STATE OF IDAHO)
County of KOOTENAI)ss
FILED 10/23/19
AT 8:45 O'Clock A. M
CLERK, DISTRICT COURT
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

GARY WEEKS, ET AL,

Plaintiff,

VS.

RACHEL GRAINGER, ET AL,

Defendants.

Case No. **CV28-18-9634**

MEMORANDUM DECISION AND ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, AND DENYING PLAINTIFFS' CLAIM FOR SUMMARY JUDGMENT

I. FACTUAL AND PROCEDURAL BACKGROUND

The matter before this Court is a Motion for Partial Summary Judgement filed by Defendants Rachel Jenks-Grainger and Zachary Grainger (Jenks-Grainger) on September 24, 2019.

The lawsuit revolves around a dispute over an easement granted to Gary Wayne Weeks and Jan Weeks (Weeks) across Jenks-Graingers' property. The Reciprocal Grant of Easement and Conveyance of Water Rights (Easement Document) was signed and executed by the Weeks and Richard Knezevich on September 13, 2017. Compl. 2, ¶ 6; Ex. 2, 2. Jenks-Graingers took title to Knezevich's property on November 22, 2017. In the Spring of 2018, the Weeks began initiating improvements to their easement, and on December 17, 2018, the Weeks filed a Complaint against Jenks-Grainger and requests relief in the form of:

A. For entry of a preliminary injunction requiring the defendants to remove all obstructions from the easement area, and to refrain from further interference with the plaintiffs' use of the easement during the pendency of this action;
B. For a Perrmanent injunction forever barring and restraining the defendants, and their successors and assigns, from interfering with the plaintiffs' use and enjoyment of the easement;
C. For an award of damages to the plaintiffs in an amount to be proven at trial;
D. For an award of all reasonable attorney fees and costs incurred by the plaintiffs herein; and
E. For such other relief as the Court deems just and equitable.

Compl. 5. Jenks-Graingers' Partial Motion for Summary Judgement requests judgement on two Issues:

> (1) The easement for the unimproved driveway is only 7 feet on each side of the centerline of the historical unimproved driveway as it existed on September 13, 2017.; (2) The Location of the historical unimproved driveway was as depicted in Troy Carlson's survey exhibit and intersected the northern edge of Lot 10 where it adjoins lot 9.

Defs.' Am. Mot. for Partial Summ. J. 1-2. This case is currently scheduled for a jury trial to begin on January 13, 2020.

II. STANDARD OF REVIEW

Idaho Rule of Civil Procedure 56 governs motions for summary judgment. According to Rule 56, summary judgment must be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." I.R.C.P. 56(a). A party asserting that there is no genuine dispute as to any material fact, or a party asserting that a genuine dispute exists, must support that assertion by "citing to particular parts of materials in the record" or "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." I.R.C.P. 56(c).

> If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:
>
> (1) give an opportunity to properly support or address the fact;
>
> (2) consider the fact undisputed for purposes of the motion;
>
> (3) grant summary judgment if the motion and supporting materials, including the facts considered undisputed, show that the movant is entitled to it; or
>
> (4) issue any other appropriate order.

I.R.C.P. 56(e).

The burden of proof is on the moving party to demonstrate the absence of a genuine issue of material fact. *Rouse v. Household Fin. Corp.*, 144 Idaho 68, 70, 156 P.3d 569, 571 (2007) (citing *Evans v. Griswold*, 129 Idaho 902, 905, 935 P.2d 165, 168 (1997)). "Once the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving party" to provide specific facts showing there is a genuine issue for trial. *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 864 (2007) (citing *Hei v. Holzer*, 139 Idaho 81, 85, 73 P.3d 94, 98 (2003)). To do so, the non-moving party "must come forward with evidence by way of affidavit or otherwise that contradicts the evidence submitted by the moving party, and that establishes the existence of a material issue of disputed fact." *Chandler v. Hayden*, 147 Idaho 765, 769, 215 P.3d 485, 489 (2009) (citing *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 865 (2007)). "Circumstantial evidence can create a genuine issue of material fact. . . . However, the non-moving party may not rest on a mere scintilla of evidence." *Shea v. Kevic Corp.*, 156 Idaho 540, 545, 328 P.3d 520, 525 (2014) (quoting *Park West Homes, LLC v. Barnson*, 154 Idaho 678, 682, 302 P.3d 18, 22 (2013)).

> In determining whether material issues of fact exist, all allegations of fact in the record and all reasonable inferences from the record are construed in the light most favorable to the party opposing the motion. *City of*

> *Kellogg v. Mission Mountain Interests Ltd., Co.*, 135 Idaho 239, 240, 16 P.3d 915, 919 (2000). When a jury is to be the finder of fact, summary judgment is not proper if conflicting inferences could be drawn from the record and reasonable people might reach different conclusions. *State Dep't of Fin. v. Res. Serv. Co., Inc.*, 130 Idaho 877, 880, 950 P.2d 249, 252 (1997).

Edmondson v. Shearer Lumber Prod., 139 Idaho 172, 176, 75 P.3d 733, 737 (2003).

The moving party may also meet "the 'genuine issue of material fact' burden . . . by establishing the absence of evidence on an element that the nonmoving party will be required to prove at trial." *Dunnick v. Elder*, 126 Idaho 308, 311, 882 P.2d 475, 478 (Ct. App. 1994). "Such an absence of evidence may be established either by an affirmative showing with the moving party's own evidence or by a review of all the nonmoving party's evidence and the contention that such proof of an element is lacking." *Heath v. Honker's Mini-Mart, Inc.*, 134 Idaho 711, 712, 8 P.3d 1254, 1255 (Ct. App. 2000) (citing *Dunnick* at 311, 882 P.2d at 478).

> Once such an absence of evidence has been established, the burden then shifts to the party opposing the motion to show, via further depositions, discovery responses or affidavits, that there is indeed a genuine issue for trial, or to offer a valid justification for the failure to do so under [I.R.C.P. 56(d)]. *Sanders v. Kuna Joint School Dist.*, 125 Idaho 872, 874, 876 P.2d 154, 156 (Ct.App.1994) (alteration added).

Dunnick at 311, 882 P.2d at 478; *see also Heath* at 712, 8 P.3d at 1255.

III. ANALYSIS

The Easement Document signed by Richard Knezevich and the Weeks on September 13, 2017, reads:

> 1. Access and Utility Easement. Richard Knezevich does hereby grant, bargain and convey unto Gary Wayne Weeks and Jan Kristy Weeks as Trustees of the GWJK WEEKS FAMILY TRUST, dated February 16, 2010, and to their heirs, successors and assigns, a perpetual, nonexclusive easement for ingress, egress and utility services and uses over, under and across that portion of the Knezevich Lot described as follows:
>
> A Strip of land being seven (7) feet on each side of the centerline of an existing unimproved driveway as depicted on Exhibit "A"

> attached and incorporated herein, together such additional width as is reasonable necessary for cut and fill slopes, drainage ditches and seasonal snow storage. Said easement is appurtenant to and for the benefit of the grantee's real property...

Compl. Ex. 2, 2.

Jenks-Graingers argue that, "the Easement Document specifies that 'vehicle access' to the Weeks parcel is 'via an existing unimproved driveway.'" Reply Mem. in Supp. of Mot. for Partial Summ. J. 4. Additionally, Jenks-Grainger contends "that the depiction in Exhibit A showing the 'approximate' location of the easement is insufficient to override the easement's language that the grant is over the historical driveway." *Id.* Jenks-Grainger argues that the easement was intended to continue along the two-track road north and exit Jenks-Grainger's property onto Ebbett's property. In support, Jenks-Grainger argues that the fork to the east that exits onto the Weeks' property cannot be the intended easement because the pathway on this fork is not suitable for vehicle access and it contains shrubs and a tree in the way of the path. *Id.* Jenks-Grainger argues that "[t]he easement document did not specify that its intent was to move the vehicular driveway access from its historical location (which was the boundary with Ebbett's) and provide direct access to the Week's parcel." *Id.* at 4-5.

Jenks-Grainger supports their interpretation of the intent of the Easement Document by arguing that the fork to the east could not be the unimproved driveway referenced in the Easement Document because "parole evidence of David Ebbitt, and Rachel Jenk-Grainger established the location of the centerline of the historic unimproved driveway, the location of the easement centerline is set forth in Troy Carlson's survey exhibit[.]" Mem. in Supp. of Mot. for Summ. J. 5. The Declaration of Rachel Jenks-Grainger states that at the time they purchased the property the realtor told them that the easement exited the property onto Ebbett's property and there were

shrubs and a tree on the north east corner of the property where the Weeks built their access path exiting onto the Weeks property. Decl. of Rachel Jenks-Grainger (September 24, 2019)., 1-2. The Declaration by David Ebbett states he is familiar with the condition of the land at the time the Easement Document was signed, and "the driveway did not curve to the east and enter the Weeks property...and...[b]efore the Weeks' moved the earth and built the road, the east side of the Jenks-Grainger parcel was covered in vegetation and shrubs, and had a small tree in it " Decl. of David Ebbitt 2.

Similar statements are made by Jenks-Grainger's Expert Witness Troy Carlson regarding his opinion that the unimproved driveway mentioned in the Easement Document refers to the driveway that exits onto Ebbitt's property. Def's Expert Witness Disclosure 3. Troy Carlson also states that:

> [t]he terminology used in the legal description of the access and utility easements leads to ambiguity as to the physical location of the access and utility easement since a field survey was not performed to formally locate the unimproved driveway prior to any type of construction or improvement, bulldozing, or other relocation or location of the formal driveway by the Weeks.

Defs' Expert Witness Disclosure 3.

Jenks-Grainger also argues that, "the Defendants only raised the issue of the location of the easement, not the location of the improvements." For this reason, Jenks-Grainger argues that the reasonableness of the improvements to the easement cannot be decided by summary judgement at this time. *Id.* at 5 (citing *Thomas v. Idaho Ins. Agency, Inc.*, 126 Idaho 527, 530,887 P.2d 1034, 1037 (1994)).

Finally, Jenks-Grainger makes an argument in the alternative. *Id.* at 6. Jenks-Grainger does "not concede that the language of the easement document was ambiguous, as [her] contention is that it clearly locates the easement on the historical

unimproved driveway." *Id.* Jenks-Grainger does argue that if the court finds the language of the easement document is subject to an interpretation that may favor the Plaintiffs, then that would mean the language is subject to at least two interpretations and therefore is ambiguous. *Id.* For this reason, Jenks-Grainger argues that Summary Judgement cannot be granted in favor of the Weeks. *Id.*

The Weeks argue that, "[a]ll of the cases cited by the defendants in support of their motion involved either deeds of conveyance or purchase and sale contract[;]" and that such is the wrong legal standard for evaluating the Easement Document because the Easement Document is an express easement. Pls'. Mem. in Opp. to Def's. Mot. for Summ. J. 4. The Weeks lay out the rules regarding sufficiency of a description for an express easement found In *Quinn v. Stone,* 75 Idaho 243, 270 P.2d 825 (1954):

> Where a conveyance of a right of way does not definitely fix its location, the grantee is entitled to a convenient reasonable, and accessible way within the limits of the grant. '28 C.J.S., Easements, § 80a, page 760.
>
> "In describing an easement, all that is required is a description which identifies the land which is the subject of the easement and expresses the intention of the parties... In *Lidgerding v. Zignego*, supra [77 Minn. 421, 80 N.W. this court held a description sufficient which indicated a right of way 'upon or rear' the defendant's property. In *Callan v. Hause*, 91 Minn. 270, 97 N.W. 973, 1 Ann.Cas. 680, and note, the rules governing the location of easements where the description is indefinite are stated. In such a case the grantor has the right in the first instance to designate and locate the roadway, and, if reasonably suitable for the purpose, a selection of a place cannot be questioned. If the grantor omits to exercise this right, the grantee may make the selection and his selection will be upheld unless he has abused the right. (Cases.) In *Grafton v. Moir*, 130 N.Y. 465, at page 471, 29 N.E. 974, 976, 27 Am. St.Rep. 533, Judge Vann, speaking for the court, said: 'Then the right of way is not bounded in the grant, the law bounds it by the line of reasonable enjoyment.' This means that the easement must be a convenient and suitable way and must not unreasonably interfere with the rights of the owner of the servient estate. See *Kretz v. Fireproof Storage Co.,* 127 Minn. 304, 312, 149 N.W. 648, 955. *Ingelson v. Olson,* 199 Minn. 422, 272 N.W. 270, 274, 110 A.L.R. 167, at pages 170-171; 17."

Quinn v. Stone, 75 Idaho at 247, 270 P.2d at 826-27.

The Weeks argue that "[t]he description of the driveway easement granted to the plaintiffs is clear, unambiguous and more than sufficient to satisfy the legal standard stated by the Idaho Supreme Court in *Quinn* and repeated in subsequent cases." Pls'.Mem. in Opp. to Defs' Mot. for Summ. J. 6-7.

The Weeks do not dispute that a portion of the unimproved driveway continued north to Ebbett's property but argue that the express easement was intended to fork east connecting to Weeks' property. *Id.* In support, the Weeks argue that the intent for this is shown in the illustration found in Exhibit A of the Easement Document, as well as the fact that the very purpose of the Easement Document would have been frustrated if it was meant to grant an easement to the north because David Ebbett "was unwilling to grant an easement across his property in September of 2017." *Id.* at 7-8. (This is also argued by John T. Sinclair on page 2 of his Declaration). Finally, the Weeks argue that "they are entitled to Summary Judgement affirming the validity of their easement as well as the improvements they have made to the easement." *Id.* at 8.

This Court finds Jenks-Graingers' Motion for Partial Summary Judgement regarding the width of the easement must be denied because genuine issues of material fact exist. The first question Jenks-Grainger has asked this Court to rule upon regards the width of the easement, and therefore relates to the contention surrounding the width of the improvements made by the Weeks. As stated by Jenks-Grainger, the Weeks "only raised the issue of the location of the easement, not the location of the improvements." For this reason, Jenks-Grainger argues that the reasonableness of the improvements to the easement cannot be decided by summary judgement at this time. Reply Mem. in Supp. of Mot. for Partial Summ. J. 4. This Court agrees with Jenks-Grainger that it is inappropriate to rule at this time on his own motion regarding the reasonableness of the improvements to the easement made by the Weeks. This

holding is bolstered by the fact that the Easement Document outlines that the width of the easement allows "additional width as is reasonable [sic] necessary for cut and fill slopes, drainage ditches and seasonal snow storage." All these factors present genuine issues of fact for proper decision by a jury.

For the above reasons, the Weeks' request for Summary Judgement on the reasonableness of their improvements to the easement is also denied. Conflicting evidence regarding the scope of the Weeks' improvements, as well as disagreement over the location of the easement, make it inappropriate to rule on the reasonableness of the improvements at this time.

This Court finds Jenks-Graingers' Motion for Partial Summary Judgement regarding the location of the easement is denied because genuine issues of material fact exist. Jenks-Graingers and the Weeks clearly disagree as to the location of the easement across Jenks-Grainger's property. If the Weeks' evidence regarding the location of the easement is construed in the light most favorable to them, a reasonable fact finder could find in their favor. The Illustration referenced by the Easement Document clearly shows a line denoted as the easement arching right to the east and exiting Jenks-Graingers' property onto the Weeks property. Compl. Ex. 2:2, Ex. A. Additionally, a reasonable fact finder could find that the intent of the Easement Document to allow the Weeks access to their land was frustrated in its purpose with a northern exit, and therefore the parties intended an eastern exit at the time the Easement Document was signed.

Jenks-Graingers' arguments and declarations that the eastward path was too overgrown and narrow to be the unimproved driveway referenced in the Easement Document are based solely on Jenks-Graingers' opinions and their witnesses' opinions, and a reasonable finder of fact could find contrary to such. Finally, Jenks-Grainger's

own expert witness, Troy Carlson, acknowledges that the terminology describing the easements location is ambiguous. For these reasons, the Jenks-Graingers' Motion for Partial Summary Judgement is denied.

The Weeks correctly point out: "The district court may grant summary judgment to a non-moving party even if the party has not filed its own motion with the court. A motion for summary judgment allows the court to rule on the issues placed before it as a matter of law; the moving party runs the risk that the court will find against it, as in this case." *Harwood v. Talbert*, 136 Idaho 672, 677, 39 P.3d 612, 617 (2001). This Court is certainly aware of that concept. However, the Weeks' Motion for Summary Judgement affirming the validity and location of their easement must be denied. Jenks-Graingers' arguments and witness Declarations present genuine issues of material fact that cannot be ruled upon as a matter of law at this time. Exhibit A of the Easement Document depicts the easement exiting the property to the East and onto the Weeks' property. This may prove to be a difficult piece of evidence for Jenks-Graingers to overcome. But a reasonable fact finder could find that the illustration is only an approximation of the easement route, and the language of the Easement Document, as well as the evidence presented by Jenks-Graingers, shows the intention for the easement to exit to the north of Jenks-Graingers' property. For these reasons, the Weeks' Motion for Summary Judgement is denied.

IV. ORDER

IT IS HEREBY ORDERED Jenks-Graingers' Motion for Partial Summary Judgement is DENIED.

IT IS FURTHER ORDERED Weeks' request for Summary Judgment is DENIED.

Entered this 22nd day of October, 2019.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the 23rd day of October, 2019, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

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