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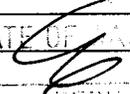
SMITH ALLING LANE

Case No. 36447-6-II

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY 

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

RICHARD C. EWAN, III, and INA KAY EWAN
Husband and Wife

Respondents

- and -

BARBARA A. PELOT

Appellant

APPEALS FROM THE SUPERIOR COURT FOR PIERCE COUNTY
STATE OF WASHINGTON
THE HONORABLE SUSAN K. SERKO

BRIEF OF RESPONDENTS

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WSBA 5159
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I. INTRODUCTION

This lawsuit involves a dispute between the dominant and servient estate owners regarding the appropriateness of gating an easement. The servient estate owners, the Defendant-Appellant, Pelot, justify the imposition of a gate for security reasons, to keep out lost travelers, and to help contain their dogs. The dominant owners, the Plaintiffs-Respondents, Ewan, sought and were granted injunctive relief: The removal of Defendants' gate from the easement way, because it unreasonably interferes with Plaintiffs' use and enjoyment of the easement way.

Exhibit A to this Brief, and to the Decree (CP 48) is similar to Exhibit 11, used at the trial to identify the position of fences, easements, and gates, past and current, in relation to the parties' properties: Parcel A is the dominant estate, and Parcel B, is the servient or burdened estate. References herein to numbered positions refer to the position of gates discussed in the testimony at trial. References to the easement or easement way are to a portion of the west 30 feet of Defendant's Parcel B, unless otherwise indicated.

The trial Judge's findings of fact, with the exception of findings O, P, R, and S, are not objected to, are therefore verities herein, and are descriptive of the setting in which this case arises. The findings objected to are supported by substantial evidence, in any event.

Prior to trial, the Defendant Lynn Pelot died, but his estate has not been substituted as a party in interest. After the trial and during the pendency of this appeal, the Appellant Pelot sold her Parcel B, and moved away.

Resolution of this appeal on the merits involves reviewing the evidence to determine whether the trial judge's decision was unreasonable, arbitrary, or an abuse of the discretion accorded a trial court in a case sounding in equity.

This controversy arose when the Plaintiff-Respondent (Ewan) objected to the placement of a gate within Ewan's easement way, claiming it was inconvenient and ugly and thus detracted from both the enjoyment and value of Ewan's property (Parcel A). Pelot, the Appellant herein, claimed security concerns, but Ewan argued that Defendant-Appellants' real or imagined security concerns could as well be addressed by moving the objectionable gate from position 2, thirty feet east, to position 3, on the eastside of Ewan's easement – thus gating Pelots' driveway without hampering Ewan's enjoyment of his easement.

The trial judge agreed with Ewan, and determined that the solution to Pelot's security concerns could be efficiently addressed without further burden to the Ewans, the dominant estate owners, and that Pelot's

maintenance of a gate within the easement way was therefore unreasonable as to Ewan.

At trial Defendant-Appellant amended her answer to add a counterclaim – alleging a 9 year old fence constructed by Ewan when he sold Defendants their Parcel B, along the east side of the easement way was a “continuing trespass”. The court, hearing no evidence of permission re the fence, found it to be a “continuing trespass” but found no credible evidence regarding damages resulting and awarded none to the Defendant.

II. COUNTERSTATEMENT OF THE CASE

By the early 1990’s, Richard C. Ewan, III and Ina Kay Ewan, husband and wife, (Plaintiffs, Respondents and Ewan herein), owned two pieces of property, designated Parcels A and B on Exhibit A, attached. CP at 40–41, 48. The Ewans built a house on Parcel B in 1992. CP at 41. In April 1994, Ewans recorded a Declaration of Easements with Road Maintenance Provisions which provided for an easement over a portion of Parcel B as follows:

1. Access and Utility Easements. Declarant hereby declares and creates an easement for ingress, egress and utilities for the benefit of Parcel A and Parcel B (described, supra) over, under and across the West 30 feet of parcel B, except the north 164 feet thereof; and the north 30 feet of Lots 3 and 2 of Pierce County Short Plat recorded under AFN 9003270461.

All that part of the above described easement way east of the west 30 feet of Lot 3 of Pierce County Short Plat recorded under Auditor's Fee Number 9003270461 shall be for the exclusive benefit of Parcel A and Parcel B.

CP 41, 49.

During the time the Ewans owned both Parcel A and Parcel B, they placed and maintained a gate at position 2, which was on the western boundary line of Parcel B and on the west side of the easement referred to above, in order to control access to Parcels A and B. CP at 41-42, 49; RP at 28-29; 43. That gate was removed when the Ewans sold Parcel B to Pelot in 1998. RP at 16, 29, 43.

At the time Parcel B was sold to Pelot, it was only partially fenced. CP 42. Part of the agreement for the purchase and sale of Parcel B allowed the Ewans to complete fencing around Parcel B. CP 42. During the fencing project, Ewan removed the wrought iron gate they had installed across the easement at position 2, and reinstalled that gate at position 3. CP at 42. As soon as Mr. Pelot saw the gate was being moved to position 3 and he objected saying he did not want the gate installed at position 3. CP at 42; RP at 19, 21, 29. The gate was put aside and laid on the ground or against a tree (RP at 19) for the next eight years. RP at 22-23.

After purchasing Parcel B, the Pelots married and while the Pelots honeymooned, the Ewans had chain link fencing installed around Parcel B. No witness recalled that fencing on the east side of the easement was part of the purchase agreement for Parcel B; but all agree that Pelots made no complaint re the fence on the east side of the easement for nine years, from 1998 until shortly before trial, in April 2007. From the time the Pelots bought Parcel B (1998) until 2006, no gate existed at positions 2 or 3 that could close or deny access to Parcel B. CP 43. Yet, Mrs. Pelot claimed people came onto her Parcel B during the day and at night. RP 49. She wanted a gate installed in order that she would feel safer (RP at 50–51; 61) and to help keep her dogs on the property. RP at 61. In 2006, the Pelots picked up the discarded wrought iron gate and reinstalled it at position 2. CP at 43. Mr. Ewan immediately objected to placement of a gate at position 2, insisting that it be removed. CP 43. The Pelots responded to Ewan’s objection by replacing the wrought iron gate with a lightweight aluminum gate. RP at 23. There are no external controls for the gate and one has to get out of their car to open it and then again to close it. RP at 23–24. Ewans continued to object to a gate, including an inconvenient and ugly cattle gate, at position 2; but their complaints about a gate at position 2 were of no avail and Ewan brought suit for injunctive relief.

Following trial, the trial judge held that the gate Pelot installed at position 2 unreasonably interfered with the Ewans' access to Parcel A because Pelot had the ability to locate a gate at position 3, on the east side of the easement that did not interfere with Ewan's access. The trial Judge decreed that the gate at position 2 be removed. CP at 47. The trial Judge also held that the fencing erected by the Ewans on the east side of the Parcel B easement represented a continuing trespass (albeit that no complaint was made for more than eight years and until trial) and that Pelot could demand, in writing, that the fencing be removed at Ewan's expense if she did so within 30 days of the date of the Decree. CP at 48.

Mrs. Pelot sold her Parcel B on November 21, 2007 to David K and Rachel M. Paterson, husband and wife, who are not parties on appeal. Exhibit B, attached. Despite continuing to pursue her appeal, Mrs. Pelot is no longer a party in interest herein.

III. ARGUMENT

This case, seeking equitable relief, was tried to the court. After considering the evidence, the trial judge decreed that gating the easement was an unreasonable abridgement of Respondents' right of passage over the easement because Appellant could easily accomplish her goals – security, and keeping her dogs at home – by placing the gate 30 feet east

of position 2 (at position 3 on Exhibit A, attached), which did not adversely affect the dominant estate owner's access.

A suit for injunctive relief is an equitable proceeding addressed to the sound discretion of the trial court, to be exercised according to the circumstances of *each* case. See for example, *Federal Way Family Physicians, Inc. v. Tacoma Stands Up For Life*, 106 Wn.2d 261, 264, 721 E2d 946 (1986); *Rupert v. Gunter*, 31 Wn. App. 27, 29, 640 R2d 36 (1982). Appellate courts must give great weight to the trial court's decision, interfering only if it is based on untenable grounds, is manifestly unreasonable or is arbitrary. *Federal Way*, 106 Wn.2d at 264; *Rupert*, 31 Wn. App. At 30. *Steury v. Johnson*, 90 Wn. App 401, 405, 957 P.2d 722 (1998).

Here, the trial Judge did balance the parties' interests and equities. A review of the record reveals that the trial Judge weighed the reward to Ewan of unrestricted access over his easement against the cost to the servient estate of placing the gate at position 3, out of the easement. Her decision was not "untenable" – a readily available alternative to gating the easement where it adversely affected Ewan's access certainly existed. Her decision re the alternative available for siting the gate is defensible, and it is sound. The idea of siting the gate on the east side of the easement way, where it could not impose on Respondent (the dominant estate owner) was

not unreasonable – in fact, it is amazing to this writer that Appellant apparently thinks otherwise. It is the epitome of equity that where a thing can be accomplished in a manner that imposes a relatively slight burden to one or both parties, it is reasonable to so proceed. The trial Judge’s decision was not arbitrary – there was a rationale, based on the evidence, to enjoin gating the easement.

Appellant challenges several of the trial court’s findings – but each finding challenged is based on testimony or other substantial evidence; or if a finding is not based on substantial evidence, then it is harmless, i.e. does not materially affect the trial Judge’s decision.

The standard of review regarding the trial Judge’s Findings of Fact and Conclusions of Law is set forth in *Standing Rock Homeowner’s Association v. Misich*, 106 Wn. App. 231, 242-243, 23 P.3d 520 (2001), and is well settled in Washington law:

When the trial court has weighed the evidence, our review is limited to determining whether the court’s findings are supported by substantial evidence and, if so, whether the findings support the court’s conclusions of law and judgment.” *Panorama Village Homeowner’s Ass’n v. Golden Rule Roofing, Inc.*, 102 W. App. 423, 425, 10 P.3d 417 (2000) (citing *Brin v. Stutzman*, 89 Wn. App. 809, 824, 951 P.2d 291, review denied, 142 Wn2d 1018 (1998)). “The challenged findings will be binding on appeal if they are supported by substantial evidence in the record.” In re *Contested Election of Schoessler*, 140 Wn.2d 368, 385, 998 P.2d 818 (2000) (citing *State v. Hill*, 123 Wn.2d 641, 647, 870 P.2d 313 (1994)). Substantial evidence exists where

there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding.” *Hill*, 123 Wn. 2d at 644. “The party challenging a finding of fact bears the burden of showing that it is not supported by the record.” *Panorama Village*, 102 Wn. App. at 425 (citing *Brin*, 89 Wn. App. At 824).

An examination of the record reveals substantial evidence for the trial Judge’s findings and certainly for the decision to not allow a gate at position 2 when a gate would do as well at position 3.

A. Appellant attacks the trial Judge’s Finding of Fact “O”; that lost travelers would come on to Pelots’ property approximately two times per week.

Mrs. Pelot testified that lost travelers came on to her property about every other day and sometimes at night. The difference between “approximately two times per week” and about every other day (3 or 4 times per week) is insignificant. The point was Pelot believed that she had security issues – and the solution was she could reinstall a gate at the top of her driveway on the east side of the driveway at position 3. The answer to Pelot’s security concern would be the same regardless of the number/frequency of lost travelers she experienced. The finding is within the evidence or is harmless. An error that does not materially affect the merits of a controversy is harmless. See e.g., *W.L. Reid Co. v. M.B. Contracting Co.*, 46 Wn.2d, 784, 285 P.2d 121 (1955).

B. Appellant attacks the trial Judge's Finding of Fact "P", that there was no trespass on Pelot's property (that would justify a gate at position 2). Regarding Pelot's concerns that could justify a gate and as to Parcels A and B (Pelot's parcel) even Pelot denied illegal use, picnicking speeding, graffiti, or litter on Parcel B. The trial Judge did find that "lost travelers" came on to Parcel B. See discussion re finding of fact "O", above. CP 43. Whether the "lost travelers" that constituted a security issue for Pelot were in fact *trespassers* or simply lost but innocent travelers does not materially bear on the trial Judge's decision to disallow the gate at position 2 when it could as well be placed at position 3. Therefore, if the "lost travelers" who flooded Pelot's Parcel B should have been denoted as "trespassers", such an error is harmless.

As to that part of Pelot's Parcel B that is the easement, Mr. Ewan, III, who regularly walked his dogs on the easement, detected no change in use of the easement by others since 1998 (8) years – other than Pelot installing the objectionable gate at position 2. No speeders; no intruders, no littering. No security issues at all, as far as he, a user of the easement and neighbor of Pelot, was aware. RP 22-24.

C. Pelot attacks Finding of Fact "R" (CP 44) claiming the trial Judge erred in finding no greater burden than "originally contemplated" on

the easement way and that Pelots' concerns could be resolved if she located a gate east of the easement way.

Pelot and the Plaintiff testified that when Plaintiff owned both Parcels A and B, and at the time Parcel B was sold to Pelot, access to Parcels A and B was gated at position 2. That wrought iron gate was removed in 1998, and not replaced until 2006. RP 16-17. There was no evidence as to the unwanted traffic on to Parcel B before Pelot's purchased. There was no evidence to indicate that the number of "lost travelers" increased from 1998 when Pelots purchased and thereafter. But, regardless of whether the basis of Pelot's security concerns increased from the time the easement was created or Pelot's purchased Parcel B, a matter Pelot had the burden of proof upon; the fact is Pelot can control access to her home and property with a gate at position 3. A gate at position 3 does not impose on the dominate estate owner's use of the easement, and is an obvious solution well within the testimony and other evidence. A glance at Exhibit 11, (Exhibit A hereto and to the Court's Decree, CP 48) reveals the utility of gating at position 3 without limiting access, use and enjoyment of the easement by Ewan.

D. Pelot challenges Finding of Fact "S", CP 44, that a gate at position 2 is unreasonable interference of Ewan's use and enjoyment of his property (which, of course, includes the access easement thereto). If

Finding of Fact "S" is indeed a finding of fact, it is amply supported by the evidence and is a finding or a conclusion squarely within the discretion of the trial Judge.

The Respondent Ewan testified that he created the easement to provide access. RP 141 line 13-14; that after he sold Lot B to Pelots he arranged for the gate at position 2 to be moved to position 3 to assure "free access" over the easement to his Parcel A. RP 146 lines 9-16. It follows that if the gate could be placed at position 3 without interfering with the Respondents' access, then to place it where it does interfere (position 2) is not reasonable. See RP 147-8.

E. Appellant challenges Conclusion of Law "A", (CP 44) which is based on case law and is an accurate restatement of the law, and is consistent with the cases cited by the trial Judge in support of her Conclusion of Law "A". The essence of the trial Judge's decision regarding a gate at position 2 being unreasonable in this case, is the exercise of her discretion, **in equity**, after "balancing" the harm to one party versus the reward to the other party, of a particular decision. In this case, in these circumstances, the trial Judge's exercise of discretion was reasonable --- it was well reasoned, it was not untenable. There is obviously a basis for deciding a gate at position 2 is objectionable to the dominant estate owner if it can be as well placed at positions 3. In any

event the trial Judge's Conclusion of Law "A" is supported by and consistent with the findings of fact.

Whether or not the owner of land, over which an easement exists, may erect and maintain fences, bars or gates across or along an easement way, depends upon the intention of the parties connected with the original creation of the easement, as shown by the circumstances of the case; the nature and situation of the property subject to the easement; and the manner in which the way has been used and occupied. *Lowe v. Double L. Props*, 105 Wn. App. 888, 893, 20 P.3rd 500 (2001).

The record has ample evidence to support the findings complained of (the others are verities on this appeal) and the findings support (i.e. virtually require) this conclusion of law.

F. The Appellant attacks the trial Judge's Conclusion of Law "C", which states that a gate at position 2 is an unreasonable interference with the Plaintiff's use of Parcel A. Conclusion of Law "C" is also supported by the findings of fact, which are based upon testimony and other evidence, including testimony of Respondent Ewan (e.g. RP 141-142), that because an alternative exists, which does not impair the access of the dominate estate user, the conclusion that a gate at position 2 is unreasonable is well within the discretionary range available to the trial court.

G and H. Appellant attacks Conclusions of Law “D” in so far as it holds that the lost travelers that Pelot was concerned about did not justify interference with Plaintiffs’ access to Parcel A; or that there was a reasonable alternative, i.e. a security gate could reasonably be placed at position 3. As with Appellant’s attack on the trial Judge’s Conclusions of Law “A” and “C” and the discussion above at paragraphs E and F, the fact that Pelot’s security concerns could be addressed with a gate at position 3, a gate that did not diminish the use and access over Ewans’ easement, makes the Judge’s conclusion a “no brainer”. That is – Pelot’s concerns do not have to be addressed at Respondents’ expense. The alternative of a gate at position 3 rather than the complained of position 2 is so obvious, reasonable, and useful as to render this appeal frivolous.

I. Appellant objects to Conclusion of Law “F”, or at least the part of the trial Judge’s decision that allows the Appellant only 30 days from entry of the trial court’s decision to demand removal of fencing east of Ewan’s easement at Ewan’s expense. The objection is insufficient. The Conclusion of Law “F” (or finding of fact, if that is what it is) is certainly consistent with the evidence of fences, dogs, and the fact that the fence, installed at Ewans’ expense over nine years earlier, may be seen as a benefit, and was in any event not complained of until shortly before trial herein.

Again, such a decision was clearly within the ambit of the trial judge's discretion: Unchallenged Findings of Fact A – K, CP 39-43 iterate some of the relevant evidence:

When Respondent Ewan sold Parcel B to Pelot, Ewan agreed, incident to the sale of Parcel B to Pelots, to provide fencing, and at the same time installed fencing along the east side of Ewan's easement. Pelot knew of the fencing since its installation in 1998 and made no complaint until 2007! In the circumstances, the trial Judge did not find credible evidence of damages.

If Pelot decided the fence on the easement's east side was really a benefit to her, keeping her dogs out of the easement, and easement users out of her yard, then she needn't ask for its removal. The court gave her a reasonable opportunity to have the fence removed at Respondents' expense. In any event, except for the fact that she has sold Parcel B and moved away, Pelot could have removed the fence or put one or more gates in it, it was on her land before she sold the land.

IV. CONCLUSION

The record as a whole supports the decision of the trial court to require the gate desired by Appellant be sited where it will not block Ewan's access to his Parcel A over his easement. Therefore, even if one

or more of the trial judge's findings of fact were not supported by substantial evidence, this appeal is without merit. Where a decision of a trial court is a matter of discretion, as in a case sounding in equity, the trial Judge's ruling will not be upset or disturbed on review unless upon a clear showing of abuse of discretion, that is, discretion exercised on manifestly unreasonable or untenable grounds, or for untenable reasons. *State. ex rel. Carroll v. Junker*, 79 Wash.2d 12, 482 P.2d 775 (1971). The common sense of the trial Judge's decision not to allow Pelot to block Ewan's easement when her gate could as well be sited at position 3 is apparent.

The instant case is one easily decided by the application of equitable principals within the discretion of the trial court. The trial court learned at trial that:

Ewan enjoyed an easement over the west 30 feet of a portion of Appellant's Parcel B, a right of ingress and egress over the easement, for access to Ewans' Parcel A.

Upon sale of Parcel B to Pelot in 1998, Respondent caused a wrought iron gate at position 2 to be moved to position 3.

Pelot objected to the placement of a gate at position 3 and the wrought iron gate was propped against a nearby tree for the next 8 years, during which time no gate existed at positions 2 or 3.

In 2006, without warning to Ewan, Pelot replaced the wrought iron gate at position 2 and Ewan immediately objected. Pelot took down the wrought iron gate and installed in its stead, an aluminum cattle gate – also objected to by Ewan.

Ewan's objection to a gate at position 2 was that it impeded access to his Parcel A; that it was ugly and diminished his property's value.

There were no security concerns re the easement strip, no litterers, rascals or thieves.

Pelot's security concerns, re lost travelers driving up to her home, could be readily addressed with a gate at position 3, without imposing on the Ewans' access or other complaints regarding a gate at position 2.

The trial Judge made no error in concluding that a gate at position 2 was unreasonable as to Ewan where a gate at position 3 would address Pelot's concerns but not hamper Ewan's access or other concerns.

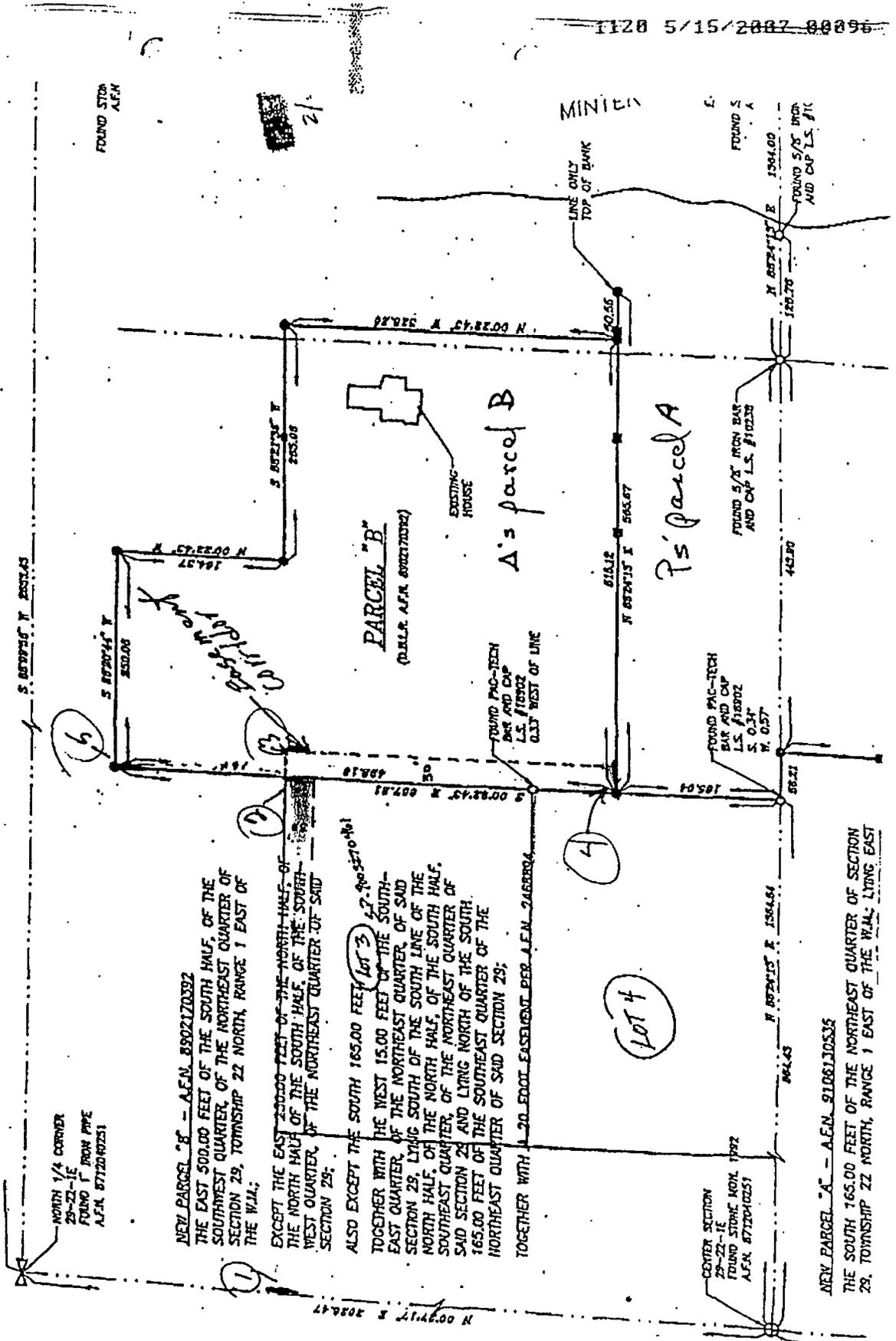
RESPECTFULLY SUBMITTED,

GORDON & ASSOCIATES

By: 
DAVID D. GORDON, WSBA # 5159
Attorney for Respondents, Ewan

EXHIBIT A

RECORD OF SURVEY



NORTH 1/4 CORNER
29-22-1E
FOUND 1" IRON PIPE
A.F.M. 8772040251

NEW PARCEL "B" - A.F.M. 8592170392
THE EAST 500.00 FEET OF THE SOUTH HALF, OF THE
SOUTHWEST QUARTER, OF THE NORTHEAST QUARTER OF
SECTION 29, TOWNSHIP 22 NORTH, RANGE 1 EAST OF
THE W.M.A.;

EXCEPT THE EAST 100.00 FEET OF THE NORTH-HALF, OF
THE NORTH HALF OF THE SOUTH HALF, OF THE SOUTH-
WEST QUARTER, OF THE NORTHEAST QUARTER OF SAID
SECTION 29;

ALSO EXCEPT THE SOUTH 165.00 FEET LOT 3
TOGETHER WITH THE WEST 15.00 FEET OF THE SOUTH-
EAST QUARTER, OF THE NORTHEAST QUARTER OF SAID
SECTION 29, LYING SOUTH OF THE SOUTH LINE OF THE
NORTH HALF, OF THE NORTH HALF, OF THE SOUTH HALF,
SOUTHEAST QUARTER, OF THE NORTHEAST QUARTER OF
SAID SECTION 29, AND LYING NORTH OF THE SOUTH
165.00 FEET OF THE SOUTHEAST QUARTER OF THE
NORTHEAST QUARTER OF SAID SECTION 29;

TOGETHER WITH A 20 FOOT EASEMENT PER A.F.M. 2468804.

CENTER SECTION
29-22-1E
FOUND STONE MON. 1992
A.F.M. 8772040251

NEW PARCEL "A" - A.F.M. 9106130535
THE SOUTH 165.00 FEET OF THE NORTHEAST QUARTER OF SECTION
29, TOWNSHIP 22 NORTH, RANGE 1 EAST OF THE W.M.A. LYING EAST

EXHIBIT A

EXHIBIT B

423039
RL



200711270634 2 PGS
11/27/2007 12:17pm \$41.00
PIERCE COUNTY, WASHINGTON

WHEN RECORDED RETURN TO:
Name: David K Patterson and Rachel M Patterson
Address: 12302 120th Street KPN
Gig Harbor, Washington 98329

Escrow Number: 423039
Filed for Record at Request of: *Buyer Title*

STATUTORY WARRANTY DEED

THE GRANTOR(S), Barbara H. Pelot, as Personal Representative of the Estate of Lynwood M Pelot, JR, deceased and Barbara H. Pelot, who acquired title as Barbara Hagen, as her separate estate for and in consideration of Ten Dollars and other good and valuable consideration in hand paid, conveys, and warrants to David K Patterson and Rachel M Patterson, husband and wife the following described real estate, situated in the County of Pierce, State of Washington:

See Exhibit A for full legal description.

Abbreviated Legal: Pm of SW 1/4 and the SE 1/4 of NE 1/4 of Section 29-22-1E

Tax Parcel Number(s): 0122291098

Dated: November 21, 2007

The Heirs and Devisees of Lynwood M Pelot, JR, deceased

Barbara Pelot PR
Barbara H. Pelot, Personal Representative

Barbara Pelot
Barbara H. Pelot (Hagen)

State of Washington

ss:

County of PIERCE

On this 21st day of November, 2007, before me personally appeared Barbara H. Pelot to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed, and on oath stated that she was authorized to execute the instrument and acknowledged it as the Personal Representative of the Estate of Lynwood M. Pelot, JR, deceased to be the free and voluntary act of such party for the uses and purposes therein mentioned. Given under my hand and official seal this 21st day and year last above written.



Lauren O'Connor
Notary name printed or typed: Lauren O'Connor
Notary Public in and for the State of Washington
Residing at Gig Harbor, WA
My Appointment expires: May 25, 2009

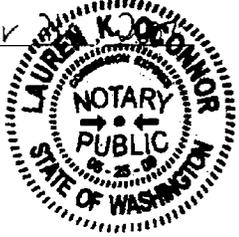
STATE OF Washington

ss.

COUNTY OF PIERCE

I certify that I know or have satisfactory evidence that, Barbara H. Pelot is the person who appeared before me, and said persons acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: November



Lauren O'Connor
Notary name printed or typed: Lauren O'Connor
Notary Public in and for the State of Washington
Residing at Gig Harbor, WA
My appointment expires: May 25, 2009

LPB 10-05 (i-1)

For reference only, not for re-sale.

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EXHIBIT A

Parcel A:

The East 500.00 feet of the South half of the Southwest Quarter of the Northeast Quarter of Section 29, Township 22 North, Range 1 East of the Northeast Quarter of Section 29, Township 22 North, Range 1 East of the W.M., in Pierce County, Washington.

Except the East 250.00 feet of the North Half of the North Half of the South Half of the Southwest Quarter of the Northeast Quarter of said Section 29;

Also Except the South 165.00 feet.

Together with the West 15.00 feet of the Southeast Quarter of the Northeast Quarter of said Section 29, lying south of the south line of the North half of the North half of the South Half of the Southeast Quarter of the Northeast Quarter of said Section 29 and Lying North of the South 165.00 feet of the Southeast Quarter of the Northeast Quarter of said Section 29.

Parcel B:

A non-exclusive easement 20 feet in width for ingress and egress, the center line of which is described as follows:

Commencing at the Northeast corner of the Southwest Quarter of the Northeast Quarter of Section 29, Township 22 North, Range 1 East of the W.M., in Pierce County, Washington;

Thence South 02°00'35" West 417.98 feet;

Thence North 89°18'15" West 203.38 feet;

Thence South 55°43'15" West 18 feet to the true point of beginning for said Center Line;

Thence South 34°16'45" East to intersect a line bearing South 89°17'23" East from a point on the West line of the Southwest quarter of the Northeast Quarter of said Section 29, a distance of 160 feet North of the Southwest corner of the North Half of the North Half of the South Half of the Southwest Quarter of the Northeast quarter of said Section 29;

Thence North 89°17'23" West to the West Line of said Southwest quarter of the Northeast quarter of Section 29 and the Terminus of said Center Line.

Except from said Easement that portion within the county Road and that portion of the South 10 feet within the East 500 feet of the southwest Quarter of the Northeast Quarter of Section 29, Township 22 North, Range 1 East of the W.M.

Situate in the County of Pierce, State of Washington.

Subject to:

Covenant and Real Property Restriction imposed by instruments recorded on October 29, 1959, under Recording Nos. 1871017 and 1871144.

Easement and the terms and conditions thereof:

Purpose: Ingress and egress
Area affected: a portion of said premises
Recorded: October 12, 1972
Recording No.: 2468894

Matters set forth by survey:

Recorded: April 9, 1992
Recording No.: 9204090539

All covenants, conditions, restrictions, reservations, easements or other servitudes, if any, but omitting restrictions, if any, based upon race, color, creed or national origin, disclosed by Pierce County Boundary Line Adjustment No. 8902170392.

Road Maintenance Agreement and the terms and conditions thereof:

Recorded: March 23, 1994
Recording No.: 9403230647

Declaration of Easements with road Maintenance Provisions and the terms and conditions thereof:

Recorded: April 21, 1994
Recording No.: 9404210400

For reference only, not for re-sale.

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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY  DEPUTY

COURT OF APPEALS
DIVISION II
STATE OF WASHINGTON

RICHARD C. EWAN, III, and INA KAY
EWAN, Husband and wife,

Respondents,

vs.

BARBARA A. PELOT,

Appellant,

No. 36447-6-II

CERTIFICATE OF SERVICE
OF BRIEF OF RESPONDENTS

I, DAVID D. GORDON, hereby certify that on the ____ day of January, 2008, I
personally delivered a true and correct copy of the Brief of Appellants to:

Joseph R.D. Loescher
Attorney at Law
1102 Broadway Plaza, Suite 403
Tacoma, WA 98402

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

DATED this 8th day of Jan., 2008.



DAVID D. GORDON, #5159

CERTIFICATE OF SERVICE

GORDON & ASSOCIATES
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P.O. Box 1189
Gig Harbor, WA 98335
(253) 858-6100 Fax: (253) 858-9747