

NO. 68416-7-1

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

EDWARD M. GOODMAN, et ux., Respondents,

v.

MICHAEL J. GOODMAN, et ux., et al., Appellants.

APPELLANTS REPLY BRIEF

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2013 FEB 22 PM 1:29

Michael Goodman
pro se, Appellant
13785 Goodman Lane
Anacortes, WA 98221
(360) 293-3298

ORIGINAL

TABLE OF CONTENTS

I. REPLY TO APPELLANTS MOTION IN BRIEF.....1-2

II. REPLY TO RESPONDENTS BRIEF.....3

 1. REPLY TO ASSIGNMENT OF ERROR 1.....3

 2. REPLY TO ASSIGNMENT OF ERROR 2.....4

 3. REPLY TO ASSIGNMENT OF ERROR 3.....5-6

 4. REPLY TO ASSIGNMENT OF ERROR 4.....7

III. REPLY TO RESPONDENTS MOTION TO STRIKE.....7

IV. CONCLUSION.....8

VI. APPENDIX.....9

I. APPELLANTS REPLY TO MOTION IN BRIEF

1) **Cloud on Mike's title.** In 1993 Ed recorded an attempted road easement Ex 18 that clouded Mike's property title and damaged his property. Appellants raised the issue of the "cloud" on Mike's title with RCW 26.16.030 and 58.17.165 in their Answer. CP 583-594.

2) **Shoreline Management Act.** The property damage to Appellants Shoreline was raised by Respondents counsel Mr. Moser: "Right, for a lot of reasons. Shoreline Management Act is one major reason, topography is another reason." RP 312. It was also pleaded by Defendant Mike Goodman in his declaration in support of objection. CP 248-278.

3) **Community Property Law.** Respondents failed to respond to why Mike's wife Mary Goodman did not know of or sign the attempted road easement.

3) **Clean Hands.** Ed's testimony contradicts the assertion that he recorded Ex 18 to protect Mike "I don't know that it has any benefit for Mike." RP 141. And that Ed didn't know page 2 would be recorded "Recorded it? A. Yes" RP 145.

Respondents give no response to Ed's testimony that he didn't tell Mike that he recorded the attempted road easement and that he hand drew it at the auditor's office. After "clouding" Mike's title in 1993, Respondents do not have "clean hands" to request equities in 2010.

Page 2 of Ex 18 denotes Ed Goodman's 20' ingress egress easement thru Lot 4 on short plat 55-80 that he can reach the northern part of Lot 3. Finding 47.

II. REPLY TO RESPONDENTS BRIEF.

1. REPLY TO ASSIGNMENT OF ERROR 1.

Conclusion of Law 6. "including Goodman Lane"

The trial court erred by not including an entire short plat 61-89 between the public road and Mike's parcel. Respondents failed to respond that they did not own or convey Lot 1 and Lot 3 of Goodman Lane. Respondents replace the absolute required element "unity of title and subsequent separation" with "former unity" citing *Evich v Kovacevich*, 33 Wash. 2d 151, 204 P.2d 839. *Evich* is no authority to replace the element.

The subsequent short plat 61-89 that Goodman Lane is located creates 3 servient estates: 1) Pete Bird Estate 2) Kirkwood and Rue Estate 3) Mike Goodman Estate, thus defeats the implied from prior usage doctrine, as it is only between two parcels.

2. REPLY TO ASSIGNMENT OF ERROR 2.

Conclusion of Law 4. The usage was apparent. The required element is “apparent and continuous usage during unity of title.” *Adams.* The Respondents failed to respond to the omission of *continuous usage*. Ed did not become a resident on Lot 3 and build their home until 1991, which is 11 years after the 1980 conveyance, the trial court would find it impossible to have any continuous usage to Ed’s house prior to 1980.

The trial court distinguished the “Easement over Driveway to Ed and Bernice Goodman’s House” on Ed’s Lot 3. Ed’s house needs to exist before 1980 for the implied easement from prior usage doctrine to apply.

3. REPLY TO ASSIGNMENT OF ERROR 3.

Conclusion of Law 5. The usage was reasonably necessary.

Implied Reservation

The respondents fail to respond to the trial court error concluding “reasonably necessary” when a higher degree is required by law for an implied reservation. *Adams*.

Ed’s own ingress egress and septic

Respondents failed to respond to the existence of Ed’s own ingress egress easement thru Lot 4 (Finding 47) and the site visit by the trial court judge on that easement:

MR. BUTLER: We also went down the easement on Lot 4.

THE COURT: We also drove on Campbell Lake Road to what was Mrs. Goodman’s home and drove down that driveway into the driveway to that house and turned around, and I could see down the hill, the extension of that 20 foot easement.

RP 277.

From the easement on to Ed's property the driveway continues to the base of the hill that his house sits. Finding 49. Ed and his brother Joe both testified they have used the driveway. Ed can walk the hill to his house, testifying "Yes, I can walk there." RP 98. There is no necessity to use Mike's property.

Injury to Mike's property

The survey by Sound Development (CP 108) distinguish the 3 easements on Mike's property:

- 1) Easement to Ed and Bernice Goodman's House.
- 2) Easement Down to Beach and Across Lakefront to Lot 3.
- 3) Easement for Septic System.

Respondents defy common sense that the survey doesn't prove Mike's property would be unable to build and sell.

Shoreline Management Act

Respondents give no response for "necessity" to have a road across Mike's Lakefront to their "Beach". And no response that it doesn't violate the Shoreline Management Act from 1971.

4) REPLY TO ASSIGNMENT OF ERROR 4

“1979 road build date” Finding 36. Respondents failed to respond why Ed changed his testimony from 1977 to 1979 as to the road build date then later testified there was no road before 1980.

When Ed was confronted with the 1983 aerial photo Ex 32, he did testify the road “goes right through the woods” RP 268. This testimony does not corroborate with the DNR expert in aerial photography Terry A. Curtis who concluded that no road existed in 1979.

Respondents don’t want the 1979 road build date “disturbed on appeal” as the true date of 1986 would be revealed.

IV. REPLY TO MOTION TO STRIKE

Both diagrams are part of the record.

- 1) Page 6 diagram. CP 248-278.
- 2) Page 12 diagram. CP 50-85.

V. CONCLUSION

Ed's own ingress egress easement and septic system (Findings 47 and 83) conflicts with our Supreme Court *Adams v. Cullen*, 44 Wn.2d 502, 505, 268 P.2d. 451 (1954) and reiterated in *Berlin v. Robbins*, 180 Wash. 176, 38 P.2d 1047 (1934). The probable injury to Mike's property conflicts with *Samish River Boom Co. v. Union Boom Co.*, 32 Wash. 586, 601; 73 P.670 (1903). The road easement to Ed's beach violates the Shoreline Management Act.

The absurd consequences to destroy the value of a property and render it unable to build could not be the intent of an equitable doctrine. Appellants respectfully request The Honorable Court to reverse the trial court decision.

Respectfully submitted this 19th day of February 2013.

Michael Goodman
Michael Goodman
13785 Goodman Lane
Anacortes, WA 98221
(360) 293-3298

VI. APPENDIX

Declaration of Ronald Torrence
Surveyed Short Plat 55-80 and the 20'
ingress egress easement to Ed
Goodman's lot 3. CP 25-40.....1
page 1 of 1 and 1 of 2

Short Plat 55-80 with Ed Goodman's 20' ingress
Egress easement thru Lot 4 Ex 1.....2

Short Plat 61-89 with Goodman Lane,
Lot 1 and Lot 3 that Respondents did
Not own or convey Ex 27.....3

Aerial photo of Ed Goodman's 20'
ingress egress easement and his driveway
on his lot 3 Ex 28.....4

Ed Goodman's Legal Description of his Lot 3
Including the 20' non-exclusive
easement thru Lot 4 Ex 30.....5

Ed Goodman changing the road build
date from 1977 to 1979 (emphasis on handwriting)
Ex 4.....6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT**

EDWARD M. GOODMAN and BERNICE
S. GOODMAN, husband & wife,

Plaintiffs,

vs.

MICHAEL J. GOODMAN and MARY F.
GOODMAN, husband and wife, and
CHANCE GOODMAN, a single man, and
TYSON GOODMAN, a single man,

Defendants.

No: 10-2-00587-3

**DECLARATION OF
RONALD TORRENCE**

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

Ronald Torrence declares and states as follows:

1. I'm over the age of 18 and not a party to this action.
2. In 1980 I was employed by Meriwether Leachman & Associates as an Office Manager and Professional Land Surveyor.
3. Currently I work as the County Surveyor for the Public Works Department of Snohomish County.
4. I was a Skagit County Reserve Deputy Sheriff, volunteer position, for over 4 years around 1980. Ed Goodman was a Skagit County Deputy Sheriff at the time so he came to me to get the short plat completed. I completed Short Plat 55-80 which was

DECLARATION OF RONALD TORRENCE - 1
102G2338.320

Law Offices of
ROBERT D. BUTLER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

recorded in Book 4 of Short Plats, page 152 of Skagit County Records. I relied upon the external boundaries from the 1976 survey done by Radar & Leonard. The property was divided into 4 lots.

5. I recall that this was a family project and that the property was going to be divided between Ed and a brother, however I do not recall ever meeting Ed's brother or the mother. At the time I completed the project, the County Code required lot 2 and lot 3 to have separate access roads to Campbell Lake Road. A non-exclusive easement was put over lot 1 for access to lot 2. A separate non-exclusive easement was put over lot 4 for access to lot 3.
6. No easement was included on the plat map that would allow lot 3 access to Campbell Lake Road through lot 2.
7. No easement was included on the plat map that would allow lot 3 to access the beachfront of the lake through lot 2.

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

DATED this 17th day of March, 2011


Ronald Torrence

DECLARATION OF RONALD TORRENCE - 2
102G2338.320

Law Offices of
ROBERT D. BUTLER

EXHIBIT B, PAGE 2 OF 2

**SURVEY IN SECTION 12, TWP 34N, R 1 E, W.M.
REVISED SKAGIT COUNTY SHORT PLAT NO. 53-90**

9007237002-3

SHORT PLAT NUMBER 53-90
DATE 5/1/80

CONSENT

BEFORE ALL MEN BY THESE APPEARING THAT THE UNDERSIGNED SUBSCRIBERS HEREBY CERTIFY THAT THIS SHORT PLAT IS MADE AS THEIR FREE AND VOLUNTARY ACT AND DEED.

[Signatures]

ACKNOWLEDGEMENTS

STATE OF WASHINGTON
COUNTY OF SKAGIT
I, C. J. [Name], being let the undersigned a Notary Public in and for the State of Washington, do hereby certify that the foregoing plat was duly acknowledged before me by the persons whose names are subscribed to the same on the 1st day of May, 1980, at [Location].



THE OPERATIONS THAT ENCOUNTERED THE ABOVE MENTIONED SURVEY AND ACCOMPANIED THE SAID SURVEY TO BE THE FREE AND VOLUNTARY ACT AND DEED OF SAID COUNTY, FOR THE USES AND PURPOSES THEREIN MENTIONED AND ON WHICH THE SAID SURVEY IS AUTHORIZED TO BE MADE, THE SAID SURVEYING WITNESSES HEREBY CERTIFY THAT THE SAID SURVEY WAS MADE AND CONDUCTED IN ACCORDANCE WITH THE LAWS AND REGULATIONS OF THE STATE OF WASHINGTON.

SURVEYOR'S CERTIFICATE

I, HEREBY CERTIFY THAT THE DIMENSIONS OF THIS SURVEY HAVE BEEN MEASURED AND THAT ALL DISTANCES AND BEARINGS ARE ACCURATE.



APPROVALS

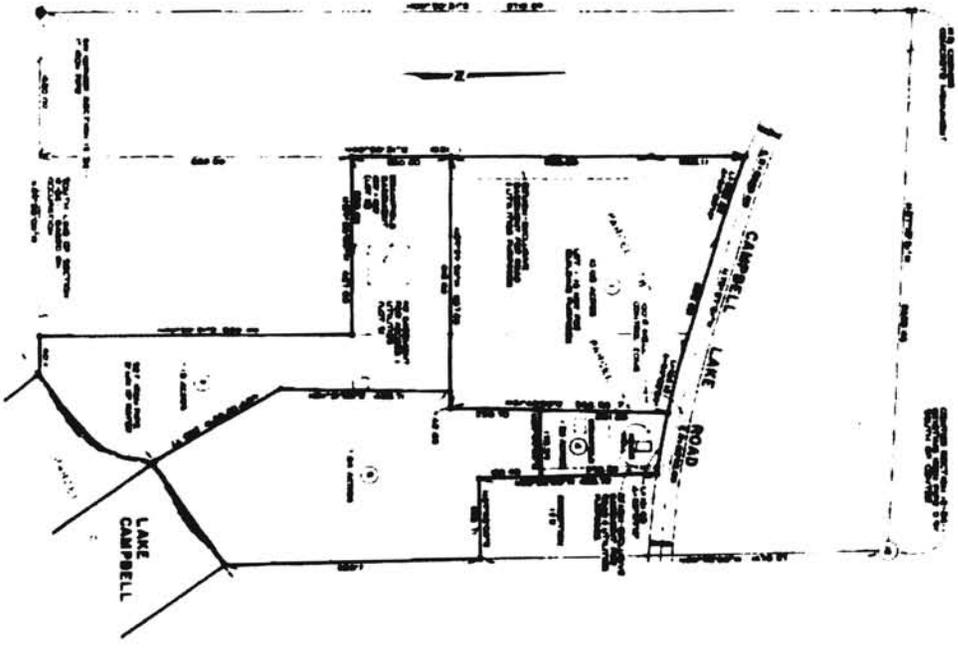
THE RETURNED PROPOSED SHORT PLAT HAS BEEN REVIEWED AND APPROVED BY THE REGISTER OF SHORT PLAT DOCUMENTS THIS 11th DAY OF MAY 1980.

[Signature]
Walter S. [Name]
Register of Short Plat Documents

AUDITOR'S CERTIFICATE

I DO HEREBY CERTIFY THAT THE SAID SHORT PLAT HAS BEEN REVIEWED AND APPROVED BY THE REGISTER OF SHORT PLAT DOCUMENTS THIS 11th DAY OF MAY 1980.

[Signature]
Auditor



LEGAL DESCRIPTION

PARCEL A: THAT PORTION OF GOVERNMENT LOT 3 AND THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 12, TWP 34N, R 1 E, W.M. APPROXIMATELY 17.5 ACRES OF THE COUNTY ROAD 17.5 ACRES AS CAMPBELL LANE ROAD, NORTHEASTERNLY OF THE EASTERN LINE OF LAKE CAMPBELL AND EASTERNLY OF THE EASTERN BOUNDARIES OF THOSE CERTAIN TRACTS OF LAND CONVEYED TO ARTHUR A. WHITE, ARTHUR A. WHITE, BARNETT CHRISTENSEN AND ARTHUR A. WHITE BY DEEDS RECORDED UNDER THE PUBLIC LANDS ACT, 1976 AND 1978, RESPECTIVELY.

PARCEL B: BEGINNING AT A POINT ON THE EAST LINE OF THE SOUTH-WEST QUARTER OF SAID SECTION 12, 64 FEET (60.8 FEET) NORTH OF THE POINT OF BEGINNING, THENCE EAST ALONG SAID EAST LINE 11 FEET THENCE SOUTH 71 FEET THENCE EAST AT RIGHT ANGLES 208.71 FEET THENCE NORTH AT RIGHT ANGLES 208.71 FEET TO THE POINT OF BEGINNING.

PARCEL C: BEGINNING AT A POINT ON THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 12, 64 FEET (60.8 FEET) SOUTH OF THE POINT OF BEGINNING, THENCE EAST ALONG SAID EAST LINE 11 FEET THENCE SOUTH 71 FEET THENCE EAST AT RIGHT ANGLES 208.71 FEET THENCE NORTH AT RIGHT ANGLES 208.71 FEET TO THE POINT OF BEGINNING.

PARCEL D: BEGINNING AT A POINT 100 FEET EAST AND 200 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SECTION 12, THENCE EAST 40 FEET THENCE NORTH TO THE SOUTH LINE OF THE COUNTY ROAD 17.5 ACRES AS CAMPBELL LANE, THENCE EAST ALONG SAID EAST LINE 11 FEET THENCE SOUTH 71 FEET TO THE POINT OF BEGINNING.

- NOTES**
1. ALL DIMENSIONS AND CONTIGUOUSNESS OF THE ADJACENT PARCELS OF THE LAND DESCRIBED HEREIN ARE BASED UPON THE SHORT PLAT NUMBERED AND DATED AS ABOVE, AND BY WHICH THE SAID LAND IS OWNED BY THE REGISTER OF SHORT PLAT DOCUMENTS.
 2. ALL DIMENSIONS AND CONTIGUOUSNESS OF THE ADJACENT PARCELS OF THE LAND DESCRIBED HEREIN ARE BASED UPON THE SHORT PLAT NUMBERED AND DATED AS ABOVE, AND BY WHICH THE SAID LAND IS OWNED BY THE REGISTER OF SHORT PLAT DOCUMENTS.
 3. OWNER OF PARCELS INDIVIDUAL SEPTIC SYSTEMS.
 4. ALL DIMENSIONS AND CONTIGUOUSNESS OF THE ADJACENT PARCELS OF THE LAND DESCRIBED HEREIN ARE BASED UPON THE SHORT PLAT NUMBERED AND DATED AS ABOVE, AND BY WHICH THE SAID LAND IS OWNED BY THE REGISTER OF SHORT PLAT DOCUMENTS.
 5. ALL DIMENSIONS AND CONTIGUOUSNESS OF THE ADJACENT PARCELS OF THE LAND DESCRIBED HEREIN ARE BASED UPON THE SHORT PLAT NUMBERED AND DATED AS ABOVE, AND BY WHICH THE SAID LAND IS OWNED BY THE REGISTER OF SHORT PLAT DOCUMENTS.
 6. ALL DIMENSIONS AND CONTIGUOUSNESS OF THE ADJACENT PARCELS OF THE LAND DESCRIBED HEREIN ARE BASED UPON THE SHORT PLAT NUMBERED AND DATED AS ABOVE, AND BY WHICH THE SAID LAND IS OWNED BY THE REGISTER OF SHORT PLAT DOCUMENTS.
 7. ALL DIMENSIONS AND CONTIGUOUSNESS OF THE ADJACENT PARCELS OF THE LAND DESCRIBED HEREIN ARE BASED UPON THE SHORT PLAT NUMBERED AND DATED AS ABOVE, AND BY WHICH THE SAID LAND IS OWNED BY THE REGISTER OF SHORT PLAT DOCUMENTS.
 8. ALL DIMENSIONS AND CONTIGUOUSNESS OF THE ADJACENT PARCELS OF THE LAND DESCRIBED HEREIN ARE BASED UPON THE SHORT PLAT NUMBERED AND DATED AS ABOVE, AND BY WHICH THE SAID LAND IS OWNED BY THE REGISTER OF SHORT PLAT DOCUMENTS.

Vol 4 Sp 99 152



2720

LEGAL DESCRIPTION

Exhibit "A"

Lot 3, REVISED SHORT PLAT NO. 55-80J, approved July 17, 1980, recorded July 28, 1980, in Book 4 of Short Plats, page 152, under Auditor's File No. 8007280013; and being a portion of Government Lot 3 and the Northeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 12, Township 34 North, Range 1 East, W.M.

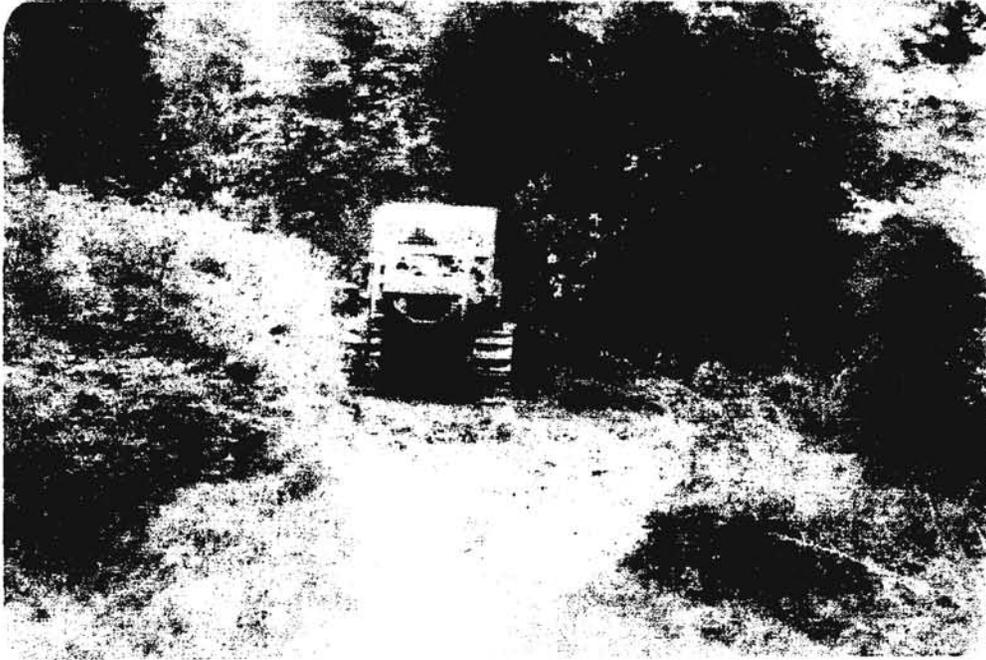
TOGETHER WITH a non-exclusive easement for road and utilities over the East 20 feet of Lot 4 of said Short Plat.

Situate in the County of Skagit, State of Washington.


201007150001
Skagit County Auditor
7/15/2010 Page 9 of 9 8:34AM



START OF
ROADWAY
INTO WOODS
FROM FIELD.



WALKING
ROADWAY PATH

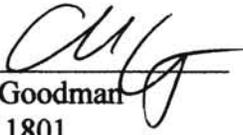
~~1977~~ 1979

Acknowledgment of Service

I served a copy of Appellants Reply Brief onto Respondents
Attorney at the address and in the manner indicated below on this
21st day of February, 2013.

C. Thomas Moser
Attorney for Respondents
1204 Cleveland Ave.
Mt. Vernon, WA 98273

U.S. Mail
 Email
 Hand Delivery



Chance Goodman
PO Box 1801
Anacortes, WA 98221
Ph. 360-299-2239