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STATE OF WASHINGTON
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NO. 42426-6-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

EARLY DAWN ESTATES HOMEOWNERS ASSOCIATION,

Appellant,

vs.

FRANK FREDERICKS,

Respondent.

APPEAL FROM THE SUPERIOR COURT FOR CLARK COUNTY

THE HONORABLE DIANE M. WOOLARD, JUDGE

REPLY BRIEF OF APPELLANTS

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I. Introduction

Despite Fredericks' characterization, what this case is really about is EDE's desire to not provide services for Fredericks without being fairly compensated. In addition, the other users of the road wish to preserve the security afforded by their security gate and not be subject to Fredericks desire to leave the gate open whenever and for how ever long he elects. They also do not believe that his right to use the easement should be expanded to allow signs and other uses that were not provided in the grant of the easement and violate not just one set of EDE's CC&Rs, but the CC&Rs for Respondents Short Plat. It makes little sense for Fredericks to be allowed to do something on the easement that he is not allowed to do on his own property. Finally, they object to his use of an ATV on the easement, since it is outside of the scope of the easement.

The case was brought by Fredericks because of his complete lack of concern for the rights and security needs for his neighbors and fellow road users. Contrary to Fredericks' claim that he had "no voice", EDE made clear that he was invited and encouraged to attend meetings where road maintenance issues were to be discussed. RP 134-134; EX 15. Exhibit 15 shows that the EDE membership voted to change the corporation bylaws to give Fredericks a "voice" in 2008, long before he initiated his lawsuit in March 2010.

Fredericks also misstates that the gate itself is locked. It is not. It is an electronic security gate that can be opened by several methods. The only thing that is locked is the electrical box where the circuits for the gate are located. Because of a device that was installed by EDE that causes the gate to automatically open in the event of a power failure, when the circuits of the electrical box are switched off, the gate automatically opens and remains open. The electrical box is locked and the distribution of keys is limited because leaving the gate open negates the security provided by the gate and poses various safety concerns, as well as causing unnecessary wear and tear on the gate.

Fredericks wishes to leave the gate open at his whim, rather than using any one of several methods to insure his guests and invitees have access to his property. He has already shown a disregard for his neighbors' concerns by demanding that the gate be left open from 9-5, five days a week. This is precisely when security concerns are at their highest, because many property owners work during those hours and are not present on their property. That is the reason that EDE established an event protocol sometime in 2003 or 2004 for the circumstances in which their gate may be left open. RP 231-233. A written copy of this protocol, as well as a verbal explanation, was provided to Fredericks.

II. Reply to Fredericks' Statement of Assignments of Error and Issues Pertaining Thereto

On page 3 of *Respondent's Brief*, Fredericks mischaracterizes the issue of Fredericks having a key to the lock box for the circuit breakers for the gate as being that Fredericks is "entitled to have his own key to enable him to open the access gate as he deems reasonably necessary." Fredericks' ability to open the gate is not affected one way or the other by the electrical panel lock box. Instead, the issue is more properly characterized as to whether Fredericks is entitled to leave the security gate protecting all properties using the easement open whenever and for how ever long he desires.

III. Reply to Fredericks' Statement of the Case

Fredericks states in his brief that at the time he short platted his property, "[a] breaker was located at the gate which anyone could trigger, resulting in the gate remaining in an open position." Respondents Brief at 6. However, the testimony at trial indicated that EDE made several efforts to secure the circuit box, including installation of locked Bakelite covers , which were repeatedly broken off, prior to installation of the metal cover that exists today. EDE was finally successful in limiting access to the breaker when they installed a metal cover and lock that could not be easily broken. RP 161-164.

Fredericks states that no one from EDE objected to his leaving the gate open during construction of his home. Respondent's Brief at 6. However, testimony at the trial indicated that no one was sure who was leaving the gate open or whether or not it was simply malfunctioning. Certainly no other road user testified that they were aware that Fredericks was leaving the gate open. The testimony, at most, showed that when the gate was left open, it created much inconvenience and concern, since no one was sure if the gate was broken, vandalized, or had been deliberately left open. RP 194.

Fredericks goes on to state that no one objected to him leaving the gate open until Stu Reeder became president in 2009. *Respondent's Brief* at 6. However, in the very next sentence, he states that the metal cover on the lock box that he finds so objectionable was installed in 2008. Id. Obviously, the other users of the gate did have an issue with the gate being left open, since they went to the effort to install an unbreakable metal cover. This occurred before Stu Reeder became president in January of 2009, RP at 330-331, and nearly two years before Fredericks asked for a key.

It is also a mischaracterization to state that "some homeowners in EDE were given keys to the lock box, enabling them to leave the gate open as desired." *Respondent's Brief* at 6. The only people with keys

were either members of the board of EDE or a homeowner who lived very close to the gate, and could observe the goings-on when the gate was left open. RP 266-268. The gate was also not "left open as desired", since written event criteria were established determining when it was appropriate to leave the gate open, while still protecting the neighborhood's security concerns. EX 19.

Further, it is incorrect that Frederick had to "remain by a telephone" in order to allow visitor's admittance. Respondent's Brief at 7. He could provide visitors with his code to the gate. Alternatively, for unexpected visitors, the calls could be routed to a cell phone. Frederick is simply attempting to establish unreasonable interference with the easement where none exists. See *Finding of Fact* No. 6.

Frederick also states that he "felt the work he had willingly and voluntarily provided to improve and maintain the roadway and gate over the years was more than adequate". *Respondent's Brief* at 7. What he neglects to mention is that much of this work was done in his role as a developer, and was required by the County for approval of his short plat. For example, building the apron on the road and widening the road were requirements. EX 35. The other road users have since had to redo some of this work, at their expense. RP 290-291. Fredericks' work as a developer has nothing to do with his responsibilities as a user of the road.

ARGUMENT

A. The trial court improperly entered Conclusions of Law 2, 2(b) and 2(d)

The trial court's decision that Fredericks be billed for expenses incurred in maintaining the road forces all other users of the road to act as Fredericks' lender when it comes to paying for maintenance of the road. There is no justification for this, considering the value received by Fredericks for the work done by EDE and considering the CC&Rs appurtenant to the Fredericks' property. It is unquestioned that he has a responsibility to maintain the private easement, and it makes little sense to treat him differently than any other user.

Fredericks' attempts to characterize EDE's objection as being that Fredericks was not required to "pay the same monthly and special assessments that EDE imposes upon its own members". This mischaracterizes the issue. The real issue is that the members of EDE do not agree that they should be put in the position of paying for the costs of road maintenance in advance, and then be forced to hope they can collect Fredericks' share from him. The actual costs of regular maintenance of the road are reflected in the budget that EDE establishes every year, which is heavily subsidized by the volunteer work done by other users of the

road. EX 61 and 62. The value received by Fredericks far exceeds the $250.00 annual payment that is being requested.

The budget for EDE is little more that a budget for maintaining the road, most of which is devoted to 159th. EX 49. Costs for special projects and repairs are also established, and should be collected, in advance. While Fredericks is not a member of EDE, he is a user of the road and should not be treated differently than any other user of the road.

Fredericks states that his "easement includes only a small portion of the roads within Early Dawn Estates". *Respondent's Brief* at 9. However, the evidence at trial showed that the vast majority of the funds expended for road maintenance were spent on 159th. EX 49. Of course, these expenses would be much more if other road users, who happen to be members of EDE, were not voluntarily working on the road.

Fredericks is not the only dominant estate holder who only uses 159th. The other lot owners in the Short Plat, for example, also only have an easement on 159th, and yet pay the same annual assessment as all the other road users. RP at 273. There is no equitable reason to treat Fredericks any differently, and to do so will only continue in perpetuity a nagging neighborhood friction.

Fredericks again attempts to argue that the money he previously spent on the road should be sufficient. Much of this work was undertaken

in his role as a developer, and was required by the County for approval of the Short Plat. EX 35. It was neither wanted nor asked for by the other road users. The other road users were given no say in that work, how it was conducted, or whether they even wanted changes to 159th.

The argument also ignores the fact that the other road users and their predecessors in interest also incurred expenses, from which Fredericks now benefits. These include construction of 159th in the first place and installation of utilities and other services from which Fredericks now benefits, on the easement. In any case, neither Fredericks nor EDE is challenging the court's decision that these expenditures satisfied Fredericks' responsibilities through 2010. Although EDE believes strongly that work Fredericks did in his role as developer of the Short Plat has nothing to do with his responsibilities as a user of the road, Fredericks' bankruptcy filing in January of 2010 renders moot any challenge to the court's decision on that issue.

Had Fredericks sold his lot in the Short Plat, instead of retaining it, it is doubtful that the court would have even considered the argument that the new owner should not be required to pay for road maintenance because of work done by the developer. Fredericks is simply another road user now. Anything he was required to do in order to develop the Short Plat is immaterial.

Fredericks continues to characterize the amounts being requested from him for repair and maintenance of 159th as "assessments". This amount could more appropriately be characterized as his fair share of the cost of maintaining the road. Further, as to his objection that he has no say whatsoever in the decision making process, he has been invited, and has in fact attended, meetings where maintenance issues for the road are discussed. EX 41; RP 134-135. His insistence that he "has no say" appears to be that he doesn't have veto power over the other users' decisions regarding the road.

It is correct that Fredericks is not a party to the EDE road maintenance agreement. *Respondent's Brief* at 10. However, that does not mean he does not have an obligation to make payments for maintenance and repair of the road. See *Bushy v. Weldon,* 30 Wn.2d 266 (1948). Further, he is a party to a road maintenance agreement in the form of his own CC&Rs. EX 8. He is not complying with the requirements in that document either.

Fredericks attempts to distinguish *Brentwood Subdivision Road v. Cooper,* 461 N.W.2d 340 (Iowa App. 1990) on the basis that *Brentwood* concerned homeowners within one subdivision. This is a distinction without a difference. There is not even a hint in that case that the court's decision had anything to do with the fact that all the road users were

located within a single subdivision. Instead, the decision was based on the principal that "when property owners commonly use private roads as ways of necessity, all of those owners should be required to contribute equally to the maintenance of those roads." *Brentwood* at 342.

In the *Brentwood* case, an association was established in a subdivision after the subdivision had already been developed. Just like EDE, the sole purpose of the association in *Brentwood* was to maintain a common road. The parties in that case were the homeowners who elected to join the association, on the one hand, and those who didn't, on the other. It was undisputed in that case, as in this one, that the party objecting to payment used the road for ingress and egress. It was also undisputed that the objecting homeowners were not part of the association. Nonetheless, the court found, on equitable principals, that the objecting parties were required to pay an equal amount in advance for the costs of maintaining and repairing the road.

Fredericks asserts that the trial court fairly and equitably allocated responsibility for the expense of the road. This is not the case. The evidence presented at trial showed that the vast majority of expenses were incurred for maintaining 159th. EX 49. The evidence further showed that the value delivered to Fredericks by the efforts of EDE exceeded the assessment that is being requested. EX 50 and 53. Finally, the court's

decision in this case differs from the one in *Brentwood* because the court's decision in this case requires all other road users to finance repairs and maintenance and then attempt to collect from Fredericks, as opposed to requiring Fredericks to pay in advance for the value of the services he receives. This requires all the other users to either run the risk of subsidizing Fredericks' use of the road, or to incur additional expenses in attempting to collect his payment should he elect not to pay his fair share. This is hardly fair or equitable.

Fredericks similarly attempts to distinguish *Okoboji Camp Owners Cooperative v. Carlson,* 578 N.W.2d 652 (Iowa 1998) on the basis that all the parties were part of the same subdivision. Just as in the *Brentwood* case, the nonpaying road users were not part of the organization seeking to collect the assessment. Nevertheless, the court determined under the principles of quasi-contract that a benefit was conferred for which the objecting road users were required to pay. No part of this analysis had anything to do with whether or not this was one subdivision.

Rather, the court determined that the cooperative had conferred substantial benefits in a context that was not officious. The measure of restitution for those benefits was the "reasonable value of the benefits of conferred" *Okoboji* at 654. The court determined that the budget presented by the cooperative was sufficient proof of that value, even

though it included items that the complaining parties did not make use of. Similarly, in this case, evidence was presented at trial for the value of the benefits conferred by EDE. This value substantially exceeds the amount of the annual payment being requested.

B. The court improperly determined that Fredericks was entitled to a key enabling him to leave the gate open whenever and for however long he desired. The court further erred in determining that the restrictions imposed by EDE regarding opening the gate were unreasonable restrictions on Fredericks' easement rights.

Fredericks states in his responsive brief that the court found that EDE had "unilateral control of the gate". *Respondent's Brief* at 12. This was not a finding by the court, and is untrue. EDE makes no attempt to control who any property owner gives the entry code to, for example. There are no restrictions on who is allowed to enter, or when visitors might enter the gate. The only restriction is on toggling the switches in the electrical box to leave the gate standing open.

Nor did the court make a finding that there was a "blanket refusal to allow Fredericks to leave the gate open from time to time." *Id.* In fact, such a finding would have been contrary to the evidence, since the evidence at trial shows that a procedure was in place allowing the gate to be left open upon previous notice and based on particular criteria that balanced the security concerns of the residents with the need to leave the gate open. EX 19. Finally, the evidence showed that on at least one

occasion, EDE did leave the gate open for Fredericks from nine to five on a particular day, but refused his blanket request to leave the gate open from nine to five on all business days. RP at 125.

The trial court's decision to allow Fredericks to leave the gate open at his whim did not take into account at all the other road users' interests in maintaining the security of the gate.

In discussing the factors the court established in *Rupert v Gunter,* 31 Wn.App. 27 (1982) for determining when a gate is a reasonable restriction on an easement, Fredericks first states that "it is telling, however, that no gate interfered with or limited use of the easement when the easement was initially created". *Respondent's Brief* at 14. While this is true, it is important to remember that this is not a case about whether the gate itself is reasonable. Fredericks apparently concedes that it is, and even used the fact that the road was gated as a selling point in selling the lots in the Short Plat. RP at 133. The issue in this case is whether it is an unreasonable interference with the use of an easement to restrict the conditions under which the gate is left open.

Fredericks goes on to state that it is very significant that the "access gate could be left open when Fredericks purchased his property, when he constructed his home, and until the metal lock box was installed in 2008." *Respondent's Brief* at 14. No evidence in the record supports

the claim that the access gate could be left open when Fredericks purchased his property.

As to whether the gate could be left open when Fredericks constructed his home, what the evidence shows is that EDE made several attempts to limit access to the electrical box by installing Bakelite covers that were subsequently broken off. A metal cover was custom made and installed in 2008 that could not be easily broken off. RP 161-164. If Fredericks was able to leave the gate open when he constructed his home, it was simply because EDE had been thwarted in their attempts to keep the electrical box locked.

Finally, it is noteworthy that while the court found that the metal lock box on the electrical panel was installed in 2008, Fredericks did not request a key until early in 2010. See EX 23. It is hard to conceive how failure to have a key to the electrical box is an unreasonable restriction on his use of the easement when apparently he did not even express the need for a key for two years after the lock was installed. In fact, the timing of his request makes it appear as if his demand to be allowed to leave the gate open at will was retaliation for his demand to include business names in the call box being denied.

Fredericks cites *Steury v. Johnson,* 90 Wn. App. 401, 406 (1998) for the proposition that in determining whether something is a reasonable

restriction on an easement, the court must engage in a balancing test between the burden on the servient estate and the inconvenience to the dominant owner. He concludes that "inconvenience to Fredericks far outweighs any burden on EDE from having to provide Fredericks a key to the metal lock box." *Respondent's Brief* at 15. However, it seems apparent that the inconvenience to Fredericks of not having a key is very small, since he did not even request a key for two years.

Nor is the burden on the servient estate stated correctly. The correct burden to be weighed against the inconvenience to Fredericks is not the burden of providing a key. This is obviously a rather simple act. Instead the minor or nonexistent inconvenience to Fredericks needs to be weighed against the compromise of the security function of the gate, which burdens all other users of the road.

Although Fredericks analyzes several Washington cases regarding gates, the issue in the instant case is not whether the gate itself is a reasonable restriction on the easement. No one, not even Fredericks, has contended that it isn't. Rather, the issue is whether the maintenance of a lock on the electrical box of the gate in order to prevent the gate from being left open, and establishing criteria for reasonable times and reasons for the gate to be left open, whim is an unreasonable restriction on the easement.

Fredericks discusses several cases in his brief, and EDE wishes to respond here to the ones that are applicable.

In *Rupert v. Gunter,* 31 Wn.App. 27 (1982), the court allowed a servient estate holder to install a lightweight gate that could be easily opened by anyone. The instant case is distinguishable because the gate here is intended for security. Obviously, it would not serve the purpose of security if it could be easily opened by "anyone". As Fredericks has not objected to the gate itself, it appears that he does not object to the installation of a security gate. While serving the purpose of security, the EDE gate can be easily opened by all authorized persons. There are several methods of providing access to invitees and guests, including providing them a code, providing them with a preprogrammed door opener, having them contact the homeowner from the call box, or leaving the gate open on prearranged occasions by following a written event guideline agreed upon by all users which reasonably balances ingress convenience with community security concerns. .

In *Lowe v. Double L Properties, Inc.,* 105 Wn.App. 888 (2001), the court held that gates intended to control livestock were allowable, but had to be such as to allow easy passage. The court in *Lowe* certainly did not make a ruling, as Fredericks wishes the court to do in this case, that the livestock gates could be left open at the dominant estate holder's whim.

Such a result would be nonsensical and defeat the purpose of the gate. Similarly, a security gate that can be freely left open does not serve its intended purpose either.

On page 16 of *Respondent's Brief*, Fredericks once again states that the gate is "locked". This is patently untrue. It is also untrue that, as Fredericks states in his brief, *Id.,* that EDE is attempting to "unilaterally dictate" when the gate can be opened. What EDE is trying to control is the uncontrolled leaving open of the gate, to the detriment of the other users of the road. In none of the cases cited by Fredericks does the court allow the dominant estate holder to leave the gate open without any regard to the legitimate concerns of the servient estate holder. In fact, all the decisions seem to stand for the proposition that the dominant estate holder has a duty to close the gate after entering or leaving.

It is correct, as Fredericks states on page 16 and 17 of *Respondent's Brief* that there were no findings of increased burden upon EDE justifying the gate. That is because, as previously stated, no one is challenging the existence of the gate. It is not correct, however, that EDE presented no evidence that it is "necessary" to leave the gate closed at all time, as Fredericks states on *Respondent's Brief* at 17. EDE, and Fredericks himself, presented evidence of acts of vandalism and trespass that occurred prior to installation of the gate. RP at 75, 120, and 156-158.

EDE also presented evidence regarding an attempted home invasion that might have been prevented had the perpetrator not been able to enter the gate. RP 208-211. The gate here has been in existence for many years. The fact that it has served its intended purpose does not mean that, without it, the servient estate was not subject to a greater burden than originally intended.

It is also incorrect that Fredericks is "saddled to his telephone whenever it is possible that someone will come to his home." *Respondent's Brief* at 17. The properties involved in this case are very rural and chance visitors are rare. Fredericks presented no evidence that anyone had ever been denied access to his property because of the gate. Further, anyone that Fredericks wishes to be able to access his property without contacting him through the call box at the gate can be given the security code for the gate, or can be provided with a programmed garage door opener. Finally, in the age of cordless and cell phones, it is rare for someone to be "saddled" to their telephone. Calls from the gate can either be forwarded to a cell phone, or the gate can be programmed to ring to a cell phone. A cordless phone would also prevent Fredericks from being "saddled" to the telephone.

The maintenance of a lock on the electrical box, in order to protect the purpose of the gate as a security device, as well as for safety purposes

and to prevent needless wear and tear, is not unreasonable and does not unreasonably interfere with Fredericks' use of the easement. The trial court was incorrect to decide otherwise.

C. The trial court improperly concluded that EDE was required to include the names of the businesses operated by Fredericks and his significant other on the reader board when the CC&Rs of both EDE and the Short Plat preclude signs.

Fredericks argues that the trial court property required EDE to include the names of businesses being operated in his property on the reader board because "visitors who know only the business names . . . . would not be able to access their home businesses." *Respondent's Brief* at 18. He then goes on to contend that both he and his significant other have the right to operate businesses from their home.

Fredericks' business is a realty office. While he may have every right to locate his office at his home, patrons of that business may not legally access that office through the easement.

Fredericks has not obtained a home occupation permit for his realty office. RP at 134. According to the Clark County Code, CCC 40.260.100, if any customers are accessing Mr. Fredericks' property, then it is necessary for him to have applied for a home occupation permit from the county. CCC 40.260.100E provides that a home business in a rural zone (such as where these properties are located) does not need a permit if,

among other things, no customers access the site. If customers are accessing his office, Mr. Fredericks would need a home occupation permit, and would have needed to either obtain an agreement with all users of the private roads accessing his business or go through a type II process with the County. He failed to do either.

CCC 40.260.100(F)3 provides:

> Minor home businesses on a private road shall be reviewed using a Type II process to ensure that safety and maintenance impacts are adequately mitigated, unless evidence of mitigation of home business impacts on the private road through a neighbors' agreement is provided at the time of application. For purposes of the agreement, 'neighbors' shall include all who are entitled to use the private road. Impacts to be addressed shall include, but are not limited to: dust, noise, trip generation, and road maintenance.

Presumably, if "visitors" know only the business name and not Mr. Fredericks, then they are intending to access the business, which is precluded by the County Code. This means Fredericks is unlawfully operating his realty office. If he is lawfully operating his business and customers are not accessing his office, then including the name of the business is a useless act.

Fredericks' significant other evidently operates an adult family home on his property. Fredericks argues that under RCW 70.128.260, she is entitled to operate that business without being limited by restrictive

covenants. However, this statute merely prevents restrictive covenants not allowing Adult Family Homes. "Reasonable nondiscriminatory regulation, including but not limited to landscaping standards or regulation of sign location or size" are allowed. *Id.*

Fredericks then goes on to assert that EDE's objection to placing the business names in the reader board "appears to stem from the fact that EDE's CC&Rs preclude business signs." What Fredericks neglects to mention is that the CC&Rs for the Short Plat, which he wrote in his role as a developer, similarly preclude signs. There is simply no legal basis for the trial court to conclude that Fredericks was permitted to do something on the easement that is not allowed on his own property.

D. Allowing Fredericks to place a sign identifying the Short Plat on the mailbox area, which is located within the boundaries of EDE, is an improper expansion of his easement.

It is correct that EDE devoted very little space in its brief towards this issue, because this issue is really very simple. Fredericks has an easement for ingress, egress and utilities. EX 1. Placement of a sign advertising the Short Plat is completely unrelated to the purpose of the easement. It is not a matter of Fredericks and his neighbors having "equal rights".

Further, the Short Plat CC&Rs prohibit signs. EX 8. Those CC&Rs state that "no sign will be erected, maintained or displayed on any

lot, except signs advertising the property for sale or rent, or any type of ornamental name plate." Since the short plat sign cannot be located on property within the Short Plat, and since the easement is appurtenant to those lots, such a sign is also prohibited on the easement, even if it were to be determined that such a sign is allowed under the scope of the easement.

The trial court acted outside of its discretion in allowing Fredericks to place a sign for the Short Plat on the easement, since this impermissibly expanded the scope of Fredericks' easement.

E. The trial court improperly concluded that the scope of the easement permits Fredericks' use of an ATV

In *Snyder v. Haynes,* 152 Wn.App. 774 (2009), the court found that ATV use was not within the scope of an easement for ingress and egress, and was therefore not contemplated by the original easement, because such vehicles could not travel beyond the easement road.

Fredericks attempts to argue that *Snyder* is not applicable, because in that case, the court found that "ATVs were creating dust and flying gravel, that children were driving the vehicles, that the ATVs were entering property of a third party, and that deep indents had been created in the road." *Respondent's Brief* at 20.

As to the indents, Fredericks misstates *Snyder.* The indents mentioned by the court were actually caused by a backhoe, and therefore

did not factor into the decision to bar ATVs. *Snyder* at 781. As to the other issues the *Snyder* court noted with ATVs, testimony indicated similar problems occurred with Fredericks' use of the easement for ATV travel.

The road in question is a dirt and gravel road. Undoubtedly, an ATV being what it is, flying dirt and gravel is also created by Fredericks' ATV. Fredericks also has entered the property of a third party with his ATV. He has trespassed with his ATV on several occasions on the private roads in EDE, on which he does not have an easement. RP 143-146; RP 215-216; RP 230-231; RP 257-258; RP 362-365. His belief that he has more rights as a trespasser on those roads than residents of EDE have as legal users was one of the frustrations that led EDE to file their counter claim regarding the ATV in the first place.

Further, testimony at trial indicated that on one occasion, Fredericks allowed his ATV to be driven at 11:00 PM on 159th, in a manner that kept a property owner's four children awake. RP 362-364.

More importantly, though, his use of an ATV on 159th has nothing to do with the scope of the easement for ingress, egress and utilities, just as in *Snyder*.

The trial court did not impose "reasonable restrictions", as Fredericks states on page 21 of his *Brief*, when it prohibited the operation

of ATVs in areas within EDE outside of 159th. The court had no authority to prohibit or not prohibit ATV use on those roads at all. Fredericks has no easement or other right to use those roads, and to the extent that he does use them, he is either trespassing or, even if the use is permissive, subject to the restrictions placed upon them by the owners of the private roads.

V. CONCLUSION

Appellant asks the appellate court to conclude that:

A. The trial court did not properly enter Conclusions of Law 2, 2(b) and 2(d) because:

1. The trial court's decision to require EDE to expend funds for routine maintenance and for needed repairs and then bill Fredericks for his share improperly places unnecessary and unreasonable additional burdens on all other users of the road.

2. Fredericks is unjustly enriched by only being required to pay a pro rata share of out of pocket expenses because those expenses do not reflect the actual value of the services EDE, as a corporation, provides to maintain the joint road.

B. The trial court improperly determined that Fredericks was entitled to a key enabling him to leave the gate open whenever and for however long he desired. The court further erred in determining that the

restrictions imposed by EDE regarding opening the gate were unreasonable restrictions on Fredericks' easement rights.

C. The trial court exceeded its discretion by concluding that the scope of the easement allowed Fredericks to place the name of his businesses on the gate post located on the easement when the location of signs is not contemplated by the scope of the easement and is precluded by not just EDE's CC&Rs, but also the CC&Rs affecting Fredericks' own property, which he personally drafted.

D. The trial court similarly exceeded its discretion by concluding that the scope of the easement allowed Fredericks to place a sign for his short plat on the easement, which also violates not just the stated scope of the easement and EDE's CC&Rs, but the CC&Rs for Fredericks' property.

E. The trial court exceeded its discretion in determining that ATV use was allowed on the easement when such use is not for purposes of ingress and egress.

RESPECTFULLY SUBMITTED this 1 day of May, 2012

SALMON CREEK LAW OFFICES

Denise J. Lukins, WSBA #24688
Of Attorney for Appellants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that I caused the foregoing REPLY

BRIEF to be served on the following:

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Denise J. Lukins

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