NF

DOC # 0723735
05/22/2008 09:56 AM Deputy: SG
OFFICIAL RECORD
Requested By:
DC/DISTRICT ATTORNEY

Douglas County - NV
Werner Christen - Recorder
Page: 1 Of 36 Fee: 0.00
BK-0508 PG- 5498 RPTT: 0.00

Assessor's Parcel Number: 1418-34-110-011
1418-34-110-012
1418-34-110-013

Recording Requested By: Cynthea Gregory, DDA

Name: Douglas County District Attorney's Office

Address: P.O. Box 218

City/State/Zip: Minden, NV 89423

Real Property Transfer Tax: $ N/A

I the undersigned hereby affirm that this document submitted for recording does not contain any personal information of any person or persons. Per NRS 239B

Cynthea Gregory

Cynthea Gregory, Deputy District Attorney

COURT ORDERS CONFIRMING EASEMENTS FOR COMMON AREA IN LINCOLN PARK SUBDIVISION

(Title of Document)

IN THE SUPREME COURT OF THE STATE OF NEVADA

MILLIGAN-TAHOE, LLC; JACKSON RANCHERIA BAND OF MIWUK INDIANS; JEFFREY AND SUZANNE LUNDAHL; THOMAS H. AND NANCY T. TORNGA, TRUSTEES OF THE TORNGA 1998 TRUST; PAUL K. AND N. K. CHAMBERLAIN; AND TODD AND ANNE TARICCO,
Appellants,
vs.
DOUGLAS COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA; WILLIAM C. ALLEN; JOHN C. ALLEN; EDWIN M. MILLER, TRUSTEE; GERALD GODFREY PAGE AND ALMA IRENE PAGE, CO-TRUSTEES; JOSEPH POHL; MEGAN CLANCY; DICK L. ROTTMAN; JEAN M. ROTTMAN; ROBERT F. STELLABOTTE; GLORIA STELLABOTTE; WARREN C. TUCKER; LUANN M. TUCKER; WILBUR E. TWINING; ROSMARIE M. TWINING; GRETA MARKS VALLERGA, TRUSTEE; JAMES M. WILHOYTE, JR; MARY WILHOYTE; THOMAS CHARLES WILHOYTE; JOHN GEORGE WILHOYTE; DONALD W. WINNE; AND DORIS L. WINNE,
Respondents.

No. 46015

FILED

FEB 26 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER DENYING REHEARING AND AMENDING PRIOR ORDER

08-04623

We have considered the rehearing petition in this matter and have determined that rehearing is not warranted.[1] Accordingly, we deny the petition. Nevertheless, we have concluded that our order in this matter affirming in part, reversing in part and remanding, entered on November 21, 2007, includes a footnote regarding attorney fees that is too restrictive and that should be amended. We therefore vacate the text of footnote 10 in our November 21, 2007 order and issue the following replacement text for footnote 10:

> We note that it is not clear from the record whether attorney fees may be permissible on some other basis. The district court remains free to consider such an award, if appropriate.

It is so ORDERED.

_____, C.J.
Gibbons

_____, J.
Maupin

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Douglas

_____, J.
Cherry

_____, J.
Saitta

[1]NRAP 40(c).

cc: Hon. David R. Gamble, District Judge
Alling & Jillson, Ltd.
Douglas County District Attorney/Minden
Thomas J. Hall
Douglas County Clerk

SEAL

CERTIFIED COPY
This document is a full, true and correct copy of the original on file and of record in my office.
DATE: 5-21-08
Supreme Court Clerk, State of Nevada
S. Young Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

MILLIGAN-TAHOE, LLC, ET AL.,
Appellants,
vs.
DOUGLAS COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA, ET AL.,
Respondents.

No. 46015

FILED

FEB 25 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER CORRECTING CLERICAL ERRORS IN ORDER AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

On November 21, 2007, this court entered an order affirming in part and reversing in part the judgment of the district court and remanding for further proceedings consistent with our order. Several respondents have filed a motion to correct clerical errors in our November 21, 2007, order. In support of the motion, the respondents note that the November 21, 2007, order incorrectly states that the district court had determined that no easement existed when the district court "did find that public and private easements exist over the unnamed beach road." Respondents also request that one of the court's conclusions be restated, apparently to clarify that both public and private easements exist over the unnamed beach road. No party has opposed the motion.

Cause appearing, we grant the motion to correct clerical errors. We direct the clerk to delete the sentence on lines 1 and 2 of page 3 of the November 21, 2007, order that currently reads: "The district court ultimately determined that no easement for Douglas Country [sic] or the Intervenors exists" and replace it with the following sentence: "The district court determined that Douglas County and the Intervenors did possess easements over the disputed strip of land." We further direct the clerk to

modify the sentence beginning on line 7 of page 4 of the order that begins: "We conclude that substantial evidence supports" to read as follows: "We conclude that substantial evidence supports the district court's determination that public and private easements exist over the unnamed beach road behind the lakefront lots."

It is so ORDERED.

_____, C.J.

cc: Hon. David R. Gamble, District Judge
Alling & Jillson, Ltd.
Douglas County District Attorney/Minden
Thomas J. Hall
Douglas County Clerk

SEAL

CERTIFIED COPY
This document is a full, true and correct copy of the original on file and of record in my office.
DATE: 5-21-08
Supreme Court Clerk, State of Nevada
By S. Young Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

MILLIGAN-TAHOE, LLC; JACKSON RANCHERIA BAND OF MIWUK INDIANS; JEFFREY AND SUZANNE LUNDAHL; THOMAS H. AND NANCY T. TORNGA, TRUSTEES OF THE TORNGA 1998 TRUST; PAUL K. AND N. K. CHAMBERLAIN; AND TODD AND ANNE TARICCO,
Appellants,
vs.
DOUGLAS COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA; WILLIAM C. ALLEN; JOHN C. ALLEN; EDWIN M. MILLER, TRUSTEE; GERALD GODFREY PAGE AND ALMA IRENE PAGE, CO-TRUSTEES; JOSEPH POHL; MEGAN CLANCY; DICK L. ROTTMAN; JEAN M. ROTTMAN; ROBERT F. STELLABOTTE; GLORIA STELLABOTTE; WARREN C. TUCKER; LUANN M. TUCKER; WILBUR E. TWINING; ROSMARIE M. TWINING; GRETA MARKS VALLERGA, TRUSTEE; JAMES M. WILHOYTE, JR; MARY WILHOYTE; THOMAS CHARLES WILHOYTE; JOHN GEORGE WILHOYTE; DONALD W. WINNE; AND DORIS L. WINNE,
Respondents.

No. 46015

FILED

NOV 2 1 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

This is an appeal from a district court judgment concerning title to a recreational easement. Ninth Judicial District Court, Douglas County; David R. Gamble, Judge.

FACTS

Appellants are lakefront property owners on Lake Tahoe who dispute the right of other homeowners in a subdivision to use a strip of land between the homes and Lake Tahoe. Douglas County is a respondent along with various other property owners in the subdivision that originally moved to intervene (Intervenors).

A 1921 plat map dedicated a piece of irregularly-shaped property that runs in a north-northwest direction, approximately one thousand feet long along Lake Tahoe. The width of the property fluctuates between fifteen and fifty feet and is just south of Cave Rock, alongside the Lincoln Park subdivision. On the plat map, an eighteen-foot strip of the dedicated property is designated for a future street referred to as the "unnamed beach road". The eighteen-foot strip runs along the original property lines of blocks A, C, E, and F. Two perpendicular roads join the unnamed beach road to a parallel road (Lincoln Park Circle). Douglas County possesses an easement for public use, and for highway and street purposes, excluding the previously abandoned areas of blocks A, B, and C. The irregular strips of land bordering the unnamed beach road were dedicated to Douglas County and later accepted in 1946.

Appellants filed a petition for declaration of rights as to real property seeking a determination as to Douglas County's interest in the

The district court determined that Douglas County and the Intervenors did possess easements over the disputed strip of land.

subdivision. ~~The district court ultimately determined that no easement for Douglas Country or the Intervenors exists.~~ This appeal followed.

deleted and replaced per order 2-25-08 SY

DISCUSSION

We review questions of law de novo.[1] The district court's findings of fact will not be disturbed if supported by substantial evidence.[2] An award of attorney fees will not be overturned absent a manifest abuse of discretion.[3]

On appeal, the lakefront owners challenged 1) the district court's finding that a public and private easement exists over the unnamed beach road behind the lakefront lots; 2) the district court's finding that three prior quiet title actions were void for lack of notice; 3) the district court's finding that the appellants did not terminate the easement by adverse possession; and 4) the district court's $69.229.74 award of attorney fees to the Intervenors.

Implied easement for public and private use

The district court found that the recording of a plat map in 1921 created an implied easement over the disputed strip of land for public and private use. We agree. In Shearer v. City of Reno,[4] we held that a plat map was controlling on the use of the land. Under Shearer, a plat map cannot be changed once it is filed, advertised, or any of the lots

---

[1]State Industrial Insurance System v. United Exposition Services, 109 Nev. 28, 30, 864 P.2d 294, 295 (1993).

[2]Keife v. Logan, 119 Nev. 372, 374, 75 P.3d 357, 359 (2003).

[3]Bergmann v. Boyce, 109 Nev. 670, 676, 856 P.2d 560, 564 (1993).

[4]36 Nev. 443, 447, 136 P. 705, 707 (1913).

described by the map are sold.[5] Here, the 1921 Map clearly notes that a strip along the beach is designated as a future street. The 1921 Map also contains an easement possessed by Douglas County for the public use and for highway and street purposes. The district court found that it was reasonable to conclude that "a dedication of a street over a beach area should be interpreted as providing a path for access along the beach to those that may also make use of the public streets." We conclude that substantial evidence supports the district court's determination that ~~a~~ public and private easements exist ~~easement exists~~ over the unnamed beach road behind the lakefront lots.

modified per order 2-25-08 SY

Prior quiet title actions

Appellants also argue that the district court erred in finding that three prior quiet title actions were void for lack of notice. The appellant lakefront owners brought three actions quieting title. Two judgments were entered in 1999, and one in 2002. Respondent Douglas County was served by mail. The intervening backlot residents of Lincoln Park were served by publication, pursuant to a district court order for publication. No one was present to contest the matters. All three judgments quieting title were awarded to appellants by default.

NRS 40.090(2) states in pertinent part that:

> The complaint must include as defendants in such action, in addition to such persons as appear of record to have some claim, all other persons who are known, or by the exercise of reasonable diligence could be known, to plaintiff to have some claim to an estate, interest, right, title,

---

[5]Id. at 448, 136 P. at 707.

> lien, or cloud in or on the land described in the complaint adverse to plaintiff's ownership.

The plat map shows sixty-five lots in the entire Lincoln Park subdivision. The only named defendants were "[t]he eight original owners, Does 1-100, and Douglas County," in those actions. The district court overruled the previous default actions for a lack of "reasonable diligence" in ascertaining individuals who may have had some claim to the beachfront. Although reasonable diligence would have revealed the identity of the backlot owners who may have had some claim to the beach front, the only certificate of mailing available in the record is on the Douglas County District Attorney's office.[6] We conclude that the district court was provided substantial evidence with which it could find that the backlot owners were not notified of the default actions going forward, and that the disputed judgments quieting title are of no effect and are not valid given the lack of service on the backlot owners.

Termination by adverse possession

Appellants also contend that the district court erred in finding that the appellants did not terminate the easement by adverse possession. But title to government land cannot be obtained through adverse possession.[7] "[A]bsent a statute allowing adverse user against the state,

---

[6]Mullane v Central Hanover Bank & Trust Co., 339 U.S. 306, 313, (1950) (providing that the U.S. Constitution's Due Process Clause requires that "deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case").

[7]See Sloat v. Turner, 93 Nev. 263, 266, 563 P.2d 86, 88 (1977).

no rights as to state property can be acquired by prescription."[8] The 1921 plat map established the government's fee interest through a statutory dedication. It is irrelevant that the landowners had made improvements to the land and had fenced it in. The dedication was complete under the filing of the plat map on September 7, 1921. Because government land cannot be taken through adverse possession, we agree with the district court that the lakefront landowners do not own title in fee to this parcel of land.

Attorney fees

Appellants contend that the district court erred in awarding attorney fees to the Intervenors in the amount of $69,229.74. We agree. We have recently concluded in Horgan v. Felton,[9] that attorney fees generally cannot be recovered unless authorized by an agreement, statute, rule, and we recently clarified that "in cases concerning title to real property, attorney fees are only allowable as special damages in slander of title actions." No authority supports the award of attorney fees in this case.[10] We therefore

---

[8]Id.

[9]Horgan v. Felton, 123 Nev. ____, ____ P.3d ____ (Adv. Op. No. 53, Nov. 21, 2007); see also Young v. Nevada Title Co., 103 Nev. 436, 442, 744 P.2d 902, (1987); see Sun Realty v. District Court, 91 Nev. 774, 776, 542 P.2d 1072, 1074 (1975).

[10]~~Notwithstanding, the district court may consider whether the award of attorneys fees is appropriate pursuant to NRS 18.010(2)(b) or under any provisions of the Nevada Rules of Civil Procedure.~~ We note that it is not clear from the record whether attorney fees may be permissible on some other basis. The district court remains free to consider such an award, if appropriate.

53

Vacated + replaced text of fn 10 per 2-26-08 order. lc

conclude that the district court's award of attorney fees as an abuse of discretion, and

ORDER the judgment of the district court AFFIRMED IN PART, REVERSED IN PART, AND REMANDED for further proceedings consistent with this order.

Gibbons, J.

Hardesty, J.

Parraguirre, J.

Douglas, J.

Cherry, J.

Saitta, J.

cc: Hon. David R. Gamble, District Judge
Madelyn Shipman, Settlement Judge
Alling & Jillson, Ltd.
Douglas County District Attorney/Minden
Thomas J. Hall
Douglas County Clerk

MAUPIN, C.J., concurring:

I concur in the result reached by the majority.

_____, C.J.
Maupin

SEAL

CERTIFIED COPY
This document is a full, true and correct copy of the original on file and of record in my office.
DATE: 5-21-08
Supreme Court Clerk, State of Nevada
By S. Young Deputy

Case No. 03-CV-0020

Dept. No. 1

2005 AUG 22 PM 1:33

BY _____

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

MILLIGAN-TAHOE, LLC, JACKSON RANCHERIA BAND OF MIWUK INDIANS, JEFFREY and SUZANNE LUNDAHL, THOMAS H. and NANCY T. TORNGA, Trustees of the TORNGA 1998 TRUST, PAUL H. and N. K. CHAMBERLAIN, and TODD and ANNE TARICCO,

Plaintiffs and Cross-Defendants,

vs.

DOUGLAS COUNTY, a Political Subdivision of the State of Nevada,

Defendant,

_____/

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

vs.

WILLIAM C. ALLEN AND JOHN C. ALLEN, EDWIN M. MILLER, TRUSTEE, GERALD GODFREY PAGE AND ALMA IRENE PAGE, CO-TRUSTEES, JOSEPH POHL AND MEGAN CLANCY, DICK L. ROTTMAN AND JEAN M. ROTTMAN, ROBERT F. STELLABOTTE AND GLORIA STELLABOTTE, LUANN M. TUCKER, WILBUR E. TWINING AND ROSMARIE M. TWINING, GRETA MARKS VALLERGA, TRUSTEE, JAMES M. WILHOYTE, JR., MARGARET WILHOYTE, THOMAS CHARLES WILHOYTE AND JOHN GEORGE WILHOYTE, AND DONALD W. WINNE AND DORIS L. WINNE

Intervenors and Cross-Petitioners

_____/

DAVID R. GAMBLE
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 218
MINDEN, NV 89423

This cause first came on to be heard before the Court for oral argument on May 5, 2004. Plaintiffs Milligan-Tahoe, LLC, Jackson Rancheria Band of Miwuk Indians, Jeffrey Lundahl and Suzanne Lundahl, Thomas H. Tornga and Nancy T. Tornga, Trustees of the Tornga 1998 Trust, Paul H. Chamberlain and N. K. Chamberlain, and Todd Taricco and Anne Taricco, having appeared in person and through their counsel Ronald D. Alling, Esq., and Michael K. Johnson, Esq. Defendant Douglas County, having appeared by and through its counsel Thomas E. Perkins, Esq., Intervenors/Cross-Petitioners William C. Allen and John C. Allen, Edwin M. Miller, Trustee, Gerald Godfrey Page and Alma Irene Page, Co-Trustees, Joseph Pohl and Megan Clancy, Dick L. Rottman and Jean M. Rottman, Robert F. Stellabotte and Gloria Stellabotte, Luann M. Tucker, Wilber E. Twining and Rosmarie Twining, Greta Marks Vallerga, Trustee, James M. Wilhoyte, Jr., Margaret Wilhoyte, Thomas Charles Wilhoyte and John George Wilhoyte, and Donald W. Winne and Doris L. Winne (herein collectively "Intervenors"), having appeared in person and through their counsel Thomas J. Hall, Esq.

Before the Court on May 5, 2004 were Plaintiffs' Motion for Summary Judgment and Intervenors' Motion for Partial Summary Judgment. During a status conference held with all parties on April 22, 2004, the Court determined, based upon the proffers of counsel, that the main issues raised within the two motions were matters of law, rather than matters of fact. Therefore, the Court

DAVID R. GAMBLE
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 218
MINDEN, NV 89423

entertained and accepted a suggestion to treat the trial date as one for oral arguments for summary judgment, in which all relevant exhibits would be reviewed. All parties mutually agreed to this suggestion, with the recognition that if factual testimony became necessary, based upon the Court's ruling after oral argument, that a further hearing could be scheduled to resolve any remaining fact issues. The Court, having considered the oral arguments heard and exhibits presented on May 5, 2004, and having examined all relevant pleadings and papers on file herein, including the Joint Stipulation of Facts, filed herein May 4, 2004. On August 16, 2004, the Court entered its Order denying Summary Judgment to Plaintiffs and granting Partial Summary Judgment to Intervenors.

On June 13, 2005 through June 16, 2005, at the request of Plaintiffs, the legal and factual matters of prescription, adverse possession and abandonment were heard by the Court, sitting without a jury. On June 15, 2005, the Court viewed the premises. On June 16, 2005, at the conclusion of Plaintiffs' case, the Court rendered its oral decision on the oral Motion for Involuntary Dismissal made by Douglas County, which Motion was joined in by Intervenors.

Good cause appearing, the Court being duly informed, hereby enters the following Findings of Fact, Conclusions of Law and Judgment.

\\\\\

DAVID R. GAMBLE
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 218
MINDEN, NV 89423

FINDINGS OF FACT

WHEREFORE, the Court finds as follows:

1. Plaintiffs Paul K. Chamberlain and N.K. Chamberlain own Lots 14 and 16, Block C, Lincoln Park Subdivision, APN 1418-34-110-020.

2. Plaintiffs Paul K. Chamberlain and N.K. Chamberlain own Lot 2, Block E, Lincoln Park Subdivision, APN 1418-34-110-021.

3. Plaintiff Jackson Rancheria Band of Miwuk Indians owns Lot 13, Block A, Lincoln Park Subdivision, APN 1418-34-110-008.

4. Plaintiffs Jeffrey Lundahl and Suzanne Lundahl, owned at the commencement of litigation and during subsequent litigation, sold *pendente lite* to Jackson Rancheria Development Corporation, Lot 14, Block A, Lincoln Park Subdivision, APN 1418-34-110-009.

5. Plaintiff Milligan-Tahoe, LLC, owns Lot 1, Block A, Lincoln Park Subdivision, APN 1418-34-110-001.

6. Plaintiffs Todd Taricco and Ann Taricco own Lots 10 and 12, Block C, Lincoln Park Subdivision, APN 1418-34-110-019.

7. Plaintiffs Thomas H. Tornga and Nancy T. Tornga own Lot 2, Block C, Lincoln Park Subdivision, APN 1418-34-110-015.

8. Plaintiffs Thomas H. Tornga and Nancy T. Tornga own the northerly 20 feet of Lot 6 and all of Lot 4, Block C, Lincoln Park Subdivision, APN 1418-34-110-016.

9. Intervenors William C. Allen and John C. Allen own Lot 12, Block B, Lincoln Park Subdivision, APN 1418-34-110-037.

DAVID R. GAMBLE
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 218
MINDEN, NV 89423

10. Intervenors Edwin M. Miller, Trustee, and LuAnn M. Tucker own Lot 7, Block B, Lincoln Park Subdivision, APN 1418-34-110-040.

11. Intervenors Gerald Godfrey Page and Alma Irene Page, Co-Trustees, own Lot 10, Block B, Lincoln Park Subdivision, APN 1418-34-110-038.

12. Intervenors Joseph Pohl and Megan Clancy own Lot 3, Block B, Lincoln Park Subdivision, APN 1418-34-110-044.

13. Intervenors Dick L. Rottman, Jean M. Rottman, Donald W. Winne and Doris L. Winne own Lot 5, Block B, Lincoln Park Subdivision, APN 1418-34-110-022.

14. Intervenors Gloria Stellabotte and Robert F. Stellabotte own Lot 15, Block B, Lincoln Park Subdivision, APN 1418-34-110-035.

15. Intervenors Wilbur E. Twining and Rosmarie M. Twining own Lot 2, Block D, Lincoln Park Subdivision, APN 1418-34-110-033.

16. Intervenors James M. Wilhoyte, Jr., Margaret Wilhoyte, Thomas Charles Wilhoyte and John George Wilhoyte own Lots 8 and 9, Block B, Lincoln Park Subdivision, APN 1418-34-110-039.

17. Intervenors Donald W. Winne and Doris L. Winne own Lots 3 and 4, Block E, Lincoln Park Subdivision, APN 1418-34-110-042.

18. The above described properties owned by the parties were created by approval of the Douglas County Commission on September 7, 1921, and by the recordation on September 7, 1921,

DAVID R. GAMBLE
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 218
MINDEN, NV 89423

of that certain Map entitled Lincoln Park, Lake Tahoe, Nevada, in Book D of Miscellaneous, at Page 40A, as Document 305, Douglas County Records (the "Map").

19. The Map particularly sets forth and describes all of the parcels of land so laid out and platted by their boundaries, course and extent, and whether they are intended for avenues, streets, lanes, alleys, commons or other public uses, together with such as may be reserved for public purposes, and all lots therein intended for sale by numbers and their precise length and width.

20. All documents and instruments conveying an interest in a lot within Lincoln Park Subdivision make reference to the Map.

21. The Map includes an offer of dedication of an 18 foot wide area, sometimes called "Unnamed Street" or later "Lincoln Park Beach Road," located immediately lakeward of Blocks A, C, E and F in the Lincoln Park Subdivision, which dedication was made pursuant to the statute in effect at that time and which dedication was accepted by Douglas County without exception, reservation, qualification or limitation.

22. In living memory, no street, highway, avenue or roadway of any sort has been constructed in the Lincoln Park Beach Road area between 1921 and the present.

23. On May 7, 1946, a Resolution was adopted by the Douglas County Board of Commissioners granting a petition that an irregular parcel of land depicted on the Map, lying west of the

DAVID R. GAMBLE
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 218
MINDEN, NV 89423

Lincoln Park Beach Road (aka "Unnamed Street"), be dedicated for public uses for highway and street purposes. The Resolution granting that petition determined that said tract of land be dedicated for public uses and for highway and street purposes, thereby amending the Map previously recorded. Exhibits 2 and 16. The Resolution was recorded on May 7, 1946 in Book D, at Page 338, as Document 2705, Douglas County Records. The newly dedicated and accepted area and the Lincoln Park Beach Road merged together and later became known as the Common Beach Area.

24. The Common Beach Area is shown on the Douglas County Assessor's Maps and is an amenity of substantial value to the Intervenors. Exhibits 42, 43 and 67.

25. According to documents on file with the Douglas County Recorder's Office, including the Map and the Resolution recorded on May 7, 1946, in Book D, at Page 338, as Document 2705 (Exhibit 12) and in conjunction with the decision from Douglas County Community Development, as of March 9, 1983, the Douglas County Assessor's Office believed the beachfront property noted as Common Beach Area on Map Book 03, at Page 16 is public property controlled by Douglas County. Exhibit 19.

26. In 1997, Douglas County abandoned three small portions of the Common Beach Area lying under improvements owned by Plaintiffs Milligan, Jackson and Lundahl, and denominated Parcels A, B and C, pursuant to An Order of Abandonment Vacating Portions of the Lincoln Park Beach Road (the "Order of Abandonment"),

DAVID R. GAMBLE
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 218
MINDEN, NV 89423

recorded on November 19, 1997, in Book 1197, at Page 3696, as Document 0426667, Douglas County Records. Exhibit 33.

27. While the Order of Abandonment ordered a reversion to the abutting property owners, Douglas County expressly reserved any Public Utility Easement embracing the limits of the original roadway, therein named the Lincoln Park Beach Road, for the continuation, maintenance, expansion and operation of the public utilities contained within the limits of the abandonment.

28. The Intervenors make no claim to Parcels A, B and C described in the Order of Abandonment.

29. Various Quiet Title Actions, specifically Case Numbers 97-CV-0225, 99-CV-0122 and 01-CV-0240, were previously brought before this Court, which resulted in stipulated Orders and Judgments Quieting Title that acknowledged fee ownership of the area lakeward of Plaintiffs' lots subject, however, to a right-of-way easement held by Douglas County. The right-of-way easement has no limitation on the extension of its area. The Court has taken judicial notice of each case and having reviewed these actions, it does not appear to the Court that Intervenors received specific and personal notice regarding these actions. Exhibits 34-36.

30. The three Judgments Quieting Title referenced in Finding 29, were recorded on April 26, 1999, in Book 0499, at Page 5138, as Document 0466488; on September 9, 1999, in Book 0999, at Page 1316, as Document 0476114 and on March 12, 2002 in

DAVID R. GAMBLE
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 218
MINDEN, NV 89423

Book 0302, at Page 03906, as Document 0536777, Douglas County Records. Exhibits 34-36.

31. Prior to July 1, 2002, the Douglas County Assessor designated and renumbered the three tax parcels comprising the Common Beach Area as APN 1418-34-110-011, 1418-34-110-012 and 1418-34-110-013, with a nominal land value of $1.00 each. Exhibit 47.

32. No taxes have been assessed, levied or paid with respect these three tax parcels.

33. The Common Beach Area is burdened by a recreational easement in favor of all lot owners within Lincoln Park Subdivision including the Intervenors, which recreational easement has been integrated from its inception on September 7, 1921 and May 7, 1946, and which recreational easement affects every piece and portion of the Common Beach Area with the exception of Parcels A, B and C.

34. The recreational easement over the Common Beach Area is a valuable property right to each lot owner within Lincoln Park Subdivision.

35. Some of the Plaintiffs have installed lawn sprinkler systems and landscaping on portions of the Common Beach Area.

36. At various times, some of the Plaintiffs have erected fences on or across portions of the Common Beach Area.

37. Because it was possible to climb over or merely walk around the fences erected by Plaintiffs on the Common Beach Area,

DAVID R. GAMBLE
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 218
MINDEN, NV 89423

access by Intervenors to the Common Beach Area was not completely obstructed.

38. No substantial enclosure has surrounded any part or portion of the Common Beach Area except for a small area adjacent to Parcel B, constructed within the easement reserved by Douglas County. Exhibit 63.

39. Plaintiffs did not give Intervenors specific and personal notice that Plaintiffs were claiming the Common Beach Area, or any part or portion thereof, as their own, by any theory of prescription or adverse possession.

40. Plaintiffs have not had open, notorious or continuous possession of the Common Beach Area, or any part or portion thereof, for five (5) years preceeding the filing of this action on January 23, 2003.

41. As of June 23, 2005, Intervenors have incurred attorney fees in the amount of $69,229.74.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Court makes its Conclusions of Law, as follows:

1. The Map originally delineated the lot boundaries and access rights in 1921, and particularly sets forth and describes all of the parcels of land so laid out and whether they are intended for avenues, streets, lanes, alleys, commons or other public use, together with such as may be reserved for public purposes.

DAVID R. GAMBLE
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 218
MINDEN, NV 89423

2. The Map notes that all streets and avenues are 18 feet in width and an 18-foot partial delineation is marked along the beach area immediately west of Block A, establishing a strip of land along the beach for a future street, the so called Lincoln Park Beach Road.

3. Douglas County possesses an easement extending along the streets and beach area from the original western edge of the lots at issue in this matter to Lake Tahoe Datum at 6,223 feet elevation ("Datum"), creating a right of access over lands west of the original property lines of Blocks A, C, E and F, to the Datum, for public uses and for highway and street purposes, excluding Parcels A, B and C previously abandoned by Douglas County, as set forth in Findings 26, 27 and 28, and as to those three areas (see Exhibit 33),

> Any Public Utility Easement embracing the limits of the original roadway is expressly reserved [to Douglas County] for the continuation, maintenance, expansion, and operation of the public utilities contained within the limits of this abandonment.

4. In reaching this determination, the Court concludes that reserving access for purposes of public highways must be interpreted as it pertains to the era in which such reservations were made.

5. Considering that horses, bicycles and pedestrian means were still viable modes of transportation in the early 20th century, it is entirely reasonable to conclude that a dedication of a street over a beach area should be interpreted as providing

DAVID R. GAMBLE
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 218
MINDEN, NV 89423

a path for access along the beach to those that may also make use of the public streets.

6. In 1946, Douglas County again resolved to accept an offer of dedication of certain land for public uses and for highway and street purposes, and later reserved a right-of-way easement in the Quiet Title Actions. See Findings 23-30, Exhibits 16 and 33.

7. All parties were always on notice of the record Map, the dedications and the amendments, both actually and constructively pursuant to NRS 111.315 and NRS 111.320, as it may affect title to their respective properties and interests in the Lincoln Park Subdivision.

8. A dedication is a gift of land by the owner for an appropriate public use, such as a street. Dedications may be classified as either by statute or by common law. A statutory dedication operates by way of grant, vesting in the municipality the fee for public use. Under a common law dedication however, the fee of the land dedicated for a street remains in the owner, subject to a public easement in the land which is vested in the municipality. A common law dedication rests upon the doctrine of estoppel *in pais*, which extends to an owner permitted use of private property to protect the public's expectation of continued use. The recording of a plat may qualify as a statutory dedication, or, at least, provides evidence of an intent to make a common law dedication. Finally, the party asserting a

DAVID R. GAMBLE
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 218
MINDEN, NV 89423

dedication bears the burden of proof. Carson City v. Capitol City Entertainment, Inc., 118 Nev. 415, 421, 49 P.3d 632, 635 (2002).

9. Sufficient evidence exists in the record of an intent to make, at a minimum, a common law dedication. A dedication of land for public purposes is simply a devotion of it, or an easement in it, to such purposes by the owner, manifested by some clear declaration of fact. Shearer v. City of Reno, 36 Nev. 443, 449, 136 Pac. 705, 707 (1913). The sale of lots with express reference to the Map qualifies as such evidence. Exhibits 5 through 12.

10. If a party contracts for a valuable consideration to be made by others founded upon a supposed appropriation of the property to the uses indicated, the dedication becomes irrevocable. The lot sale contract with the Lincoln Park Subdivision owner estops him from later asserting any interest except in common with the lot purchasers from him. Shearer, supra, 36 Nev. at 449, 136 Pac. at 708.

11. In this instance, access to the beach area within the Map has been demonstrated as previously described. Upon recordation of the Map, subsequent lot purchasers were notified that beach access was allowed as an amenity.

12. As described previously, the Map delineates a portion of the Common Beach Area at issue in this matter to serve as a street with a designated width of 18 feet. Again, in 1946 Douglas County resolved to accept the dedication of certain additional

DAVID R. GAMBLE
DISTRICT JUDGE
DOUGLAS COUNTY
P.O BOX 218
MINDEN, NV 89423

land for public uses and for highway and street purposes and later retained certain right-of-way easements in the Abandonment and Quiet Title Actions. Exhibits 33-36.

13. The Intervenors, as lot owners within Lincoln Park Subdivision, have and possess an easement and right to use and enjoy the Common Beach Area for recreational purposes, hence the recreational easement.

14. All the lot owners within Lincoln Park Subdivision possess a recreational easement and right for beach access over the same ground described in Plaintiffs' Petition, being the Common Beach Area.

15. An easement is a right, distinct from ownership, to use the land of another in some limited way, and gives no right to actually possess the land affected.

16. A servient estate owner cannot unreasonably restrict or interfere with the proper use of an easement established for joint use.

17. When an easement is non-exclusive, as here, the common users must accommodate each other.

18. Use of a portion of the easement is use of the whole.

19. The easement rights held by Intervenors cannot be divested except by due process of law.

20. The prior quiet title actions described in the Petition and in Findings 29 and 30 did not comply with due process of law relative to the Intervenors and therefore did not affect

DAVID R. GAMBLE
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 218
MINDEN, NV 89423

Intervenors' interests in and to the Common Beach Area. Exhibits 34-36.

21. An easement is a vested interest in real property and cannot be lost or terminated by mere non-use alone, for any period, however long it may continue.

22. Mere use does not constitute adverse use.

23. The statutory provisions governing the acquisition of title by adverse possession must be strictly construed and strictly followed.

24. Plaintiffs have not met their burden of proof to demonstrate compliance with the statutory provision governing the acquisition or loss of title by adverse possession.

25. A permissive use cannot ripen into an adverse use absent specific notice to the owner of the servient estate that such use is henceforth adverse for purposes of creating a prescriptive easement.

26. The Plaintiffs failed to show any evidence of a hostile claim of right to the Common Beach Area for the requisite five years.

27. Just as creation of an easement by prescription is not favored in the law, the termination of an easement by adverse possession or prescription is not favored.

28. Between co-tenants, the tenant out of possession may assume that the permissive possession of his co-tenant is amicable until notified that it has become hostile. Here, the

DAVID R. GAMBLE
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 218
MINDEN, NV 89423

Plaintiffs failed to give notice of any adverse or hostile use to Intervenors.

29. The use by Plaintiffs of the Common Beach Area has been a matter of convenience and not of necessity.

30. An adverse possession claimant has the burden of establishing his or her claim by clear and competent proof in order to overcome the presumption that possession of the land is under the regular title. The Plaintiffs failed to establish their claims or adverse possession or prescription by clear and competent proof.

31. Plaintiffs have not adversely possessed any portion of the Common Beach Area for five years preceding the filing of this action on January 23, 2003.

32. Plaintiffs have not extinguished any part or portion of the recreational easement over the Common Beach Area by prescription.

33. The easement rights held by Intervenors have not been lost by non-use, abandonment, forfeiture, prescription or adverse possession.

34. There can be no adverse possession or prescriptive claim against Douglas County.

35. Attorney fees may be awarded as special damages in those cases in which a party incurred the fees in recovering real property acquired through the wrongful conduct of a party or in clarifying or removing a cloud upon the title to real property.

DAVID R. GAMBLE
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 218
MINDEN, NV 89423

36. Intervenors shall be awarded their costs and reasonable attorney fees as special damages.

37. Intervenors are entitled to judgment against the Plaintiffs quieting title in and to a recreational easement over the Common Beach Area described in the Petition, at trial and herein and at the location and for the uses herein described above.

38. If a Conclusion of Law is found to be a Finding of Fact, or Finding of Fact is really a Conclusion of Law, the same should be freely substituted as the case may be.

JUDGMENT

Judgment based on the foregoing Findings of Fact and Conclusions of Law, the Court enters Judgment as follows:

1. To the extent Plaintiffs' Petition seeks a declaration that the Lincoln Park Subdivision beach area was dedicated to Douglas County for highway and street purposes but not for public use, highway and street purposes, and that the same area is not subject to an easement for beach or recreation purposes, those portions of the Petition are DENIED.

2. To the extent Intervenors' Cross-Petition requests a judgment confirming the rights of Intervenors to have, use and enjoy the Common Beach Area for recreational purposes, that request is GRANTED.

3. The Intervenors jointly have, own and possess a recreational easement over the Common Beach Area, being that area

DAVID R. GAMBLE
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 218
MINDEN, NV 89423

lakeward of the west side of Blocks A, C, E and F originally shown on the Plat of Lincoln Park Subdivision, recorded on September 7, 1921, in Book D of Miscellaneous, at Page 40A, as Document 305, with the provision however, that the recreational easement over all such area be extended lakeward, pursuant to NRS 321.595, to the low water mark of Lake Tahoe at a line whose elevation is 6,223 feet, Lake Tahoe Datum, and with the further provision that such recreational easement be reduced for Parcels A, B and C as described in the Order of Abandonment, recorded on November 18, 1997, in Book 1197, at Page 3696, as Document 0426667, Douglas County Records.

4. Douglas County has a right-of-way, including a recreational easement over the Common Beach Area, that being the area lakeward of the west side of Blocks A, C, E and F, as shown on the Map, with the provision that the recreational easement was reduced by abandonments for Parcels A, B and C as ordered on November 18, 1997 and recorded in Book 1197, at Page 3696, as Document No. 0426667, Douglas County Records.

5. Plaintiffs shall remove all fences from the Common Beach Area within sixty (60) days of this Judgment. If not so removed, Intervenors shall be entitled to apply to the Court for further relief.

6. Intervenors are entitled to Judgment against the Plaintiffs Milligan-Tahoe, LLC, Jackson Rancheria Bank of Miwuk Indians, Jeffrey and Suzanne Lundahl, Thomas H. and Nancy T.

DAVID R. GAMBLE
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 218
MINDEN, NV 89423

Tornga, Trurstees of the Tornga 1998 Trust, Paul K. and N.K. Chamberlain and Todd and Anne Taricco, jointly and severally, for damages in recovering real property acquired through the wrongful conduct of the Plaintiffs and in clarifying or removing clouds from their title to the recreational easement over the Common Beach Area in the amount of $69,229.74, plus interest at the lawful rate thereon from the date of Judgment.

7. Costs shall be awarded to Douglas County and to Intervenors and against Plaintiffs.

DATED this 22 day of August, 2005.

DAVID R. GAMBLE
District Judge

Copies served by mail this 22 day of August, 2005, to: Thomas Hall, Esq., P. O. Box 3948, Reno, NV 89505; Ronald Alling, Esq., P. O. Box 3390, Lake Tahoe, NV 89449; Thomas Perkins, Esq., (hand delivered).

Cathy Colquhoun

SEAL

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: 5/21/08

Barbara J. Griffin, Clerk of the 9th Judicial District Court of the State of Nevada, In and for the County of Douglas.

By Kristin Heffield **Deputy**

DAVID R. GAMBLE
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 218
MINDEN, NV 89423