

FILED _____

AT _____ O'Clock _____ M
CLERK OF DISTRICT COURT

Deputy

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

In re: Lots 13 and 14, Block 16, Bayview,
Kootenai Co., State of Idaho,

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Case No. **CV 2011 291**

**MEMORANDUM DECISION AND
ORDER DISMISSING COMPLAINT
FOR DECLARATORY RELIEF**

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on the Complaint for Declaratory Judgment filed by Petitioner, Lucille Morrow (Morrow), on January 5, 2011. Morrow moves this Court for an Order declaring her the rightful holder of title to lots 13 and 14, block 16, Bayview, Kootenai County.

No motion was ever filed by petitioner. However, a "Notice of Hearing" was filed on January 21, 2011, purporting to notice for hearing "...her rights based on the instruments filed with the Verified Complaint for Declaratory Judgment on Contract", for oral argument on April 11, 2011. Notice of Hearing, p. 1.

In her Complaint, Morrow sets forth the process by which she (and her now deceased husband) obtained title to the subject property. Complaint for Declaratory Judgment, pp. 2-3. She states, "[u]pon information and belief, the Warranty Deed described herein was not recorded with the Kootenai County Recorder's Office." *Id.*, ¶ XII. It appears the deed was delivered to Morrow's deceased husband while he was living, and either he or a title company failed to record the warranty deed. In any event,

it was not recorded. Morrow now moves the Court for a “declaration and determination that Petitioner is the rightful holder of title to the subject property.” *Id.*, p. 3.

II. STANDARD OF REVIEW.

In a declaratory judgment action, where evidence submitted is entirely in writing, an appellate court may draw its own impressions from evidence, but will not substitute its impressions for the trial court’s findings of fact unless those findings are clearly erroneous. *Mutual of Enumclaw Ins. Co. v. Wood By-Products*, 107 Idaho 1024, 1027, 695 P.2d 409, 412 (Ct.App. 1984) (finding principles regarding the standard of review in applications for relief from default judgments equally applicable to declaratory judgment actions submitted with evidence entirely in writing).

III. ANALYSIS.

Morrow has presented the Court with only her Complaint for Declaratory relief and attached exhibits, asking this Court to draw its findings of fact from that evidence. Importantly, and likely dispositive of the relief sought, Morrow writes, “Petitioner is not aware of any other individuals or entities who may have or claim an interest in the subject property.” Complaint for Declaratory Judgment, p. 3, ¶ X. The question for this Court, thus, is whether Morrow presents for this Court *an actual controversy*.

In Idaho, cases interpreting declaratory judgment contemplated in Idaho Code § 10-1201, *et seq.*, require a justiciable controversy for a declaratory action to lie. *State ex. Rel. Diefendorf v. Idaho Egg Producers*, 59 Idaho 38, 80 P.2d 28 (1938); *Whitney v. Randall*, 58 Idaho 49, 70 P.2d 384 (1937); *Harris v. Cassia County*, 106 Idaho 513, 681 P.2d 988 (1984). In *Harris*, the Idaho Supreme Court quoted the United States Supreme Court in *Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227, 240-41, 57 S.Ct. 461, 464 (1937):

A “controversy” in this sense must be one that is appropriate for judicial determination...A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot...The controversy must be definite and concrete, touching on the legal relations of parties having adverse legal interests...It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.

Harris, 106 Idaho 513, 516, 681 P.2d 988, 991. Where no difference or threat, present or prospective, exists between parties, no judicial determination is necessary. *State ex.rel. Miller v. State Board of Education*, 56 Idaho 210, 217-18, 52 P.2d 141, 144 (1935). In the present case, there are no parties, other than Morrow, and there does not appear to be any justiciable controversy. In *Whitney v. Randall*, the Idaho Supreme Court held:

Here no disputed issue, no adversary controversy was tendered. Plaintiff alleged that the contract was valid and binding and that defendant was competent to make the contract. Defendant admitted and asserted the same facts. It is true that plaintiff alleged: “That there exists an uncertainty as to the ability and capacity of the defendant to contract, and that this action is brought to quiet from the said title such uncertainty, and under chapter 70, 1933 Session Laws of Idaho, denominated, ‘The Uniform Declaratory Judgment Act.’” But it is nowhere alleged that defendant denies or repudiates the contract or claims that he was incompetent to enter into the contract at the time it was executed, nor is it alleged that any member of his family, presumptive heir, or relative, who might be legally liable for his support, in case of his insanity and indigence, has questioned or doubted his competency or the validity of the contract.

There must be adverse parties to an action or proceeding, whether it be prosecuted under the statute to quiet title or under the declaratory judgment act. Section 11 of the Declaratory Judgment Act provides: “When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.” Here the purchaser of the property, as vendee named in the contract, is the only defendant.

In *State v. State Board of Education*, 56 Idaho, 210, 52 P.(2d) 141, 144, we had occasion to consider a question presented under the declaratory judgment act and said:

“The Declaratory Judgment Act (chapter 70, 1933, Sess.Laws) contemplates some specific adversary question

or contention based on an existing state of facts, out of which the alleged 'rights, status, and other legal relations' arise, upon which the court may predicate a judgment 'either affirmative or negative in form and effect.' Section 1 of Declaratory Act.

The questioned 'right' or 'status' may invoke either remedial or preventive relief; it may relate to a right that has either been breached or is only yet in dispute or a status undisturbed but threatened or endangered; but, in either or any event, it must involve actual and existing facts." (Citing cases.)

We there held that in order to obtain a declaratory judgment under this act, some specific adversary question must be presented. There must be a justiciable issue presented. No judicial declaration is necessary or seemly where no difference or threat, present or prospective, exists between the parties to the action or proceeding. The authorities under the Uniform Declaratory Judgment Act generally sustain this view of the scope and purpose of the act. *Jefferson County v. Johnson*, 232 Ala. 406, 168 So. 450; *State v. Dammann*, 220 Wis. 17, 264 N.W. 627, 103 A.L.R. 1089; *County Board of Education, etc., v. Borgen*, 192 Minn. 512, 257 N.W. 92; *Stewart v. Herten*, 125 Neb. 210, 249 N.W. 552; *Burton v. Durham R. & I. Co.*, 188 N.C. 473, 125 S.E. 3.

The order vacating the judgment is affirmed and the cause is remanded with direction to permit the plaintiff to amend his complaint, if he desires to do so. Appellant will be required to pay respondent's costs and also to pay amicus curiae the costs taxable for printing his brief.

58 Idaho 49, 58-59, 70 P.2d 384, 388.

Here, Morrow concedes that no individuals or entities "may have or claim" any interest in the property. Complaint for Declaratory Judgment, p. 3, ¶ X. There are simply no parties against which Morrow can seek preventative or remedial relief. As the instant matter stands, there is no controversy "definite and concrete, touching on the legal relations of parties having adverse legal interests." *Harris*, 106 Idaho 513, 516, 681 P.2d 988, 991 (quoting *Aetna Life Insurance Co.*, 300 U.S. 227, 240-41, 57 S.Ct. 461, 464).

At oral argument on April 11, 2011, counsel for Morrow indicated that the "title company" needs an order from the Court in order to insure Morrow has good title should she wish to convey the property. While it may well be true that a title company merely

wants some order from this Court in order to insure title, this Court lacks jurisdiction to do so because of a lack of justiciable controversy. Additionally, this Court cannot order any "title company" to do anything, as there is no title company that is a party to this action.

Counsel for Morrow also suggested that she file an affidavit showing the Kootenai County Recorder will not accept a copy of the warranty deed. The copy of the warranty deed provided to the Court has the notary's signature, but no signature from the prior owner, the Hawks.

Counsel for Morrow cited I.R.C.P. 57, and pointed out that many of the above cases were decided before that rule was created. That may be true, but I.R.C.P. 57 does nothing to obviate I.C. § 10-1201 regarding declaratory judgments. *Harris v. Cassia County*, decided in 1984, was decided after I.R.C.P. 57 came into effect.

It is unknown what would prevent a quiet title action against the Hawks (Morrow's predecessor in interest), where title can be quieted against the Hawks (or Hawks' estate if the Hawks are deceased) and the rest of the world.

IV. CONCLUSION AND ORDER.

For the reasons stated above, this declaratory action must be DISMISSED.

IT IS HEREBY ORDERED this case is DISMISSED.

Entered this 12th day of April, 2011.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of April, 2011, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

<u>Lawyer</u>	<u>Fax #</u>	<u>Lawyer</u>	<u>Fax #</u>
Regina M. McCrea	667-1939		

Jeanne Clausen, Deputy Clerk