,
10 which caused her to not be able to address all the issues at trial. (VRP
11 IV. SUMMARY OF ARGUMENT: This is a case of un-neighborly
12 neighbors.
13

14 V. ARGUMENT

15 Argument Issue No 1:

16
17 The trial court erred in Assignment of Error No. 1 in awarding
18 Chapman, Codella, and Evans an easement through Clough property
19 because Clough asserted in Answer p14,15,16 and Reply p7,8 the 10 year
20 statutory period has passed time barring them from complaint (VROP .566
21 at 21; .567 at 4) and that the law rules: RCW 4.16.020; RCW 7.28.050;

22 Evidence Exhibit No. 60, Clough's tax records show and prove
23 that she took ownership in good faith by color of title in 10/2006 and it is
24

1
2 now 7/2017 so 10 years have passed, they have not seized or possessed the
3 premises which proves they are time-barred from claiming a suit. Clough
4 moves the suit be dismissed with prejudice for failure to state claim.
5

6 (Answer p 14,15,16 May 25, 2016; Reply p 7,8 June 29, 2016; Evidence
7 Exhibit No. 60 Feb. 3, 2017p4)

8 Argument Issue No. 2:

9
10 The trial court erred in Assignment of Error No. 1, in granting
11 Chapman, Codella, and Evans an easement over Clough property. Ex. 5
12 John and Sally Chapman's deed states "lack of recorded easement for
13 access" on page 1, paragraph 3 which Chapman admitted in trial
14 (VROP.134 at 22; .562 at 20). The deed does not list OKAF 657611
15 Declaration of Easements. Legal authority rules: RCW64.04.010;
16 RCW64.04.020; and RCW65.08.070 . Clough was in err when she
17 thought two of Chapman's lots were inside the 657611 Declaration
18 boundaries because the schedule B map was slightly in err on the
19 boundary lines (VROP .563 at 4). This proves Chapman's property
20 without an easement and the court was in err to grant through Clough.
21

22 The court erred in granting Chapman an implied easement because
23 Chapman does not fulfill all the elements of implied easement required in
24 ruling WA State legal authority:

1
2
3 Landberg v. Carlson, 108 Wn. App. 749, 33P.3d 406 (2001)

4 Exhibit 5, Chapman's deed, shows "A and M Northland Holdings" as the
5 Grantor and no other title history has been offered; Clough's title shown in
6 Exhibit 6 lists Sadowsky as Grantor; Exhibit 7 lists Fanning Grantor to
7 Sadowsky; therefore, Chapman's title has no "unity of title" with Clough's
8 title (VROP .569 at 7; .569 at 20) Codella and Evans do not fulfill all the
9 elements required for implied easement because no evidence of "actual"
10 and "apparent" use has been proven (VROP.137 at 12), because Ex 29
11 shows a picture of the easement abandoned, Ex. 52 shows the easement
12 and logging road barely visible in 2006 when Clough bought Ex. 59 shows
13 4 affidavits from people who viewed the property and also thought it was
14 abandoned, Ex. 16 aerial photo dated 1983 that shows not visible at all
15 before the 1993 logging, witnesses Sadowsky, Audrey Conkle, and
16 Clough VROP at), and circumstantial evidence of contractors building
17 for 7 months without seeing anyone use and who would put a PUD a well
18 and a house right in an easement unless you thought it was abandoned, all
19 prove that there was no usage existing and not apparent to Clough when
20 she bought her property and it is not necessary because they already use an
21 adequate, legally enforceable access easement shown in the Declaration of
22 Easements 657611 via Knox Road Extension, a county road, from the east
23 joining Pine Ridge Road then between Evans and Codella right to
24

1
2 Chapman's property and this is the easement all of them have used for
3 ingress/egress all along (VROP .567 at 5-15); proven by Ex. 30 a picture
4 of how adequate Pine Ridge Road is and Evans sign on Pine Ridge
5 pointing to his shack, and his entry way off of Pine Ridge, Ex. 44 are
6 photos taken in 2015 showing Chapman's property and roads well used
7 even while Clough's gates were locked,52 showing how worn Knox Road
8 Extension was in 2006 compared to Clough driveway barely visible, Ex.
9 54 a picture of Pine Ridge Road going through Codellas and how worn
10 and adequate it is, Ex. 55 shows the large trailer Evans pulled up while
11 Clough's gates were locked, Ex 53 shows a picture of Knox Road
12 Extension with an unlocked gate, where it connects with the county road,
13 and witness Sadowsky all which proves the court was in err and should
14 not grant Chapman, Codella, or Evans implied easement over Clough
15 property (VROP .567 at 16).
16

17
18 In his "Second Amended Complaint To Quiet Title Of Easement;
19 Enforce Covenants; For Damages And Injunctive Relief; Or In The
20 Alternative For Prescriptive Easement" on page 7, paragraph 3, filed on
21 May 5, 2016 Mr. Crandall pleaded for a Washington Special Easement by
22 Necessity:

23 "7.2 a) RCW 8.24 et seq, " "or at such other route as determined
24 by the Court." And page 8, paragraph 3 "30 feet wide" and "for

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2
3 the court to determine the amount of compensation to be paid to
Defendants”

4 Therefore, this proves Chapman, Codella, or Evans do not have a legal or
5 equitable right to express, implied, prescriptive easement over Clough
6 property and Chapman’s property is “landlocked” so he fulfills all
7 elements required by law for Washington Special Easement by Necessity
8 to rule:

9 Chapter 8.24 Washington’s Special Statutory Way Of Necessity Providing
10 For Private Condemnation Due To The State Constitution (Wash.
11 Constitution Art. I, §16)

12 More legal authorities apply and rule: RCW 8.24.030; RCW 8.24.025;
13 Sorenson v. Czinger 70 Wn. App. 270, 852 P.2d 1124 (1993);
Hellberg v. Coffin Sheep Co., 66 Wn.2d 664, 404 P.2d 770 (1965)

14 (VROP .557 at 16) If it pleases, Clough moves the court to vacate the
15 present Judgement and award Chapman a Wa Spec. to Chapman and
16 would decide the route via Knox Road Extension/PineRidge/through
17 Codella or Evans to Chapman because this route is the “least productive
18 land”, “feasible”, direct and shortest to county road, “adequate”
19 “reasonable” the route they have used all along; past the little shack Ryan
20 Burkett built on Cedilla’s property, a win-win-win for all parties
21 and Chapman agreed (VROP. 159 at 16; 160 at 15) Berringer used Pine
22 Ridge Road to do his estimate, the NCW used the same to survey
23 Codella’s property, McNall used this route to get to Chapmans, the
24

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3 Sherriff deputies used this route to arrest Evans invites for all their
4 reckless shooting, the DNR used this route each year to check for
5 lightning fires, Chapman property has been mowed, a little shack built on
6 Codella by Evans invites, Jake Evans admitted "I just use Pine Ridge"
7 and a travel trailer pulled up, and much more using this route, all while
8 the Clough gate was locked. (Id. Answer p7; Id. Reply p3,4,5,6; Id.
9 Exhibit No. 5,6,7,8,27,28)

10 In comparison, the alleged "Evans Ranch Road" is not between
11 Chapman, Codella, Evans and the county road but in the opposite
12 direction past and then back through Clough which is much longer, not
13 feasible, not adequate Ex. 17 shows alleged "Evans Ranch Road" needs
14 87,000.00 worth of work , steep nearly 20% grade, narrow, costly and
15 impossible to maintain, too close to 3 private homes who do not want,
16 unnecessary, unreasonable, recreational touring, not compatible with
17 hunting and partying (VROP .572 at 2). (Id. Answer p7; Id. Reply
18 p3,4,5,6; Id. Exhibit No. 5,6,7,8,27,28, 47)

19
20 Argument Issue No. 3:

21 The trial court erred in Assignment of Error No. 1 in awarding Wayne
22 Evans an easement when his name was not on the deed at the time of the
23 trial, and he did not follow court rules because Evans did not file a pro se
24

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2 appearance pursuant to Okanogan County Superior Court Local Court
3 Rules LR 4.3 Pro Se Appearance.
4

5 CR 10 Forms of Pleadings and other papers (1) Names of parties
6 “shall include the names of all the parties” (2) unknown names amended
7 accordingly (3) Since Wayne Evans quit claimed his property (Okanogan
8 County Auditor File 3208368 on 05/18/2016 Quit Claim Deed Grantor
9 Wayne R. Evans Grantee Ryan Burkett, Jacob Evans, Michael Evans
10 “subject to all easements of record and those which are apparent.”) before
11 the trial on 7/12/16, he was not a property owner at the time of the trial
12 and he did not include Ryan Burkett, Jake Evans, or Michael Evans nor
13 did he submit or amend any pleadings (VROP. 234 at 17-235 at 7; 66 at
14 14-68 at 3). Clough objected with “insufficiency of process, improper
15 procedure, and prejudice” (VROP.520 at 8, 21; .66 at 14; .68 at 3; .520 at
16 8) Evans did not comply with Washing State court rules LR4, LR16
17 Pretrial Procedure and Formulating Issues (27) (A)2015 or LR16(a)
18 Appendix A-6 and A-7 2.1,2.5,2,8,2016. Okanogan County Superior
19 Court Docket List proves that no pro se appearance, no pleadings, no pre-
20 trial statement, no evidence disclosed at pre-trial hearing, nothing was
21 filed from Evans so Clough hereby moves the court to dismiss Evans
22
23
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2 claims entirely with prejudice if it pleases. (Okanogan County Superior
3 Court Case Summary Docket List Case Number 14-2-00393-7, p1-4,
4 Okanogan County Clerk, (6/30/2017)
5

6 Argument Issue No. 4 - Loop

7 The trial court erred in Assignment of Error No. 1 when it granted
8 Chapman, Codella and Evans an easement through Clough's property
9 because it is on a "loop" that leaves Pine Ridge Road and joins back to
10 Pine Ridge Road at the west of Nelson property north of Codella property
11 corner, without in any place abutting or entering Chapman, Codella or
12 Evans, but running parallel about 75 feet from Chapman. Evans is way up
13 the hill right on Pine Ridge Road. Clough asserted in trial (VROP.562 at
14 13-19; 352 at 21- 353 at 6). Ex. 27 Okanogan County Auditor File 657611
15 Declaration of Easements Schedule B for "ingress/egress" shows the
16 original easement that used to run through Clough property Ex. 28 shows
17 the course of the "loop". Ex. 32 shows how far the loop is from the
18 property line, and Ex. 29 shows a picture of where it joins back to Pine
19 Ridge Road without entering or abating Chapman, Codella, or Evans, Ex.
20 41 shows an expert survey map of where the renovated part is entirely on
21 Clough property therefore, to travel it would not be considered
22
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2 “reasonably necessary” which is the commonly known definition of
3
4 “ingress/egress” but it would be commonly considered as “recreational
5 touring” (VROP .565 at 2) since their Knox Road Extension route is direct
6 to the county road and the abandoned easement loop does not even lead to
7 their properties. In order to reach the skid trail they renovated in 2008 to
8 meet where Clough had renovated to turn around at the bottom, they must
9 cross about 75 feet of Clough Property Ex. 41, that has no dashed line
10 therefore, is not on the schedule B map, and is not an easement across her
11 property which proves the court erred in granting Chapman, Codella and
12 Evans an easement through Clough property. If it pleases the court
13 Clough moves for failure to state a claim and the decision to be reversed
14 and the suit dismissed with prejudice if it pleases. (Id. Answer p 7,8; Id.
15 Exhibit No. 8, 27, 28, 29, 32, 41)
16

17
18 Argument Issue No. 5.1:

19 The trial court erred in Assignment of Error No. 1 in because it
20 was based on unreliable evidence and witnesses, exhibit numbers 24, 25,
21 26, 19, 74, 78, 17, 18, 19, 20, 21, 22 that should not have been admitted;
22 and did not admit reliable evidence exhibit numbers 10, 28, 33, 47, 50, 56,
23 57, 58, 61, 62, 64, 66, 67, 70, 71 shown in Exhibit Index pages 1-4, filed
24
25

1
2 on February 3, 2017 (Exhibit Index p1-4, Okanogan County Superior
3 Court WA (February 03, 2017)
4

5 The law rules: LCR 16 (9); LR4; and LCR 16(27)(A)

6 “(d) fails to obey pretrial order (1) is prohibited from introducing
7 evidence (2) striking pleadings (3) staying process (4) dismiss the
8 action (5) render default judgement (6) contempt of court award of
9 fees, expenses”

10 Evidence Index No. 24, 25, 26, 74, 78 were not available to view at the
11 pre-trial conference and were not included in the pre-trial statement.

12 Clough saw them for the first time at trial. Clough asserted at trial and
13 objected with “improper procedure” and “insufficiency of process” at
14 (VROP .40 at 22 - .42 at 6)

15 The trial court erred in admitting JUDGEMENT EXHIBIT A
16 pages 4,5,6, and EXHIBIT B page 7, NCW Land Surveying, LLC Land
17 Use Planning “Centerline Description”, drawing of alleged road, into the
18 Judgement in Okanogan County Superior Case No. 14-2-00393-7.

19 Exhibits 24, 25, and 26 should not have been admitted as evidence not
20 only pursuant to LCR 16 Id., but also because the author, Erickson, has
21 admitted it is not a “survey” but merely a “sketch” because he did not
22 check the corners or go to the corners, the house is drawn at the wrong
23 angle in the wrong place, they were not able to distinguish a “centerline”
24

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2 and Clough witnessed he was not on where the “centerline” used to be,
3 there was no “centerline” only a lawn, he refused to measure where the
4 abandoned easement really used to go, (VROP.195 at 25, .199 at 6 - .200
5 at 8, .196 at 7), Ex. 6 shows a 60 foot wide and turning up the hill south
6 when he admitted to 7 feet wide and going straight west (VROP .196 at 7)
7 could not get a signal in places due to tall trees, mountainsides, and cliff,
8 cannot get a GPS signal or Satellite signal where he was, the t.v. and
9 Hughes net could only get signal in one specific place, he admits he
10 guessed (VROP .209 at 1 - .214 at 16, 203 at 4) the measurements are not
11 accurate, the drawings were done specifically for the trial, so they were
12 not objective or impartial paid for by Chapman, drawings done in a hurry
13 a few days, different than a previous line flagging done previously, so they
14 should not have been admitted as evidence, and the “Entry Upon Land”
15 should not have been allowed pursuant to CR26(b)(1)(A)(B)(C) which
16 she asserted in her Response and Opposition to Motion for Entry Upon
17 Land filed on 07-05-2016 "oppressive” with attachments of Ex. 33 the
18 survey from Fanning with Olympia address which shows no roads on the
19 property when Clough bought and a survey Chapman already had done by
20 Fisher that showed no roads on the North side of his property. Crandall
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2 and Erickson were rude to Clough when they entered her property and the
3 entire ordeal was extremely oppressive done right before trial and causing
4 Clough anxiety.
5

6 Crandall did not disclose witness Perry Houston pursuant to
7 LCR16 Clough did not get to see the drawings until 9:00 P.M. July 11.
8 Clough tried to object with “improper procedure” “unreliable” and
9 “improper procedure” LCR 16 during trial but wasn’t fast enough due to
10 anxiety(VROP.203 at 4). Clough moves for choice (4) dismiss action.
11

12 Evidence Exhibit No. 48 and 70 shows a current picture of where
13 the “alleged” centerline with a tape measure showing it to be 25 feet from
14 Clough’s bedroom window, not the 32.8 feet shown on the “sketch”. No.
15 41 shows a more accurate previous depiction by the same company in
16 which they did check the boundaries with the key showing different
17 measurements. Clough did not have an opportunity to hire an independent
18 and impartial party to do a real survey more accurate and check the
19 corners.
20
21

22 Ex. 25 has a darker line scribbled in to make it look like Chapman
23 was a part of 657611 boundary and it was different than 657611 schedule
24 B. Erickson drew Crandall a large visual with a bright orange rectangle
25

1
2 drawn around Clough property and a bright yellow line depicting the
3 alleged "road" so that Crandall could ask witnesses "point to the "road"
4 you took to your property" and they pointed at the yellow line inside the
5 orange triangle which proves nothing except they can find a yellow line
6 inside an orange triangle and I thought that would be obvious and apparent
7 to the court. Later, without the yellow line and orange rectangle chapman
8 could not find his property on the map. All Erickson's documents were
9 drawn specifically for the trial and profit. Clough thought it was obvious
10 to the court that these documents were false. The law rules and Clough
11 has proven that the court erred in admitting and not admitting above said
12 exhibits and they should not have been considered or used in trial but
13 stricken from the proceedings but Clough's evidence should have been
14 admitted. (Response and Opposition to Motion for Entry Upon Land p1-
15 9 (7/5/2016) (Id. Ex. 33, 41)

16
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18
19 Evidence Index No. 74 was also offered by a party not listed in the
20 suit "Ryan Burkett, Jacob Evans, Michael Evans" Clough thought the
21 court had stricken due to prejudicial, and should not have been allowed to
22 play in court because it violated her right to privacy 9.73.030, intimidated
23 and humiliated her, emotionally traumatized and harassed Clough right
24

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3 there in the courtroom, causing Clough to cry with huge anxiety attack and
4 not be able to address everything she wanted to in her closing statements
5 (VROP .572 at 7-10). Ex. 74 is evidence of the “intentional infliction of
6 emotional harm” harassment attack on Clough as it is a telephone
7 conversation about Ryan Burkett and Jake Evans being dropped off,
8 climbing through gate, walking through no trespassing signs up to her
9 house when she was not home, but Clough’s caretaker caught them stoned
10 and drunk with beer in their pockets, arriving at her home, telling Mike
11 Sadowsky slander about Clough, aggravating, then turn on the tape
12 recorder, causing Clough extreme emotional anxiety attack even though
13 Clough repeated “by legal means” “have you arrested” and at no time
14 threatened with bodily harm and would not ever. Judge Burchard had
15 already ruled and told Evans “remedy is to file in Superior Court” but they
16 trespassed and harassed instead of filing in court, which proves the court
17 erred when it did not award Clough damages for non-economic damages.
18 Clough moves the exhibit to be stricken from the record if it pleases and
19 judge all the Evans, family, and invites permanent injunction protecting
20 Clough.
21

22 Ex. 19 was missing the two pictures that showed where the real
23 original easement course looked abandoned so it should not have been
24 admitted pursuant to ER 106; all the maps with lines drawn in by Perry
25

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3 Houston in the Okanogan County Planning Department should not have
4 been admitted because Houston draws in the roads wherever he wants
5 them to be, does not check for easements, and leaves out the Knox
6 Extension/Pine Ridge excellent roads for some unknown reason. These
7 lines are unreliable because the maps have a disclaimer at the bottom
8 shown in Ex. 32. So, they should not be admitted as reliable evidence to
9 show where or not where a “road” goes. Clough sent out the road naming
10 documents in compliance with an inaccurate letter but not at any time did
11 she sign and give an easement. The law rules: An easement must be in
12 writing and

13
14 ¶ 35 Licenses and easements are distinct in principle. 25
15 AM.JUR.2D *Easements & Licenses* § 2 (2007).

16 No. 28, 33, 47, 50, 56, 57, 58, 61, should have been admitted as
17 Clough introduced them with witness verification and thought they had
18 been admitted because it was apparent obvious that she was introducing
19 them in order to admit them. Mr. Crandall took the entire first two days at
20 trial delaying and confusing the easement issue with other issues, it was
21 supposed to be a 2 day trial, but finally at the end of the 2nd day Clough
22 was able to testify. As soon as she was started the court called an
23 extended recess, waited hours, then come back tomorrow. On 7/14/2016
24

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2 she felt rushed because the court was in an extra day, she knew she didn't
3 have time to rebut all the false information presented by Mr. Crandall.
4 This was not equitable, fair, or impartial which violates Clough's
5 Constitutional 5th right to fair trial. If these exhibits cannot be considered
6 admitted Clough moves the court to admit them or remand so she can
7 admit them at a new trial; or make a motion within this brief to offer them
8 and/or new evidence. Ex. 33 is public record an Okanogan County
9 Auditor File No. 3101590 document showing the Olympia address of the
10 previous owners of Clough property which proves it was "vacant"
11 property and therefore no prescriptive easement can be claimed with a
12 survey showing no roads which in "Objection to Admissibility of
13 Documents Pursuant to ER 904(c)" was filed on August 5, 2015; which
14 also admitted No.'s 31, 32, 34,35,37, 38, 40, Clough supplied the
15 foundation for No. 41 and deleted "true and correct", 42, 43, 44, 45, 46,
16 48, 49, 51, 52. For Ex. 47 and 50 Clough asserted ER 902 (f) printed
17 materials purporting to be newspapers periodicals" since these were online
18 periodicals which the "public broadly recognizes" they should have
19 qualified for the exception to hearsay rules and been admitted. (VROP . 48
20 at 22 - .49 at 7); Exhibit No. 61 was identified by Chapman as his invites
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3 business card given to Clough when they were hunting on her
4 property(VROP.157 at 9 – 159 at 5) and Clough thought it was admitted
5 when she told them not to hunt on her property they said “you better watch
6 out” which proves Chapmans invite was hunting on Clough’s property and
7 threatened her when caught; Ex. 28, Clough supplied the foundation so it
8 should have been admitted, is public record general information to show
9 the names of the “roads” in relation to 657611 schedule B map with better
10 routes included since these are self-authenticating public documents they
11 should have been admitted. No. 56 is an online social media Facebook
12 page which shows Evans invite Ryan Burkett slandering and harassing
13 Clough showing a gun, swearing, calling Clough a “hippi blank” and
14 riding a four wheeler down the road from Chapman property through
15 Codella/Evans property connecting with Pine Ridge/Knox Road Extension
16 which shows and proves that is a better route more direct to county road,
17 is apparent, and the hostile harassment to Clough causing her emotional
18 distress. Clough did not have time to get this admitted. Clough would
19 like to formally admit this pursuant to ER 901 (4) , ER 904 (6), and or ER
20 901(a) or remand to trial to get this admitted because it would change the
21 outcome and serve justice and get them to stop harassing Clough.
22
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2 (VROP.8 at 1-21, .208 at 1-9, .407 at 4)(Obj. Adm. Doc. ER904(c)

3
4 Colbert p1,2 (8/5/2015))

5 A copy of the 2nd Amended complaint was not attached to the
6 Motion for Joinder and amend Complaint filed on 3/21/2016 (Washington
7 Courts Superior Court Case Summary Docket Sub 63-67) pursuant to CR
8 15 Amended and Supplemental Pleadings. Clough did not receive a copy
9 until 6 weeks later on 5/05/2016, almost time for trial. Clough moves to
10 dismiss the entire suit with prejudice.

11 Pursuant to ER 607 and ER 608(a)(b), the witnesses McNall,
12 Berrigan, Erickson, Houston, Chapman, and Codella, Evans, and George
13 Conkle called by Crandall have been proven to be impeached due to
14 credibility including prejudice, bias, interest in outcome, untruthfulness,
15 and specific instances of conduct and their testimony not reliable
16 evidence.

17
18 McNall admitted to working for Chapman and is trying to gain an
19 \$87,000.00 contract to fix the skid trail and make it passable (VROP .188
20 at 12 - .189 at 5) which proves monetary interest (VROP .189 at 21 - .190
21 at 9) which proves a specific instance of conduct where he cut through my
22 gate, passed no trespassing signs, drove to my home, and put the gate
23 together so I wouldn't know. He was hunting, not working for Evans and
24

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2 went through Pine Ridge Road after he left my home which proves
3 adequate legal access to Evans and Codella actual use.
4

5 Berrigan had monetary interest in outcome trying to gain a logging
6 contract from Chapman and Codella Ex. 21,22, and untruthfulness in an
7 inconsistent statement "only accessible by the road in question" then he
8 did gain permission to take them the other route (VROP .164 at 22 - .165
9 at 21-23; .189 at 21 – 190 at 9) then Berrigan admitted he could have
10 pulled the logs up the skid trail (VROP 168 at 16 - .169 at 2) which proves
11 his testimony is unreliable. Berrigan used the other access to reach
12 Codella and Chapman to perform his work because Clough gates were
13 locked, proving these are adequate access and show on the 657611
14 schedule B map, therefore legal adequate access for Codella and Evans
15 therefore not necessary to travel past my bedroom window.
16

17 Erickson said he did a "survey" and later admitted it was a
18 "general" guess so it should not be reliable evidence.(Id. Above)

19 Houston has monetary interest in the outcome because he testified
20 works in the Okanogan County Planning Department and is trying to get
21 more development for the county so if he gets Chapman an easement then
22 Chapman can develop his properties. A specific instance of conduct is
23 when he took out 2 pictures of the abandoned part of alleged "road" and
24 only turned in the rest in Ex. 19 which proves not reliable evidence.
25

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3 Chapman has monetary interest because he wants to develop his
4 properties and untruthfulness with many prior inconsistent statements
5 including “saw Clough at the gate” (VROP . 138 at 9) and “saw me for the
6 first time at the settlement conference” (VROP . 138 at 20), “his wife”
7 (VROP .135 at 19) and “he is single individual” (VROP .136 at 2), “been
8 to his property a lot of times” (VROP 147 at 20) and didn’t recognize a
9 picture of his property (VROP 151 at 23, .150 at 1, .150 at 14) and many
10 more, therefore his testimony should not be admitted as reliable evidence.

11 Evans has an interest in the outcome so he can recreational tour
12 and hunt through Clough’s property, monetary so he doesn’t have to pay
13 to maintain his own road, and made many untruthful inconsistent
14 statements including (VROP .525 at 8-12) first Evans said he did not get a
15 key, then he said the key was taken back. The key was not taken back.
16 (VROP .251 at 19) Evans says he named the alleged “road” Evans Ranch
17 Road (VROP .253 at 15-.254 at 8) but Ex. 20 shows that Clough sent out
18 the application and Evans did sign it which proves one of Evans many
19 inconsistent statements therefore Evans testimony is not reliable evidence.
20 Evans also has specific instance of misconduct when he threatened Clough
21 with “I can get really shitty” and said Clough was harassing him when she
22 was not, and said Clough threatened him with bodily harm when she did
23 not and would not. Evans was also recently arrested for possession off a
24
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2 stolen vehicle and rides an atv while he is receiving disability Ex. 40
3 shows a picture of Evans on his ATV hiding on Chapman property and
4 watching Clough as she walked.
5

6 Codella has monetary interest in gaining an easement through
7 Clough's property and made untruthful inconsistent statements including
8 (VROP .90 at 2) communicated with Clough, but this did not happen the
9 first communication was 2007 when Clough called to name the "road"
10 (VROP . 91 at 1), Codella said he did not know what route they took
11 (VROP .86 at 11) then said they took alleged "Evans Ranch Road"
12 (VROP .86 at 17), Codella said they can't take logs up hill (VROP 86 at
13 20) but Clough has a deep personal knowledge of logging and it common
14 knowledge that loggers often skid logs up hill, which proves that Codella
15 testimony is unreliable as evidence. Codella did admit that Boesel used
16 the other access to survey Codella's property (VROP .101 at 9) and
17 Berrigan accessed his property another way (VROP .95 at 25) which
18 proves Codella has another legal access which is adequate making it
19 unnecessary to go through Clough "loop" back to Pine Ridge and then to
20 his property.
21

22 George Conkle had a prior inconsistent statement when he told
23 Clough he "couldn't remember" what it looked like so his testimony
24 cannot be reliable evidence.
25

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3 Which proves these exhibits and witnesses were not reliable and
4 should not have been admitted or relied on as evidence, but Clough's
5 evidence and witness should be admitted and relied, therefore, Clough
6 moves these exhibits to be stricken from the record and since the Facts and
7 Conclusions were based on unreliable witness and evidence, the
8 Judgement vacated, reversed, or modified, if it pleases the court.
9

10 Argument Issue No. 6: The trial court erred in Assignment
11 of Error No. 1 when it did not find the judicial theories of "neighborly
12 accommodation" and "vacant land doctrines" relevant to this case.

13 Legal authorities rule:

14 Gamboa v. Clark, 321 P. 3d 1236- Wash: Court of Appeals, 3rd Div. 2014

15 Roediger v. Cullen, 26 Wash. 2d 690, 175 P.2d 669 (1946)

16 Cuillier v. Coffin, 57 Wash.2d 624, 358 P2d 958

17
18 Todd v. Sterling, 45 Wn.2d 40, 42, 44, 273 P.2d 245(1954); N.W.Cities
19 Gas Co. v. Western Fuel Co., 13 wn.2d 75, 84,123 P.2d 771 (1942); Id.
20 Todd, 45 @n.2d at 43; Roediger v. Cullen, 26 Wn.2d 690, 711, 175 P.2d
21 669 (1946)

22 The "Vacant Land Doctrine" legal authorities rule:

23 Todd v. Sterling, 45 Wn. 2d 40 44 273 P2d 245 (1954); Granite Beach

24 Holdings 103 Wn. App); E.g., Brandt vs. Orrock 106Wash. 593, 181 Pac.
25

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3 35 (1919); *Watson v. County Commissioners*, 38 Wash. 662, 80 Pac. 201
4 (1905).

5 If the Plaintiffs did actually use the skid trail from 1990 until 2006
6 it would be considered permissive by the court (VROP . 567 at 24; .568 at
7 1-8) because Ex. 42 shows pictures of the 4 unenclosed corners of Clough
8 property proving it was wild, unenclosed and Ex. 33 shows the Grantors,
9 Fanning, address in Olympia, which proves the property was vacant, and
10 the “vacant land doctrine” applies to this suit. no evidence was offered
11 proving the Fannings did not give them permission, therefore any use
12 before 2008 would be presumed permissive. In several decisions the court
13 rules that the “owner must have knowledge of the adverse use” *N.W.Cities*
14 *and Gas Co. v. Western Fuel Company*, 13 Wn. 2d 75, 123 P.2d 771
15 (1942) Since Chapman, Codella, and Evans must prove all the elements
16 required by case law to grant prescriptive easement and they do not, their
17 claim should be denied and the court was in err to award them easement.
18 Since Clough gave permission trying to be neighborly she should be
19 protected by the “neighborly accommodation doctrine” upheld in
20 Washington State Court in *Roediger v. Cullen*, 26 Wn.2d 690, 175 P.2d
21 669 (1946) Ex. 51 shows a gift from Evans after Clough gave him
22 permission to use and they were friends until the adverse started in 2008
23
24
25

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2 and lasted until 2010. Clough asserted her argument in her Answer
3 p9,10,11 and (VROP.138 at 9)
4

5 The Respondents do not fulfill the remaining elements because if they
6 used the alleged “Evans Ranch Road” skid trail route it could Not have
7 been continuous because all the evidence shows the skid trail non-existent
8 before the 1993 logging and fading after the 1993 logging as if no one
9 used it and Knox Road Extension becoming more worn. (Ex.)
10

11 The law rules: Granite Beach Holdings, LLC v. Dep’t. of Natural res.,
12 103 Wn. App. 186, 200, 11P.3d847(2000); Murray v. Bosquet, 154 wash.
13 42, 280 P. 935 (1929)

14 Ex. 43 shows there are no structures on the Chapman, Codella, or Evans
15 properties and offered no evidence of actual continuous use.

16 Ex 30 and 67, 54, 53,52, 44 show they did not use a uniform route.

17 Aerial photos of a log skid trail do not prove Respondents
18 actually used it for ingress egress. Just because a road has a name doesn’t
19 met has an easement. Ex. 45 Perpetual Timber Deed Quit Claim proves it
20 was logging road. Ex. 52 shows it fading each year until 2006 when
21 Defendant bought and excavated to the bottom of the skid trail, then in
22 2008 Alexander excavated the skid trail, Id. Logging created the skid trail
23 in and the alleged “road” that replaced the original old easement
24

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2 (VROP.85 at 21) Then, even the 1993 logging road was left abandoned
3 proven by Ex. 59 and the above stated exhibits. Legal authority rules:
4 Cullier v. Coffin, 57 Wn. 2d 624, 627, 358 P.2d 958 (1961) did not pay
5 taxes on the 60,000 square feet of alleged “easement” Chapman, Codella,
6 nor Evans fulfill any of the elements of prescriptive easement which
7 proves the trial court erred in awarding them.
8

9 (VROP .141 at 3, .353 at 24 - .354 at 21, .376 at 13)(Id. Answer p9,10,11;
10 Id. Ex. No. 42, 51, 33,34, 60)

11 Argument Issue No. 7:

12 No. 7 The trial court erred in Assignment of Error No. 1 when it
13 did not rule to eject extinguish any easement right Chapman, Codella, or
14 Evans may have had if they might have had pursuant to RCW78.070;
15 78.050; Clough also fulfills all the elements set out in Washington State
16 Case Law to extinguish any express or prescriptive rights Chapman,
17 Codella or Evans may claim and RCW78 states that after 7 years owner
18 claims rights by title. Clough’s title states “Together with all”. (Court’s
19 Findings of Fact and Conclusions of Law from trial; Order P8 pp.3,
20 Christopher Culp, Okanogan County Superior Court WA (08-23-2017)
21
22

23 The trial court erred in not ruling any Express or prescriptive
24 easement rights if Chapman, Codella, or Evans had any extinguished by
25

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3 abandonment and estoppel (VROP .568 at 2-5; .566 at 21; .567 at 4; .563
4 at 4). Ex. 60 shows Clough took possession in 2006 by color of title and
5 in good faith, has paid all taxes and continued in possession until 2017,
6 put an underground PUD, a well, a house, tool shed, wood shed, lawn,
7 yard, landscaping and became acclimated, and Chapman, Codella, Evans
8 did not file suit until 2014 after the 7 years color of title had passed. Since
9 the suit is still in litigation and it is now 2017, then 10 years have passed
10 with Clough “asserted and enforced ownership rights”. Since the original
11 easement on 657611 has not been used for 24 years since the 1993 logging
12 road was made that does not follow the easement route depicted in
13 657611, no of actual use has been proven on any at all.

14 Legal authorities rule :

15 Restatement of Property, §504, Comment d (1944);
16 Barnhart v. Gold Run, Inc., 68 Wn. App. 417, 423 n. 2, 843 P.2d 545
17 Hickerson v. Bender, 500 N.W.2d169(Minn. Ct, App. 1993)
18 Comeau v. Manzelli, 182 N.E. 2d 487 (Mass.1962);
19 Howell v. King Count, 16 Wn.2d 557, 559-60, 134 P.2d 80 (1943);
20 Lewis v. City of Seattle, 74 Wash. 219, 223-25, 24 P2d427 (1993) aff’d,
21 27 P.2d 1119 (1993); City of Edmonds v. Williams, 54 Wn. App. 632,
22 634, 774 P.2d 1241 (1989); Burkhard v. Bowen, 32 Wn.2d 613, 203 P.2d
23 361 (1949); Shelton v. Boydstun Beach Association, 641 P.2d 1005 (Idaho
24 Ct. App. 1982); Slak v. Porter Id.; Barnhart v. Gold Run, Inc. 68 Wn. App.
25 417, 423 n. 2, 843 P.2d 545 (1993) Schumacher v. Brand, 72 Wash 543,
130 P. 1145 (1913); McCue v. Bellingham Bay Water Company, 5 Wash.
156, 31 P. 461 (1892)

23 Ex. 48 and 70 show a picture of Clough’s yard with no “road” visible, Ex.
24 59 shows a description of what the alleged “road” looked like when

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2
3 clough bought it in 2006, Ex. 31 Shows the skid trail non-use, Ex. 30, 44,
4 53, 54 show the other well-used routes that lead to their properties,
5 Since Chapman, Codella, Evans used Knox Road Extension and other
6 routes instead, failed to maintain and let trees and bushes grow up, fail to
7 object to home building until 8 years later, this proves that the court was in
8 err when they did not extinguish any or all rights in the easement pursuant
9 to the abandonment and estoppel theories and RCW78 7 years by title.
10 Pursuant to Hickerson v. Bender, 500 N. W. 2d 169 (Minn. Ct. App.
11 1993), no objection to numerous obstructive improvements being placed
12 on the easement, held sufficient evidence of abandonment. The Plaintiffs
13 failed to assert their rights in time. Clough has proven “assertion of rights”
14 before the 10 year prescriptive easement element could be established.
15 The following common law cases have upheld this action (Schumacher v.
16 brand, 72 Wash. 543, 130 P. 1145 (1913); McCue v. Bellingham Bay
17 Water Company, 5 Wash. 156, 31 P. 461 (1892); Abbott v. Thompson,
18 641 P.2d 652 (Or. Ct. app. 1982);), therefore, this proves Clough has not
19 committed any wrongdoing and she was fully within the law to assert her
20 ownership rights by title after 7 years and before the 10 year prescriptive
21 period fulfilled. Clough did this by legal means and not at any time
22 threatened anyone with bodily harm that is why there is no reliable
23
24
25

1
2 evidence to prove the claim. (VROP .352 at 21, .389 at 24, .375 at
3 17, .342 at 4, 359 at 2, .336 at 9, .369 at 10, .361 at 3, .390 at 7) (Ex. 16,
4 29, 31, 48, 70, 59, 52, 51) Therefore, Chapman, Codella, or Evans do not
5 have legal or equitable right to express, implied, prescriptive through
6 Clough property, and the court was in err and Clough moves the court to
7 reverse, vacate, and/or dismiss the suit with prejudice if it pleases.
8

9 Argument Issue No. 8:

10 The trial court erred in Assignment of Error No. 1 in not awarding
11 Clough “Economic Damages” “Bodily Injury” and “Non-economic
12 Damages” pursuant to RCW4.56.250, due to the refusal of Chapman,
13 Codella, Evans to help pay for maintenance during Chapmans one year of
14 use Evans 2 ½ years of use of alleged “road,” the attorney fees incurred
15 for an attorney for this suit, and their intentional infliction of outrageous
16 harassment. (Judgement P3, pp5, Christopher Culp, Okanogan County
17 Superior Court (11-08-2016))
18

19 Ex. 38 shows checks written for maintenance and receipt for attorney
20 fees for this suit, Ex. 66 shows a bill for one snowplow needed at least 10
21 times per year (VROP .570 at 10), Ex. 58 shows documentation of the
22 harassment, 57 shows one of the trespassers Chapmans invite, 47 shows
23
24
25

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2 average road costs, 40 shows evidence of the harassment, 39 shows
3
4 Clough's physician statement of how this has affected her health which
5
6 proves the court erred in not awarding damages.

7
8 Legal authority rules: Buck Mountain Owners' Association v.
9
10 Prestwich Wash. Court of Appeals, 1st Div. 2013

11
12 "Absent an agreement, joint users of a common roadway are obligated to
13 contribute to the costs reasonably incurred for repair and maintenance of
14 the roadway." "After a six-day bench trial, the trial court entered judgment
15 against Bentley-Prestwich for past maintenance and repair costs, including
16 interest, late fees, and construction impact fees. It also obligated Bentley-
17 Prestwich to share 62.5 percent of a full share of future maintenance and
18 repair costs and ordered them to execute a binding covenant."

19
20 The law rules RCW 4.56.250 The Defendant is entitled to damages due
21
22 to the Plaintiffs intentional infliction of emotional distress. Legal
23
24 authorities rule: Sophie v. Fibreboard Corp. 112 Wn. 2d 636 (1989);
25
26 Kloepfel v. Bokor, 149Wn. 2d , 192,194, 66P. 3d 630 , 202 -203(2003)

27
28 Ex. 56 shows a slanderous Facebook video posted by Ryan
29
30 Burkett, Evans invite, where he shows a gun, Ex. 50 shows information
31
32 about Clough's highly sensitive health condition, Ex. 38 shows bills for
33
34 maintenance and attorney for this suit, Ex. 74 shows Evans son harassing
35
36 clough and recording it, Ex. 61 shows the business card the hunters who
37
38 threatened Clough gave her when she caught them hunting on her property
39
40 and told them not to they said "you had better watch out" (VROP at .379

1
2 at 18, .381 at 16, .383 at 15, .384 at, .385 at 9, .363 at 10 – 364 at 1, .140
3 at 1, .363 at 19) Chapman identified this card at trial as belonging to his
4 grandson, since Chapman invited him he is liable for his actions toward
5 Clough all of which proves that Clough has been damaged.
6

7 The harassment to Clough from Wayne Evans invites Ryan
8 Burkett, Jake Evans, and Michael Evans and whoever they can get has
9 continued to present. Evans and invites caused \$2,000.00 worth of
10 damage to Clough's driveway this spring, had his truck towed up to
11 Clough's property and left it there for 2 months. Respondents refused to
12 help pay their share of \$2000.00 of snowplowing incurred 1/9/2016-
13 3/20/2016. It is not fair or equitable for Clough to pay all the maintenance
14 and endure the harassment. Clough has asserted this in her Answer on
15 page 21 and 22, and her Counterclaim the court (VROP .582 at 10,24, .580
16 at 5) This proves the Respondents are liable for damages and Clough
17 pleads to the court if they please, to order the Respondents to pay for
18 alleged "road" renovation, maintenance costs, damages to Clough, and
19 attorney fees from this suit. Clough offered to drop all charges of
20 damages if they would agree to stop harassing her and use their other
21 routes and leave her alone but they refused the offer so far. (Id. Answer p
22 21,22; Counterclaim p1-20 (July 27, 2015); Ex. 39, 40, 47, 50, 56, 57, 58,
23 61, 66, 74)
24

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3 Argument Issue No. 9: The trial court erred in Assignment of
4 Error No. 1, in not finding an enormous disparity of hardships to Clough
5 upon applying the “balance of hardships test” theory.

6 Legal authorities rule:

7 782*782 *Seattle v. Nazarenius*, 60 Wn.2d 657, 669, 374 P.2d 1014
8 (1962); *Lenhoff v. Birch Bay Real Estate, Inc.*, 22 Wn. App. 70, 75, 587
9 P.2d 1087 (1978); Restatement (Second) of Torts § 936 (1979).

10 The Judgement that the trial court imposed is causing enormous hardships
11 on Clough. This violates Clough’s right to “life, liberty and the pursuit of
12 happiness” her home is her happiness and a life dream of continuing the
13 legacy of her Great Grandfather’s homestead in Tunk Valley 2 miles
14 away, learning from her Grandfather Horace Clough, and her late father
15 Richard Horace Clough born on the homestead. Not only does this
16 devalue her home, not enough room to turn around in front of her house,
17 the cost of building a road is enormous, gives away over 60,000 square
18 feet of the only flat part of Clough property that she already had leveled
19 and graveled for her barn that burnt down she was going to replace, a
20 sentimental beautiful rock fire pit her son built, considerable amount of
21 large diameter timber that did not burn, protected sharp tailed grouse
22 habitat, is not sensible or reasonable, Clough drives 45 minutes each way
23 to work from the mountainside for privacy, peace, quiet and health issues,
24 now she cannot go out in her yard or walk causing her health to diminish.

1
2
3 Clough will have to relocate if an easement is granted and would live her
4 life waiting to die. Clough will lose everything (VROP .435 at 14) But,
5 Chapman's invites and Evans invites have shown misconduct Ex. 40, they
6 delayed too many years in bringing suit Ex. 60, it is not necessary other
7 remedies are available such as Knox Road Extension/Pine Ridge (VROP
8 .565 at 18; 566 at 3), and the character of the interest to be protected is the
9 Constitutional Right of Clough a home and life dream to be where her
10 Great Grandfather homesteaded which is her "pursuit of
11 happiness."(VROP .572 at 10-13;Dec.of Independence,Jefferson,p1 1776)

12 Clough just witnessed Evans still using Pine Ridge Road (7/5/2017
13 at 4:10 P.M.) his adequate legal access. Chapman would rather use the
14 other access and has a home and will make a lot of money developing
15 which proves an enormous disparity of hardships and irreparable harm to
16 Clough. Clough asserted in her Answer and the law rules:

17
18 *Kucera v. Dep't of Transp.*, 140 Wash.2d 200, 209, 995 P.2d 63
19 (2000) ("[I]njunctive relief will not be granted where there is a plain,
complete, speedy and adequate remedy at law"

20 To award Chapman, Codella, Evans easements connecting to Knox
21 road extension/Pine Ridge Rd would be a " plain, complete, speedy and
22 adequate remedy at law."(VROP .570 at 1; .555 at 7) Id. Also, Proctor v.
23 Huntington, 192 P. 3d 958 - Wash: Court of Appeals, 2nd Div. 2008;
24

1
2
3 Shaw v. Merritt, Wash: Court of Appeals, 1st Div. 2004

4 “The only necessity offered by Shaw is the avoidance of an additional
5 7 to 12 miles of driving. Although driving the additional miles may
6 be inconvenient, it does not provide the degree of necessity required
7 to establish the easement.”

8 Clough asserted this in her answer on page 20 and 21 and (VROP .570 at
9 15-19; .570 at 6,7; .512 at 16; .570 at 24; .571 at 7)(Id. Answer p20,21;
10 Reply p28,29,30)

11 The trial court erred in neglecting to take a “neighborly approach” and
12 provide provisions for the neighbors to get along in the future such as
13 maintenance, scope, gates, misuse, overuse, and manners Clough has
14 asserted in Answer and law states: RCW7.28.010 states “proper parties” ;
15 8.24.015 “may be joined as a party” Cohoe, Swanson, Algie, and Nelson
16 were not joined or notified of the change (VROP .563 at 23).

17 Clough moves the court to order to remove the Lis Pendens from her title
18 pursuant to 4.28.328(1)(2)(3), if it pleases.

19 Legal authorities rule the specific nature of the actual use will
20 define the nature and scope of a prescriptive easement pursuant to:
21 Northwest Cities Gas Co. V. Western Fuel Co., 13 Wn. 2d 75, 123 P.2d
22 771 (1942) The scope through Clough was a field of grass, then after
23 renovation 7 feet wide, but Judgement give 60,000 sq.ft. of property.
24

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2 The law rules: *Lingvall v. Bartmess*, 97 Wn. App. 245, 982 P.2d 690
3 (1999)

4
5 *Standing Rock Homeowners Assn. v. Misich*, 23 P. 3d 520 – Wash: court
6 of Appeals, 3rd Div. 2001 rules that Clough can have gates.

7 Clough moves the court for a permanent injunction against Chapman,
8 Codella, Evans, Burkett, against trespass and harassment to Clough.

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

12 Chapman wants an easement for 8 20-acre lots for development. Without
13 easement his lots are worth 20,000.00 each; with easement they are worth
14 50,000.00 each; which means the easement is worth \$240,000.00 of profit
15 for Chapman therefore, Chapman should pay for the value of easement
16 (VROP .549 at 15)

17 The law rules against recreational touring through Clough
18 property:

19 *Snyder v. Haynes*, 217 P. 3d 787-Wash: Court of Appeals, 3rd Div. 2009

20 Therefore, this proves the trial court erred in not applying balance of
21 hardships test providing a neighborly approach with provisions for
22 neighbors to get along in the future. There was not enough time at trial or
23 not enough pages allowed in appeal to address all the issues presented.
24

1
2 (Id. Answer p 21,22; Counterclaim p1-20 July 27, 2015; Ex. 39, 40, 47,
3 50, 56, 57, 58, 61, 66, 74)

4 Clough believes in “Love thy neighbor” but also “Do unto others”
5 so for un-neighborly neighbors should buy an easement and it would be
6 easier from a distance with neighborly provisions. (Id. Reply p30-31; Ex.
7 69,68,67, 63,52, 53, 54, 55)

8
9 VI. CONCLUSION: Wherefore, since the burden of proof is upon
10 Chapman, Codella, Evans but they have not shown substantial reliable
11 evidence or witness, court rules have not been followed, and prima facie
12 evidence has been disproven with Clough’s substantial reliable evidence
13 and witness, 10 years have passed, misconduct has been, errors made,
14 shown Clough continues full ownership rights of her property by title, and
15 prays for an equitable win-win solution that will heal hard feelings and
16 cause neighbors to be neighborly again with spiritual awakening.

17
18 IF IT PLEASES THE COURT, Appellant Clough seeks the
19 following relief:

20
21 No. 1 Vacate/reverse/modify the Judgement and Order; Award
22 Chapman Wa Spec. Easement Necessity; select route via Knox Road
23 Extension to Pine Ridge through Codella’s to Chapman’s, determine scope
24

1
2 to be 30 feet, and calculate/award future market value payment for
3
4 easement, order a maintenance costs and manners agreement

5 No. 2 Award Wayne Evans, Jake Evans, Michael Evans and
6 Burkett the same easement via Knox Ext./ Pine Ridge and name this route
7 "Evans Ranch Road"

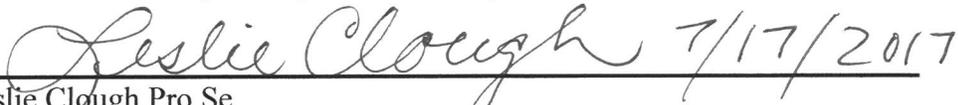
8 No. 3 Vacate abandoned easement and log "road" through
9
10 Clough/Nelson and order Clough's address back to 350 Knox Road

11 No. 4 Award damages to Clough and Remove Lis Pendens

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

15
16 VII. APPENDIX – Not Applicable

17
18 Respectfully submitted, signed and dated:

19  7/17/2017
20 _____
21 Leslie Clough Pro Se
22 PO Box 324 Riverside, WA 98849
23 509-429-0335
24 cloughleslie@yahoo.com

1 NO. 349179

2 COURT OF APPEALS: DIVISION III
3 OF THE STATE OF WASHINGTON

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

6 JOHN HARVEY CHAPMAN, and SALLY CHAPMAN, a married couple;
7 and JOHN CODELLA, JR, a single person, Respondents;
8 and WAYNE EVANS, a single person, Respondent;

9 v.

10 LESLIE CLOUGH, Appellant;

11 CERTIFICATE OF SERVICE

12 I, Leslie Clough, Appellant, certifies that on the 17th of July, 2017, I caused a true and
13 correct copy of AMENDED BRIEF OF APPELLANT to be served on the following in the manner
indicated below:

14 Counsel for John Harvey Chapman
15 And Sally Chapman, and
16 John Codella;
17 Kenneth H. Kato
18 1020 N. Washington St.
Spokane, WA 99201
509-220-2237
khkato@comcast.net

(X) U.S. Mail

19 Wayne Evans
20 304 South Main Street
Omak, WA 98841

(X) U.S. Mail

21 Mailed by: Michael Sadowsky July 17, 2017
Michael Sadowsky PO Box 108, Riverside, WA 98849

22 Signed and dated this 17th day of July, 2017 by
23 Leslie Clough 7/17/2017

24 Leslie Clough, Appellant, Pro Se
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