STATE OF IDAHO)
County of BONNER)ss

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CLERK OF DISTRICT COURT

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Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO IN AND FOR THE COUNTY OF BONNER

JOHN F. THORNTON, *Plaintiff*, vs. **MARY E. PANDREA, a single woman individually and as Trustee of the Kari A. Clark and Mary E. Pandrea Revocable Trust u/a April 9, 2002, and KARI A. CLARK, a single woman individually and as Trustee of the Kari A. Clark and Mary E. Pandrea Revocable Trust u/a April 9, 2002, and as Trustee of the Kari A. Clark Trust u/a June 21, 2010,** *Defendants*.	Case No. **BON CV 2013 1334** **MEMORANDUM DECISION AND ORDER DENYING PLAINTIFF THORTON'S MOTION TO RECONSIDER SUMMARY JUDGMENT, AND DENYING DEFENDANT PANDREA'S MOTIONS**

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on plaintiff John F. Thornton's (Thornton) Motion to Reconsider Summary Judgment and on various motions filed by defendant Mary E. Pandrea's (Pandrea).

On August 14, 2013, Thornton filed his "Complaint to Quiet Title and for Damages" against Mary E. Pandrea and Kari A. Clark (Clark). Thornnton attached to that Complaint a typed property descriptions purporting to describe his property, but Thornton attached no copies of any deed, let alone a copy of the recorded deed to his property.

On September 3, 2013, Pandrea filed *pro se* "Defendant Pandrea's Answer to Complaint to Quiet Title and for Damages." At no time in this litigation has Pandrea filed a counterclaim against Thornton nor has Pandrea filed a cross-claim against Clark.

On December 5, 2013, Clark filed "Defendant Clark's Answer, Affirmative Defenses, Counterclaim and Demand for Jury Trial." At no time in this litigation did Clark file a cross-claim against Pandrea.

On January 29, 2014, Clark filed a "Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counterclaims". Oral argument on that motion was held on March 14, 2014. At the March 14, 2014, hearing, the Court also took up the issue of "Clark's Motion to Strike Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment and the Affidavits Filed in Support Thereof." The basis of that motion was Pandrea is not an adverse party to Clark, and Clark's Motion for Summary Judgment only pertained to Thornton's claims against Clark and Clark's counterclaims against Thornton. Defendant/Counterclaimant Clark's Motion to Strike Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment and the Affidavits Filed in Support Thereof, pp. 2, 3. At the conclusion of oral argument, the Court granted "Clark's Motion to Strike Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment and the Affidavits Filed in Support Thereof", because Pandrea is not an adverse party to Clark, and also granted Clark's Motion for Summary Judgment.

At the March 14, 2014, hearing on Clark's motion for summary judgment, this Court granted summary judgment on all of Clark's counterclaims against Thornton, and dismissing all of Thornton's claims against Clark. On April 9, 2014, this Court entered its "Memorandum Decision and Order Granting Defendant Clark's Motion for Summary

Judgment as to Claims of Plaintiff Thornton, and Granting Defendant Clark's Motion for Partial Summary Judgment on Clark's Counter-Claims Against Thornton." In that decision and order, this Court held:

> For the above stated reasons, this Court grants summary judgment in favor of Clark as against Thornton's claims, and grants partial summary judgment in favor of Clark as against Thornton on all of Clark's counterclaims, except for the issue of damages to Clark by Thornton, if any, which will be tried to a jury.

Memorandum Decision and Order Granting Defendant Clark's Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Defendant Clark's Motion for Partial Summary Judgment on Clark's Counter-Claims Against Thornton, p. 22. On April 30, 2014, this Court entered its Judgment consistent with that written decision.

This matter is now before the Court because on May 6, 2014, Thornton timely filed "Plaintiff's Motion to Reconsider Summary Judgment and Notice of Hearing", a "Memorandum of Law in Support of Plaintiff's Motion to Reconsider Summary Judgment", an "Affidavit of John Thornton in Support of Motion to Reconsider" attached to which are twelve "illustrative maps" he feels "create a fair and accurate depiction of the properties and easements involved in this case." Affidavit of John Thornton in Support of Motion to Reconsider, p. 1. Thornton also submitted an "Affidavit of Mary Pandrea in Support of Plaintiff's Motion to Reconsider", in which Pandrea stated Thornton's "illustrative maps" "appear to be fair and accurate depictions of the history of the property boundaries and ownership of the three parcels owned by the parties." Affidavit of Mary Pandrea in Support of Motion to Reconsider, p. 1. On May 6, 2014, Val Thornton, the attorney for John Thornton, filed an "Affidavit of Val Thornton in Support of Plaintiff's Motion to Reconsider Summary Judgment" (and on May 14, 2014, Thornton filed "Affidavit of Correction Affidavit of Val Thornton in Support of Plaintiff's Motion to Reconsider Summary Judgment"). On May 13, 2014, Clark filed

“Defendant/Counterclaimant Clark’s Response to Thornton’s Motion for Reconsideration and Objection to the Affidavits of Mary Pandrea and John Thornton Filed in Support Thereof.” On May 16, 2014, Thornton, four days before oral argument, untimely filed “Plaintiff’s Reply Brief in Support of His Motion to Reconsider Summary Judgment.” Also on May 16, 2014, Pandrea filed another affidavit in support of Thornton’s Motion to Reconsider Summary Judgment. Oral argument on these motions by Thornton was held on May 20, 2014. At oral argument, counsel for Clark objected to the untimely filing of Thornton’s “reply brief”, but did not demonstrate any prejudice. The Court finds that because Thornton’s arguments are specious, there is no prejudice to Clark due to Thornton’s untimely filing of Thornton’s reply brief.

This matter is also now before the Court on Pandrea’s motions. On April 23, 2014, Pandrea, *pro se* filed “Defendant Pandrea’s Motion to Amend Findings of Fact and to Alter or Amend Judgment; Motions to Reconsider the Order Granting Clark’s Motion to Strike; Denying Pandrea a Hearing; and Granting Partial Summary Judgment in Favor of Clark”, a “Memorandum in Support of Pandrea’s Motion to Amend Findings of Fact and to Alter or Amend Judgment; Motions to Reconsider the Order Granting Clark’s Motion to Strike; Denying Pandrea a Hearing; and Granting Partial Summary Judgment in Favor of Clark”, and “Supplemental (Page 12) to the Memorandum in Support of Pandrea’s Motion to Amend Findings of Fact and to Alter or Amend Judgment; Motions to Reconsider the Order Granting Clark’s Motion to Strike; Denying Pandrea a Hearing; and Granting Partial Summary Judgment in Favor of Clark.” On May 8, 2014, Pandrea *pro se* filed “Pandrea’s Motion to Void Judgment”, an “Affidavit of Mary E. Pandrea in Support of Her Motion to Void the Clark Judgment” and “Pandrea’s Memorandum in Support of Motion to Void Judgment.” On May 12, 2014, Clark filed “Defendant/Counterclaimant Clark’s Objection to Pandrea’s Motion to Amend and

Motion to Reconsider. On May 3, 2014, Pandrea signed a “Stipulation for Order of Dismissal of Plaintiff’s Complaint to Quiet Title and for Damages Against Defendant Mary Pandrea.” On May 6, 2014, Val Thornton signed that document on behalf of John Thornton. On May 14, 2014, that stipulation was filed with the Court. That stipulation, in its entirety, reads: “JOHN THORNTON AND MARY PANDREA hereby stipulate to move the court to enter an order dismissing John Thornton’s Complaint to Quiet Title and for Damages against Defendant Mary Pandrea, with prejudice, and that each party shall pay his or her own attorney fees and costs.” Oral argument on Pandrea’s motions was held on May 22, 2014. At that hearing, the Court found Pandrea had no standing to bring her claim for reconsideration of this Court’s decision as to the relationship between plaintiff Thornton and defendant Clark. The reasons for that decision are discussed below.

On May 12, 2014, Clark filed “Defendant/Counterclaimant Clark’s Motion for Award of Attorney’s fees and Costs”, a “Brief in Support of Defendant/Counterclaimant Clark’s Motion for Award of Attorney’s fees and Costs”, and an “Affidavit/Memorandum of Joel Hazel in Support of Motion for Award of Attorney’s fees and Costs.” On May 27, 2014, Thornton Timely filed “Plaintiff’s Objection and Motion to Disallow Defendant Kari Clark’s Motion for Attorney Fees and Costs.”

As set forth in the April 9, 2014, Memorandum Decision and Order, the factual background of this case is a follows:

> On August 14, 2013, this action was commenced by Thornton against his neighbors Pandrea and Clark to quiet title to his real property. Thornton and Pandrea own adjacent parcels of real property in Sandpoint, Bonner County, Idaho, near Tavern Creek. Complaint to Quiet Title and for Damages (Complaint) pp. 3-5, ¶¶ 2.7-2.22. Thornton and Pandrea share a common boundary border. Affidavit of Mary E. Pandrea in Support of Defendant Pandrea’s Motion to Dismiss Complaint for Quiet Title and for Damages (First Affidavit of Mary E. Pandrea), p. 2, ¶ 3.

In 1993, prior to owning his land, Thornton rented the property from Robert Wiltse (Wiltse) and Wiltse's wife at the time, Mary Pandrea. Complaint, p. 2, ¶ 2.2. This property Thornton now owns is a two-acre parcel of land. Affidavit of Joel P. Hazel in Support of Defendant Clark's Motion for Partial Summary Judgment (Affidavit of Joel P. Hazel), p. 2 ¶ 3. Wiltse and Pandrea had obtained the two-acre parcel of land from Clark and Pandrea, by Bonner County Quitclaim Deed, Instrument No. 416381, on November 10, 1992. Affidavit of Joel P. Hazel in Support of Defendant Clark's Motion for Partial Summary Judgment (Affidavit of Joel P. Hazel), Exhibit A. That Quitclaim Deed conveyed the property to Wiltse and Pandrea "[s]ubject to and reserving a 30.0 foot easement for a road right of way and utilities . . . ." *Id.* Wiltse and Pandrea divorced in 1996. First Affidavit of Mary E. Pandrea, p. 2, ¶ 6.

On May 4, 1998, after he was divorced from Pandrea, Wiltse conveyed the two-acre parcel of land to Thornton by Warranty Deed, Bonner County Instrument No. 525386 (Thornton Property). Affidavit of Joel P. Hazel, Exhibit B. The Warranty Deed has a provision for an easement as follows:

EASEMENT AND CONDITIONS THEREOF RESERVED BY INSTRUMENT:
IN FAVOR OF: MARY E. PANDREA WILTSE, A MARRIED WOMAN DEALING IN HER SOLE AND SEPARATE PROPERTY; AND KARI A. CLARK, A SINGLE WOMAN
FOR: A 30.0 FOOT EASEMENT FOR A ROAD RIGHT OF WAY AND UTILITIES
RECORDED: DECEMBER 1, 1992
INSURYMENT NO.: 416381

Id. Clark maintains that since the 1940s the road referred to in Warranty Deed, Instrument No. 525386, which goes through the Thornton Property, is the only road her family has used to access approximately twenty acres of land that was jointly owned by Pandrea and Clark. Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counterclaim, p. 3; Affidavit of Terry Boyd-Davis in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counter Claims (Affidavit of Terri Boyd-Davis), p. 2 ¶ 4. Pandrea disputes that Clark and Pandrea jointly owned the twenty-acre parcel of land. Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment, p. 9. However, on May 11, 2011, Pandrea sued Clark to partition the twenty-acre parcel of land in Bonner County case number CV-2011-835. Defendant Clark's Answer Affirmative Defenses and Counterclaim, p. 5 ¶ 6; Affidavit of Joel P. Hazel, Exhibit C. On August 16, 2012, District Judge John P. Luster issued a decision in that case, partitioning the parcel in kind, with Clark receiving 10.423 acres and Pandrea receiving 12.739 acres. *Id.* [On January 24, 2014, Judge Luster issued a Revised Judgment and Decree

of Partition, which awarded Clark 10.423 acres of real property "subject to an easement appurtenant to the land for ingress through and over the parcel awarded to Plaintiff Mary E. Pandrea as the servient parcel and estate . . . ." Affidavit of Joel P. Hazel, Exhibit C.]

According to Clark, in 2013, Thornton erected a locked gate across the easement, interfering with Clark's easement rights. Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counterclaim, p. 2; Affidavit of Terry Boyd-Davis, pp. 2-3 ¶¶ 5-6. A sign dated July 5, 2013, was posted next to the gate, which read as follows:

NOITCE
KARI CLARK
IS PROHIBITED FROM ENTERING UPON THIS PROPERTY FOR ANY REASON UNDER PENALTY OF CRIMINAL TRESPASS. I.C. § 18-7001.

JOHN F. THORNTON
4685 UPPER PACK RIVER ROAD
SANDPOINT IDAHO 83864

OWNER

Affidavit of Terri Boyd-Davis, Exhibit G. Thornton claims that "[s]ince 1993, when I began renting Thornton property, the easement was used solely by Mary Pandrea and her invitees. Mary Pandrea gated and locked the easement at times, and decided who was to have a key to the gate." Affidavit of John Thornton Opposing Summary Judgment (Second Affidavit of John Thornton), p. 1 ¶ 2.

On August 14, 2013, Thornton brought this present action to quiet title to a parcel of land, approximately one tenth of an acre in size, which contains a well, against Pandrea and Clark. Complaint to Quiet Title and for Damages, pp. 3-5, ¶¶ 2.7-2.22. Thornton contends that in 2012 he had the Thornton Property surveyed, and apparently that survey is how and when Thornton discovered the physical property description on his Deed did not include about one-tenth acre (Well Piece). *Id.* at 3, ¶ 2.6. Thornton attaches as Exhibit 2 to his Complaint to Quiet Title and for Damages, a property description. *Id.*, Exhibit 2. However, that property description is simply printed on a piece of paper and attached to his Complaint; it is not a certified copy of any recorded document. *Id.* When this Court issued its Memorandum Decision and Order Granting in Part and Denying in Part Defendant Pandrea's Motion to Dismiss (Motion for Summary Judgment) on February 14, 2014, the Court had not at that time been provided a copy of Thornton's deed. Two weeks after that decision was issued, when Clark filed the instant motion for summary judgment, was the first time the Court was provided a copy of Thornton's deed. Affidavit of Joel P. Hazel, Exhibit B. It is now apparent that at all times Thornton was deeded this parcel, the metes and bounds description of which did not include the "Well Piece". However, Thornton claims he only discovered that fact in 2012 through a survey he had performed on his

> property. Clark maintains that following the Revised Judgment and Decree of Partition issued by Judge Luster on January 24, 2014, in Bonner County case number CV 2011 835, the twenty- acre parcel of land was divided so that Clark no longer has an ownership interest in the Well Piece. Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counterclaim, p. 2.

Memorandum Decision and Order Granting Defendant Clark's Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Defendant Clark's Motion for Partial Summary Judgment on Clark's Counter-claims Against Thornton, pp. 4-7. The Judgment was entered on April 30, 2014. In that decision and in that Judgment, the Court granted Clark partial summary judgment in favor of Clark as against Thornton on all of Clark's counterclaims, except for the issue of damages which were to be tried to a jury, the trial scheduled to begin June 23, 2014. On April 18, 2014, Val Thornton, attorney for John Thornton, signed, as did the attorney for Clark, a "Stipulation for Order of Dismissal of Defendant/Counterclaimant Clark's Damage Claim for Interference with Easement." In this stipulation Clark reserved her right to seek attorney fees against Thornton, but Clark gave up her right to seek damages for Thornton's interference with Clark's easement rights. Thus, nothing remains for trial.

II. STANDARD OF REVIEW.

"A motion to amend findings of fact, pursuant to Idaho Rule of Civil Procedure 52, is addressed to the discretion of the trial court." *McGregor v. Phillips*, 96 Idaho 779, 781, 537 P.2d 59, 61 (1975). A trial court's decision to deny the motion "will not be disturbed on appeal where the court's findings are supported by competent and substantial evidence." *Johnson v. Edwards*, 113 Idaho 660, 662, 747 P.2d 69, 71 (1987) (citing I.R.C.P. 52(a)).

A trial court's decision to grant or deny a motion for reconsideration is reviewed for an abuse of discretion. *Jordan v. Beeks,* 135 Idaho 586, 592, 21 P.3d 908, 914

(2001). A motion for reconsideration of an interlocutory order of the trial court may be made at any time before entry of the final judgment, but not later than fourteen days after entry of the final judgment. I.R.C.P. 11(a)(2)(B). A party making a motion for reconsideration is permitted to present new evidence, but is not required to do so. *Johnson v. Lambros,* 143 Idaho 468, 147 P.3d 100 (Ct. App. 2006). A district court must consider new evidence or authority bearing on the correctness of a summary judgment order if the motion to reconsider is timely filed under Idaho Rule of Civil Procedure 11(a)(2)(B). *Kepler-Fleenor v. Fremont County*, 152 Idaho 207, 210-11, 268 P.3d 1159, 1162-63 (2012).

When deciding a motion for reconsideration, the district court must apply the same standard of review that it applied when deciding the original order being reconsidered. *Fragnella v. Petrovich*, 153 Idaho 266, 276, 281 P.3d 103, 113 (2012). Since the motion sought to be reconsidered in the present case is Clark's Motion for Partial Summary Judgment, the standard of review under Idaho Rule of Civil Procedure 56(c) applies. In considering a motion for summary judgment, the Court is mindful that summary judgment may properly be granted only where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. I.R.C.P. 56(c). In determining whether any issue of material fact exists, this court must construe all facts and inferences contained in the pleadings, depositions, and admissions, together with the affidavits, if any, in the light most favorable to the non-moving party. I.R.C.P. 56(c); *Sewell v. Neilson, Monroe Inc.,* 109 Idaho 192, 194, 706 P.2d 81, 83 (Ct. App. 1985). A mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue for purposes of summary judgment. *Samuel v. Hepworth, Nungester & Lezamiz, Inc.,* 134, Idaho 84, 87, 996 P.2d 303, 306 (2002).

Summary judgment must be denied if reasonable persons could reach differing conclusions or draw conflicting inferences from the evidence. *Smith v. Meridian Joint School District No. 2,* 128 Idaho 714, 718, 918 P.2d 583, 587 (1996).

III. ANALYSIS OF THORNTON'S MOTION TO RECONSIDER SUMMARY JUDGMENT.

Thornton objects to the Court's reliance on the Affidavit of Joel P. Hazel in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counterclaims because he claims "Joel P. Hazel has no personal knowledge of the property boundaries subject of the quitclaim deeds to which he testifies in his affidavit and his statements are untrue." Memorandum of Law in Support of Plaintiff's Motion to Reconsider, p. 11. This is but one more illustration of the ill-thought out positions Thornton has taken throughout the litigation he has wrought upon Clark. What Thornton ignores is that the Court cited to the *attachments* to the Affidavit of Joel P. Hazel, not the statements of Hazel within the affidavit. The attachments to the Affidavit of Joel P. Hazel were certified documents and were properly before the Court for its consideration.

Thornton further objects to the Court's reliance on Defendant Clark's Answer, Affirmative Defenses, Counterclaim and Demand for Jury Trial, and the Affidavit of Joel P. Hazel in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment of Clark's Counterclaims, "for the proposition that the two parcels comprise one big twenty-acre parcel of land." *Id.* Thornton's argument completely ignores the fact that District Judge John P. Luster, in Bonner County Case No. CV 2011 835, found that Clark and Pandrea owned twenty acres of land as tenants in common. Affidavit of Mary Pandrea,

Exhibit 1. That evidence is before the Court and that evidence is uncontroverted. Thornton's stubborn insistence to the contrary is unavailing.

Thornton argues, "The court further considered Joel P. Hazel's allegations concerning the property boundaries, and what easements were described in the documents, which he could not possibly know. The court did not consider John Thornton's affidavit, showing disputed facts." *Id.,* p. 12. Again, the Court cited to the documents attached to the Affidavit of Joel P. Hazel, not the statements contained within the affidavit, when making its ruling.

Thornton claims that since he attested that "Kari Clark had excellent access to her property via the Upper Road", the Court thus has sufficient facts to deny summary judgment. *Id.,* p. 11. Thornton steadfastly refuses to recognize Clark has a written express easement of record across his land. As such, whether or not Clark has access via another means is entirely irrelevant to the inquiry before the Court. In an "easement by necessity", the quality of another route by which to access property is relevant, as the person seeking the easement must prove "reasonable necessity", which can be disproved by an alternative access, the quality of which is relevant. *MacCaskill v. Ebbert*, 112 Idaho 1115, 1121, 739 P.2d 414, 419 (Ct.App. 1987). But in this case, Clark has a written express easement of record. Thornton's irrelevant discussion of implied easement theory will not change that fact.

Finally, Thornton maintains "where Kari Clark seeks to use the easement conveyed from Parcel B, in order to serve Parcel C, it is impermissible as a matter of law. If the easement attaches to land, it attaches to Parcel B, the land from which the portion of land containing the easement was conveyed, and to no other." Memorandum of Law in Support of Motion to Reconsider, p. 16. However, as the Court stated in its written decision:

> At oral argument, Thornton's attorney echoed the claim made by Thornton in his affidavit that: "At the time the easement was created, the only acreage adjacent to my property was the 5-acre parcel, formerly Mary Pandrea's sole and separate property also known as Tax Lot 40." Affidavit of John Thornton in Opposition to Summary Judgment, p. 1, ¶ 1. At oral argument, Thornton's attorney argued that an easement appurtenant had to be adjacent to the property burdened. Thornton's attorney stated: "The easement, if any, appertaining to the adjacent parcel only appertains to the adjacent parcel." No legal authority supporting such circular argument has ever been submitted by Thornton. No legal authority for Thornton's argument exists. Clark is named in the easement. The easement exists and is recorded, so for Thornton's attorney to state on March 14, 2014, that "The easement, if any…", ignores the uncontroverted evidence. For Thornton's counsel to make the claim that an easement appurtenant depends on "adjacency" to the burdened land, without any legal support for that claim, is irresponsible. Clark's easement does not depend on adjacency of her property to Thornton's. **Clark's easement depends on the fact that her name is on a recorded easement that burdens Thornton's land.**

Memorandum Decision and Order Granting Defendant Clark's Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Defendant Clark's Motion for Partial Summary Judgment on Clark's Counter-claims Against Thornton, pp. 15-16 (emphasis added).

In response, Clark maintains the language of Warranty Deed, Bonner County Instrument No. 525386, and Quitclaim Deed, Bonner County Instrument No. 416381, grant Clark an easement appurtenant to the Thornton Property. Defendant/Counterclaimant Clark's Response to Thornton's Motion for Reconsideration and Objection to the Affidavits of Mary Pandera and John Thornton Filed in Support Thereof, p. 2. Clark further requests that this Court strike the Affidavits of Pandrea and Thornton in support of the Motion for Reconsideration, as she claims they are irrelevant to whether Clark has an easement appurtenant to the Thornton Property, the maps hand-drawn by Thornton are without foundation, and the legal descriptions contacted within deeds speak for themselves. *Id.*, pp. 3, 4. The Court will not strike Thornton's affidavit. While Thornton's affidavit provides no relevant evidence to rebut the express

easement of record Clark has across Thornton's land, Thornton's affidavit is relevant to show the absurd lengths he is willing to travel to try and trump Clark's easement. Drawing twelve maps with colored pencils in an attempt to show what happened at various times in history, does nothing to change the fact that Clark has a written express easement across Thornton's land.

In the underlying motion, Clark sought a determination by the Court that she had an easement appurtenant across the Thornton Property according to the language of Warranty Deed, Bonner County Instrument No. 525386, and Quitclaim Deed, Bonner County Instrument No. 416381. Memorandum in Support of Defendant Clark's Motion for Summary Judgment of Dismissal of Thornton's Complaint and Motion for Partial Summary Judgment on Clark's Counterclaim, pp. 5-6. At no time in this litigation, from its inception by Thornton to the current time, does Thornton address the actual language of these documents. When Thornton filed his Complaint to Quiet Title and for Damages, he breathed not a word about Clark's recorded express easement. Throughout summary judgment, Thornton refused to discuss that easement, instead he chose to make irrelevant arguments to the Court. Now, Thornton supplies the Court with additional documents that do nothing to dispute the language of Warranty Deed, Bonner County Instrument No. 525386, and Quitclaim Deed, Bonner County Instrument No. 41638. The hand-illustrated maps made by John Thornton alleging to depict the properties and easements involved in this case are of no relevance. Clark shifted the burden to Thornton to show that there is a genuine issue of material fact and Thornton has failed to meet his burden via admissible and relevant evidence.

Thornton's audacity has continued through oral argument. At the beginning of oral argument on Thornton's Motion to Reconsider, attorney Val Thornton, counsel for her husband John Thornton, acknowledged that Clark had a "colorable claim" to an

easement. This is simply untenable. Clark has an *express written easement* which has been recorded. That language in that easement is unambiguous. That easement gives Clark an unequivocal thirty foot wide easement right to cross Thornton's land. From Clark's point of view, the only way her easement rights could be stronger would be if she owned fee simple title to that thirty foot wide strip of land. "Color" is defined as "An apparent, but legally insufficient, ground of action, admitted in a defendant's pleading to exist for the plaintiff; especially, a plaintiff's apparent (and usually false) right or title to property…" Black's Law Dictionary, 7th Ed., p. 259 (1999). "Color of title" is defined as "A written instrument or other evidence that appears to give title, but does not do so." *Id.,* p. 260. "Color of law" is defined as "The appearance or semblance, without the substance, of a legal right." *Id.* There is nothing "apparent" about Clark's easement. Clark's express, recorded, unambiguous easement she has over Thornton's land is "legally sufficient", it has "the substance of a legal right." This Court made all of this quite clear in its April 9, 2014, Memorandum Decision and Order Granting Defendant Clark's Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Defendant Clark's Motion for Partial Summary Judgment on Clark's Counter-claims Against Thornton. Following that decision, for Thornton's attorney to claim at oral argument that Clark simply has a "colorable claim" to an easement is beyond cavil.

Thornton further makes an absurd argument that Clark no longer owns the dominant estate. Memorandum of Law in Support of Plaintiff's Motion to Reconsider, pp. 14-15. There is no factual basis to Thornton's argument. Clark and Pandrea owned property as tenants in common which was adjacent to Thornton's property. That property which Clark and Pandrea owned as tenants in common has now been partitioned by Judge Luster. However, in no way have Pandrea or Thornton been divested of the dominant estate. There is no legal basis to support Thornton's

argument. Thornton cites to *Hodgins v. Sales*, 139 Idaho 225, 76 P.3d 969 (2003); *Christensen v. City of Pocatello,* 142 Idaho 132, 124 P.3d. 1008 (2005); *Coward v. Hadley,* 150 Idaho 282, 246 P.3d 391 (2010) and *Tungsten Holdings, Inc. v. Drake,* 143 Idaho 69, 137 P.3d 456 (2006).

Hodgins contains the very quote which is the undoing of Thornton's argument. The Idaho Supreme Court in *Hodgins* wrote: "*When an appurtenant easement is created*, *it becomes fixed* as an appurtenance to the real property, which is subject to the prescriptive use *and may be claimed by a successor in interest*." 139 Idaho 225, 230, 76 P.3d 969, 974 (citing *Marshall v. Blair,* 130 Idaho 675, 680, 946 P.2d 975, 980). (italics added). This tells us that as a matter of law, to determine what the dominant estate is, the pertinent time to make that determination is *when the easement was created*. The easement appurtenant in the present case was created on December 1, 1992, when Wiltse expressly and specifically signed it in favor of Pandrea and Clark. At that moment "it becomes fixed as an appurtenance to the real property." At that moment, Pandrea and Clark owned adjacent property as tenants in common. "The real property" in this case is the property held as tenants in common (until earlier this year) by Pandrea and Clark. All Judge Luster did on January 14, 2014, in a different lawsuit, was to partition that property between Pandrea and Clark, but Pandrea and Clark still own the dominant estate. But more importantly, *Hodgins* tells us January 14, 2014, is not the pertinent time period to determine the dominant estate…December 1, 1992, is the pertinent date. And *Hodgins* tells us that anyone to whom either Pandrea or Clark chose to transfer their property in the future, will receive the benefit of the easement across Thornton's land. If a subsequent transferee of either Pandrea or Clark would

receive the benefit of the express appurtenant easement across Thornton's land, then certainly Pandrea and Clark post-apportionment retain that same benefit.

While Thornton correctly quotes *Christensen* he misapplies that quote. The quote is "Thus, where one seeks to use an easement appurtenant to an identified dominant estate to serve a parcel other than that dominant estate, it is impermissible as a matter of law and the factual inquiry regarding increased use is not conducted." Memorandum of Law in Support of Plsaintiff's Motion to Reconsider, p. 16 (citing *Christensen,* 142 Idaho 132, 137, 124 P.3d. 1008, 1013). However, Thornton is seriously misguided when, immediately following the above quote, he argues:

> Thus, in this case, where Kari Clark seeks to use the easement conveyed from Parcel B, in order to serve as access to Parcel C, it is impermissible as a matter of law. If the easement attaches to land, it attaches to Parcel B, the land from which the portion of the land containing the easement was conveyed, and to no other.

Id. This phenomenon of Parcel A, B and C, was not before the Court on summary judgment, and there is no admissible evidence before the Court at this time on reconsideration. In any event, the Court must look at what Pandrea and Clark owned on December 1, 1992, not colored pencil drawings with new alphabet designations ascribed by John Thornton. There is no doubt what Pandrea and Clark owned on December 1, 1992; there is no doubt Wiltse intended that property to be the dominant property. By taking quotes from case law out of context, and then applying that to facts not in evidence, Thornton simply intends to create confusion in what is a clear issue.

Likewise Thornton twists the quotation from *Coward.* Thornton correctly quotes "unless the terms of the servitude…provide otherwise, and appurtenant easement or profit may not be used for the benefit of property other than the dominant estate." *Id.* (citing *Coward,* 250 [sic 150] Idaho 282, 287, 246 P.3d 391, 396). All this means is

Pandrea and Clark cannot extend to *additional* landowners further down the road, the ability to use this easement across Thornton's property. Additionally, the Idaho Supreme Court in *Coward* determined Cowards did not have an express easement, which is certainly not the situation in the present case.

Finally, *Tungsten* is not on point as the Idaho Supreme Court reversed because Tungsten failed to put on any evidence that he had bought the Siemsens' (the grantees of the easement) property. 143 Idaho 69, 71, 137 P.3d 456, 459. In the present case, there is no doubt Thornton is the successor in interest to Wiltse, the grantee of the easement. Thornton's predecessor Wiltse specifically stated Clark and Pandrea held the easement over what is now Thornton's property.

Thornton's argument that Clark no longer owns the dominant estate is really just a repackaged version of the argument Thornton floated past this Court at summary judgment. That argument was that the owner of the appurtenant property had to be an *adjacent* owner. Thornton's argument was that since Judge Luster apportioned the property between Pandrea and Clark, Clark's property no longer touched (no longer was adjacent to) Thornton's land, Clark's easement was no longer in effect. The problem is such argument finds no basis in the law, as this Court previously found:

> At oral argument, Thornton's attorney argued that an easement appurtenant had to be adjacent to the property burdened. Thornton's attorney stated: "The easement, if any, appertaining to the adjacent parcel only appertains to the adjacent parcel." No legal authority supporting such circular argument has ever been submitted by Thornton.

Memorandum Decision and Order Granting Defendant Clark's Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Defendant Clark's Motion for Partial Summary Judgment on Clark's Counter-Claims Against Thornton, p. 6. As such, Thornton's Motion to Reconsider Summary Judgment is denied.

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IV. ANALYSIS OF PANDREA'S MOTION TO AMEND FINDINGS OF FACT.

Pandrea requests this Court amend the findings of fact contained within its April, 9, 2014, Memorandum Decision and Order Granting Clark's Motion for Summary Judgment, which she believes were made in error. Memorandum in Support of Pandrea's Motion to Amend Findings of Facts and to Alter or Amend Judgment; Motion to Reconsider the Order Granting Clark's Motion to Strike; Denying Pandrea a Hearing; and Granting Partial Summary Judgment in Favor of Clark, pp. 11-22. Specifically, she claims the Court erred in making findings of fact when it summarized the following in the Procedural History and Factual Background section of the Memorandum Decision and Order: 1) Pandrea and Clark jointly owned a twenty-acre parcel of land (the specific language used by the Court reads "on May 11, 2011, Pandrea sued Clark to partition the twenty-acre parcel of land in Bonner County case number CV-2011-835."); 2) "Pandrea and Clark are sisters who still own land bordering Thornton's land"; 3) "Wiltse and Pandrea had obtained the two-acre parcel of land from Clark and Pandrea, by Bonner County Quitclaim Deed, Instrument No. 416381, on November 10, 1992"; and 4) "Clark maintains that since the 1940s the road referred to in Warranty Deed, Instrument No. 525386, which goes through the Thornton Property, is the only road her family has used to access approximately twenty acres of land that was jointly owned by Pandrea and Clark." *Id.* (citing April, 9, 2014, Memorandum Decision and Order Granting Clark's Motion for Summary Judgment, pp. 1, 4, 5).

The Court did not make findings of fact in its April, 9, 2014, Memorandum Decision and Order Granting Clark's Motion for Summary Judgment. The Court is not the finder of fact in this case. A demand for jury trial was filed by Clark on December 9, 2013. Defendant Clark's Answer, Affirmative Defenses, Counterclaim and Demand for Jury Trial, p. 7. The above quoted language is contained in the Procedural History and

Factual Background section of the Memorandum Decision and Order. The factual background set forth by the Court was based on the evidence submitted by the parties. In granting summary judgment in favor of Clark, the Court found that Clark established the absence of a genuine issue of material fact through the evidence it submitted to the Court in support of its Motion for Partial Summary Judgment. That shifted the burden to Thornton to provide a sufficient showing to establish the essential elements of his case. Thornton failed to do so. The Court construed the admissible facts presented to it, drawing all reasonable factual inferences in favor of Thornton, the non-moving party. After doing so, it found Thornton failed to meet his burden and establish a genuine issue of material fact on the issues. At no time did this Court make findings of facts. Because no findings were made, Pandrea's motion to amend findings of fact is denied.

V. ANALYSIS OF PANDREA'S MOTION TO RECONSIDER.

Pandrea moves this Court to "reconsider" its April 9, 2014, Order granting Clark's Motion for Partial Summary Judgment "…whereby Pandrea was denied her inclusion as a necessary party and her Memorandum and Affidavits in Support of Thornton's Response to Clark's Motion for Summary Judgment was allowed to be stricken." Defendant Pandrea's Motion to Amend Findings of Facts and to Alter or Amend Judgment; Motion to Reconsider the Order Granting Clark's Motion to Strike; Denying Pandrea a Hearing; and Granting Partial Summary Judgment in Favor of Clark, pp. 1-2. The Court, in its April 9, 2014, decision, wrote, in its entirety:

> Also, at the March 14, 2014, hearing, the Court took up the issue of "Clark's Motion to Strike Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment and the Affidavits Filed in Support Thereof." The basis of that motion was Pandrea is not an adverse party to Clark, and Clark's motion for summary judgment only pertained to Thornton's claims against Clark and Clark's counterclaims against Thornton. Defendant/Counterclaimant Clark's Motion to Strike Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment and the

> Affidavits Filed in Support Thereof, pp. 2, 3. Pandrea (pro se) had no objection to Clark's motion to shorten time to hear this motion, and counsel for Thornton objected, stated her client Thornton was prejudiced, but articulated no actual prejudice. Accordingly, this Court granted Clark's motion to shorten time. The Court then heard argument from the attorneys and Pandrea. At the conclusion of oral argument, the Court granted "Clark's Motion to Strike Pandrea's Memorandum in Support of Plaintiff's Response to Defendant's Motion for Summary Judgment and the Affidavits Filed in Support Thereof", because Pandrea is not an adverse party to Clark (thus, the Court stated it did not need to reach the untimeliness of Pandrea's submissions). An order to that effect has not been submitted, so the Court will include such at the end of this decision. Although the motion to strike was granted, the Court will discuss Pandrea's claims and arguments in this memorandum decision, to provide context. The affidavits submitted by Pandrea have been read by the Court, but will not be considered in this motion for summary judgment between Clark and Thornton.

Memorandum Decision and Order Granting Defendant Clark's Motion for Summary Judgment as to Claims of Plaintiff Thornton, and Granting Defendant Clark's Motion for Partial Summary Judgment on Clark's Counter-Claims Against Thornton, pp. 3-4. Pandrea now seeks a reconsideration of the Court decision on the Motion to Strike. Memorandum in Support of Pandrea's Motion to Amend Findings of Facts and to Alter or Amend Judgment; Motion to Reconsider the Order Granting Clark's Motion to Strike; Denying Pandrea a Hearing; and Granting Partial Summary Judgment in Favor of Clark, p. 22. Specifically, Pandrea claims "Clark was required to include Pandrea as a party to her counterclaim against Thornton for quiet title in Thornton's Property and quiet title in Pandrea's interest in the same property." *Id.* Pandrea cites I.R.C.P. 3(a) for this proposition, but such is inapt. At any point in time, Pandrea could have filed her own counterclaim against Thornton, but Pandrea chose not to.

Moreover, Pandrea claims she is adversely affected by the judgment granting Clark an easement across the Thornton Property because for Clark to reach the Clark Property via the easement she must also cross the Pandrea Property. *Id.,* p. 23. By failing to include Pandrea as a necessary party, Pandrea claims she "was not given her

right to due process as she was not included in a judicial process that resulted in depriving her of [the] right to protect her property." *Id.,* p. 27. Pandrea maintains that she "is undoubtedly a party to this action as Clark can only reach her property by crossing Pandrea's Property, ***not*** just the Thornton Property." *Id.*, p. 28 (emphasis in original). As such, she claims it was error for the Court to strike her memorandum and affidavits. *Id.*

Pandrea also challenges the Court's decision granting partial summary judgment to Clark. Memorandum in Support of Pandrea's Motion to Amend Findings of Facts and to Alter or Amend Judgment; Motion to Reconsider the Order Granting Clark's Motion to Strike; Denying Pandrea a Hearing; and Granting Partial Summary Judgment in Favor of Clark, p. 29. She contends "the Court determined that there was a '20-acre Parcel' held in co-tenancy between Clark/Pandrea; [yet] there is no substantial competent evidence on record to support this fact." *Id.* She maintains this creates a genuine issue of material fact. *Id.*

In response, Clark contends Pandrea is not an adverse party to Clark's Motion for Summary Judgment against Thornton. Defendant/Counterclaimant Clark's Objection to Pandrea's Motion to Amend and Motion to Reconsider, p. 3. Moreover, Clark maintains "Pandrea does not have any standing to challenge the Judgment that was entered regarding Clark's legal rights as they pertain to Thornton's property." *Id.*

The Court agrees with Clark that Pandrea does not have standing to challenge the Judgment. "[T]he doctrine of standing focuses on the party seeking relief and not on the issues the party wishes to have adjudicated." *Idaho Branch Inc. of Associated Gen. Contractors of Am. v. Nampa Hwy. Dist. No. 1,* 123 Idaho 237, 240, 846 P.2d 239, 242 (Ct. App. 1993) (citing I.C. §§ 10-1205 –1206). "To satisfy the requirement of

standing litigants must allege an injury in fact, a fairly traceable causal connection between the claimed injury and the challenged conduct, and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury." *Doe v. Doe*, 155 Idaho 660, 315 P.3d 848, 850 (2013) (citing *Bagley,* 149 Idaho 806, 807, 241 P.3d 979, 980 (2012)). The claimed injury must be against the party whose standing is in question. *Id.* (citing *Abolafia v. Reeves,* 152 Idaho 898, 902, 277 P.3d 345, 349 (2012)).

The lack of standing was made even more clear on May 6, 2014, when Pandrea signed the "Stipulation for Order of Dismissal of Plaintiff's Complaint to Quite Title and for Damages Against Defendant Mary Pandrea." On May 20, 2014, this Court signed the Order of Dismissal of Plaintiff's Complaint to Quiet Title and for Damages Against Defendant Mary Pandrea. The filing of Thornton's complaint in this case naming Pandrea as defendant was the only pleading which made Pandrea a party. Now, Thornton's complaint against Pandrea has been dismissed, at Pandrea's stipulation upon Pandrea's signature. At all times, Pandrea has completely lacked standing to request this Court to reconsider its opinion or its Judgment. At present, due to her own stipulation, she is not even a party.

While it may be true that Clark can only reach her property by crossing the Pandrea property after crossing the Thornton property, the Judgment in this case did not grant Clark an easement across the Pandrea property, nor could the Court have done so *in this litigation*. But in *other litigation*, Clark was granted an easement across the Pandrea Property on January 24, 2014, when District Judge John P. Luster issued a Revised Judgment and Decree of Partition in Bonner County case number CV 2011 835, awarding Clark 10.423 acres of real property and Pandrea 12.739 acres of real property "subject to an easement appurtenant to the land for ingress through and over

the parcel awarded to Plaintiff Mary E. Pandrea as the servient parcel and estate . . . ." Affidavit of Joel P. Hazel, Exhibit C.

The Judgment in this case does not alter or change the easement rights awarded to Clark in Bonner County case number CV 2011 835. Rather, the Judgment in this case grants Clark an easement across the Thornton Property, which leads to the easement on the Pandrea Property. The only property rights affected by the Judgment in this case are those of Clark and Thornton. Pandrea is attempting to make the easement granted to Clark in Bonner County case number CV 2011 835 ineffective, and circumvent the Judgment entered by Judge Luster. Pandrea does not have an interest in the Thornton Property, as it pertains to the easement.

Moreover, the evidence before the Court is that Bonner County case number CV 2011 835 was initiated by Pandrea on May 11, 2011, when Pandrea sued Clark to partition land owned by Clark and Pandrea as tenants in common. Defendant Clark's Answer Affirmative Defenses and Counterclaim, p. 5 ¶ 6; Affidavit of Joel P. Hazel, Exhibit C; Affidavit of Mary E. Pandrea, Exhibit 1. Pandrea now claims that somehow a genuine issue of material fact exists about the parcel, such that summary judgment should not have been awarded in this case. It is unclear, given the evidence provided to this Court, how she could make that claim if she had standing to do so.

As such, the Court denies Pandrea's motion to reconsider.

VI. PANDREA'S MOTION TO VOID JUDGMENT.

A motion for relief from a final judgment, pursuant to I.R.C.P. 60(b), is committed to the sound discretion of the trial court. *Clear Springs Trout Co. v. Anthony,* 123 Idaho 141, 143, 845 P.2d 559, 561 (1992); *Johnston v. Pascoe,* 100 Idaho 414, 599 P.2d 985 (1979). "Although courts have broad discretion to grant a motion for relief from judgment, that discretion is bounded by the requirement that the party seeking relief

demonstrate 'unique and compelling circumstances' which justify relief." *McLean v. Cheyovich Family Trust*, 153 Idaho 425, 429, 283 P.3d 742, 746 (2012) (quoting *Miller v. Haller,* 129 Idaho 345, 349, 924 P.2d 607, 611 (1996)). "It is incumbent upon a party seeking relief from a judgment not only to meet the requirements of I.R.C.P. 60(b), but also to show, plead or present evidence of facts which, if established, would constitute a meritorious defense to the action." *Maynard v. Nguyen,* 152 Idaho 724, 726, 274 P.3d 589, 591 (2011) (citing *Ponderosa Paint Mfg., Inc. v. Yack,* 125 Idaho 310, 317, 870 P.2d 663, 670 (Ct. App.1994)).

Idaho Rule of Civil Procedure 60(b) provides in pertinent part:

> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

I.R.C.P. 60(b). "Idaho's Rule 60(b) is similar to that found in the Federal Rules of Civil Procedure. I.R.C.P. 60(b), *Federal Rules Comparison.* Several federal circuits have held that a non-party has standing to bring a Rule 60(b) motion so long as the non-party was directly affected by the judgment sought to be set aside." *Campbell v. Kildew*, 141 Idaho 640, 646, 115 P.3d 731, 737 (2005) (citing *Eyak Native Vill. v. Exxon Corp.,* 25 F.3d 773, 777 (9th Cir.1994); *Houck v. Folding Carton Admin.,* 881 F.2d 494, 505 (7th Cir.1989); *Kem Mfg. Corp. v. Wilder,* 817 F.2d 1517, 1521 (11th Cir.1987); *Southerland v. Irons,* 628 F.2d 978, 980 (6th Cir.1980); *Root Refining Co. v. Universal Oil Products*

Co., 169 F.2d 514, 522-25 (3d Cir.1948); *U.S. v. Buck,* 281 F.3d 1336, 1341-42 (10th Cir.2002)).

Pandrea seeks to void the Judgment which was entered in favor of Clark on April 30, 2014, pursuant to I.R.C.P. 60(b), alleging Clark lacks standing to quiet title to an easement now solely belonging to the Pandrea Property, as determined by Bonner County case number CV 2011 835. Pandrea's Motion to Void Judgment, pp. 1, 2; Pandrea's Memorandum in Support of Motion to Void Judgment, pp. 6-7. In support of this position, Pandrea relies upon *Tungsten Holdings, Inc. v. Drake*, 143 Idaho 69, 137 P.3d 456 (2006). In that case, the Idaho Supreme Court found that "close examination of the record, exhibits, and trial transcripts reveals no evidence to support the district court's finding that the Tungsten property was previously owned by the Siemsens" and as such a successor in interest of the grantees of the easement in question. 143 Idaho 69, 72, 137 P.3d 456, 459. Pandrea maintains that there is no evidence that Pandrea and Clark jointly twenty acres of land with Clark (Pandrea's Memorandum in Support of Motion to Void Judgment, p. 9), despite the fact that she submits as evidence to this Court a decision issued by District Judge John P. Luster in Bonner County case number CV 2011 835, where a twenty acres of land owned by Clark and Pandrea as tenants in common was partitioned, with Clark receiving 10.423 acres and Pandrea receiving 12.739 acres. Affidavit of Mary Pandrea, Exhibit 1. Unlike *Tungsten Holdings*, this is evidence that Clark previously owned the entire parcel as tenants in common with Pandrea. As such, Clark does have standing to seek quiet title of the easement.

In turn, Clark requests that this Court strike Pandrea's Motion to Void Judgment and the memorandum and affidavit filed in support of the motion because Pandrea is not an adverse party to Clark and, as such, has no standing to challenge the judgment. Defendant/Counterclaimant Clark's Objection to Pandera's Motion to Void Judgment, p.

2. She also objects under Idaho Rule of Civil Procedure 7(b)(3), as the notice of hearing for Pandrea's motion was untimely. *Id.*

The Court finds Pandrea does not have standing to challenge the Judgment since she was not directly affected by it. As stated above, "the doctrine of standing focuses on the party seeking relief and not on the issues the party wishes to have adjudicated." *Idaho Branch Inc. of Associated Gen. Contractors of Am. v. Nampa Hwy. Dist. No. 1,* 123 Idaho 237, 240, 846 P.2d 239, 242 (Ct. App. 1993) (citing I.C. §§ 10-1205 –1206). "To satisfy the requirement of standing litigants must allege an injury in fact, a fairly traceable causal connection between the claimed injury and the challenged conduct, and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury." *Doe v. Doe*, 155 Idaho 660, 315 P.3d 848, 850 (2013) (citing *Bagley,* 149 Idaho 806, 807, 241 P.3d 979, 980 (2012)). The claimed injury must be against the party whose standing is in question. *Id.* (citing *Abolafia v. Reeves,* 152 Idaho 898, 902, 277 P.3d 345, 349 (2012)).

Pandrea claims that she is damaged by the Judgment in this case because her "property value would be diminished by up to 30%", "she [will] not be able to further develop her property, and the property would be greatly burdened if it were ever sold." Pandrea's Memorandum in Support of Motion to Void Judgment, pp. 10, 11.

The Judgment in this case grants Clark an easement across the Thornton Property only, and not the Pandrea Property. While it may be true that once Clark crosses the Thornton Property, she must then cross the Pandrea Property to access the Clark Property, the Judgment in the present case does not give Clark any right to cross the Pandrea Property. However, Clark was granted an easement across the Pandrea Property on January 24, 2014, when District Judge John P. Luster issued a

Revised Judgment and Decree of Partition in Bonner County case number CV 2011 835, awarding Clark 10.423 acres of real property and awarding Pandrea 12.739 acres of real property "subject to an easement appurtenant to the land for ingress through and over the parcel awarded to Plaintiff Mary E. Pandrea as the servient parcel and estate . . . ." Affidavit of Joel P. Hazel, Exhibit C. That easement right exists whether or not a Judgment was awarded to Clark in this case. The Judgment in this case does not alter or change the easement rights awarded to Clark in Bonner County case number CV 2011 835. The only property rights affected by the Judgment in this case are those of Clark and Thornton. Pandrea does not have an interest in the Thornton Property, as it pertains to the easement granted to Clark.

For the above stated reasons, Pandera's Motion to Void the Judgment is denied.

VII. ANALYSIS OF CLARK'S MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS.

On May 12, 2014, Clark filed "Defendant/Counterclaimant Clark's Motion for Award of Attorney's Fees and Costs", a "Brief in Support of Defendant/Counterclaimant Clark's Motion for Award of Attorney's Fees and Costs", and an "Affidavit/Memorandum of Joel P. Hazel in Support of Motion for Attorney's Fees and Costs." This was timely, as the Judgment was entered by this Court on April 30, 2014. I.R.C.P. 54(d)(5). On May 16, 2014, Thornton filed "Plaintiff's Reply Brief in Support of His Motion to Reconsider Summary Judgment." In that reply, Thornton did not address Clark's claim for attorney fees against Thornton. Instead, Thornton obliquely stated: "The court should reconsider its order granting summary judgment, and John Thornton should be awarded attorney fees and costs for having to defend against baseless claims that are not supported by fact or law." Plaintiff's Reply Brief in Support of His Motion to

Reconsider Summary Judgment, p. 4. This court finds that cannot be construed as an objection under I.R.C.P. 54(e)(6).

On May 27, 2014, Thornton timely filed "Plaintiff's Objection and Motion to Disallow Defendant Kari Clark's Motion for Attorney Fees and Costs." Under I.R.C.P. 54(e)(5), attorney fees are to be processed in the same manner as costs, and under I.R.C.P. 54(e)(6), objections to attorney fees are to be made in the same manner as an objection to costs as provided by I.R.C.P. 54(d)(6). Idaho Rule of Civil Procedure 54(d)(6) provides, "Any party may object to the claimed costs of another party set forth in a memorandum of costs by filing and serving on adverse parties a motion to disallow part or all of such costs within fourteen (14) days of service of the memorandum of cost." Because the "day of the act", in this case the day of filing of Clark's motion for attorney fees (May 12, 2014) is not to be included in computing the amount of time passed for Thornton's "objection", said objection was timely filed.

Under I.R.C.P. 54(d)(7), the Court is required to hold a hearing if there has been an objection to costs.

VIII. CONCLUSION AND ORDER.

For the reasons stated above,

IT IS HEREBY ORDERED Thornton's "Plaintiff's Motion to Reconsider Summary Judgment and Notice of Hearing" is DENIED.

IT IS FURTHER ORDERED Pandrea's motion to amend findings of fact is DENIED.

IT IS FURTHER ORDERED Pandrea's motion to reconsider Clark's motion for partial summary judgment is DENIED.

IT IS FURTHER ORDERED Pandrea's motion to void judgment is DENIED.

IT IS FURTHER ORDERED counsel for Clark must prepare an adequate survey

of Clark's easement across Thornton's land, file such with the Court, cause such to be recorded, and prepare a final judgment which includes that description.

IT IS FURTHER ORDERED the jury trial scheduled for June 23, 2014, is VACATED.

Entered this 2nd day of June, 2014.

____
John T. Mitchell, District Judge

Certificate of Service

I certify that on the _______ day of June, 2014, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer	Fax #	Lawyer	Fax #
Val Thornton	208-255-2327	Joel P. Hazel	208-667-8470
Mary E. Pandrea, Pro Se			

____
Jeanne Clausen, Deputy Clerk