

730-0974

FILED

97 NOV 26 AM 10:45

SUPERIOR COURT OF WASHINGTON FOR KITTITAS COUNTY

KITTITAS COUNTY  
SUPERIOR COURT CLERK

DANIEL S. JONASSEN and SHARON )  
JONASSEN, husband and wife, )  
LARRY JAMES, RONALD K. )  
JOHNSON, THOMAS H. THELEN and )  
CELESTINE A. THELEN, husband )  
and wife, )

Plaintiffs, )

No. 93 2 00121 8

vs. )

MEMORANDUM DECISION

WILLIAM E. BREEDEN and JUDITH )  
M. BREEDEN, husband and wife, )  
and the marital community )  
comprised thereof, and MAY )  
GAGE, )

Defendants. )

1. Purpose. This memorandum is prepared specifically to memorialize the court's visit to the site on Tuesday, November 25, 1997 in the presence of plaintiffs' attorney, Gary Levell, and defendants' attorney, Kenneth D. Beckley, the court's measuring of the 284 foot Boise Cascade/Jonassen right-of-way, and the court's staking of the corner at the southern end of Lower Mitchell Road and the westward turn of Upper Mitchell Road.

2. Measurements. The court measured 33 feet in a direction perpendicular to Manastash Road from the center of Manastash Road to the corner of the section line of Sections 13 and 14 to establish the beginning point from which the Boise Cascade/Jonassen right-of-way should be measured, then measured 284 feet south along the section line and placed an orange painted rebar stake into the

MEMORANDUM DECISION

93 2 00121 8

Page 1

Entry ID: 792224

132

ground. This stake demarks the southeast corner of the Boise Cascade/Jonassen right-of-way and measures approximately 44 feet 7 inches east of the northernmost metal post on the west edge of Lower Mitchell Road constituting the Breeden fence post. The court also measured the width at the eastern end of Upper Mitchell Road from the third Breeden metal post on the north side of Upper Mitchell Road (the second metal post from the west) perpendicular south across Mitchell Road 24 feet where the court caused another orange painted rebar stake to be placed. The court then staked an arc easterly and northerly to the southeast corner of the Boise Cascade/Jonassen right-of-way. The top of the arc measured 45 feet from the same third pole. The court took other secondary measurements on the line of the arc also.

3. Scope of Easement. The scope of the prescriptive easement established to the plaintiffs by the court in the 1993 trial, as clarified by these 1997 post-trial motions, shall be as follows: Upper Mitchell Road, beginning at said third pole described above, shall be 24 feet in width to recognize the existing road bed as it has been impressed upon the land for several years. The middle 12 feet of said 24 foot corridor, in lines parallel with the width of the Upper Mitchell Road cattle guard, constitutes the main traveled portion of the easement. Additionally, the dominant users may use the middle 16 feet of said corridor for passenger vehicle width passing on the very occasional basis when needed for two cars to pass. As described earlier in a letter to counsel, in addition to the normal traveled portion, be it regular or occasional, there shall be a 40 foot long, four foot wide turn-out for uphill traffic on the northern side of the Upper Mitchell Road beginning at the third pole described above then going west as well as a downhill turn-out in the upper third of the south side of Upper Mitchell Road a similar 40 feet in length, 4 feet in width, going east. The turn-outs shall be for the exclusive purpose of allowing larger vehicles to pass. Finally,

Entry ID: 792224

the balance of the 24 foot corridor may be used only for emergencies and snow removal. Mr. Breeden is not to place any structure or object within the 24 foot corridor and is to remove any structure or object presently within said corridor. The plaintiffs are not to block or in any way obstruct through maintenance, snow removal or otherwise, access to Mr. Breeden's shops on either the north or south sides of Upper Mitchell Road.

With respect to the corner between Lower and Upper Mitchell Roads, Mr. Breeden is to remove the rocks situated within the arc drawn by the court. He may taper the apron approach to his property on the upper south side of Mitchell Road in the area where the rocks are so that all parties may use that area within the arc for their own purposes. The ramp created by Mr. Breeden approaching the south side uphill property shall remain and the plaintiffs are not to obstruct Mr. Breeden's access to that property. Any snow removed shall not block Mr. Breeden's access in the corner to his uphill south-side property.

Lower Mitchell Road, as that term is utilized in these proceedings, consists of its existing 14-15 foot corridor as well as the 30 foot Boise Cascade/Jonassen right-of-way. The 12 foot gate at the entrance to Lower Mitchell Road shall remain.

Mr. Breeden may fence along the section line between Sections 13 and 14 as well as between the gate and the new beginning point of the 284 foot measurement.

4. Notes.

a. Modifications. It is noted the court has retreated from its original decision of a 16 foot corridor on Upper Mitchell Road with additional four foot turn-outs. One of the problems in trying to fashion an equitable remedy is to think through all of the possibilities and angles. Unfortunately, sometimes the court talks faster than it thinks. After having thought out and reviewed all of the evidence it is clear that the foundation of the prescriptive easement is the road way of Upper Mitchell Road carved

out of the hillside. It has, and always was, approximately 24 feet in width. Hence, the court needs to start with the 24 foot corridor and then describe the historical usage of Upper Mitchell Road thereafter, which it has done.

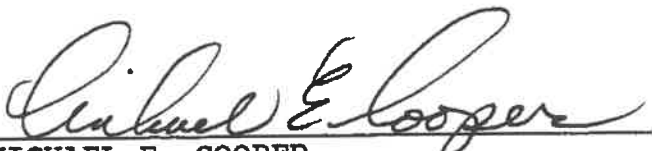
b. Corner and old Manastash Road. Plaintiffs continued to argue even during their motion for reconsideration that they were being denied what Mr. Jonassen purchased from Boise Cascade, that a sliver of the right-of-way was left out by the court forming an arc which tapered into the corner post established by the court at the southeast corner of the Boise Cascade/Jonassen right-of-way. Again, Boise Cascade and Jonassen never had the right-of-way south of the 284 feet. The problem, of course, has been the establishment of the 284 feet since the measurement was supposed to go from south to north, that is from old Manastash Road to the new Manastash Road. It is clear upon the establishment of the southeast corner by the court that the distance from that southeast corner south to approximately where the big tree was cut, 52 feet, more or less, was where old Manastash Road crossed the section line into Section 14. Old Manastash Road was never part of the Boise Cascade right-of-way and the plaintiffs never purchased that part. Use of the corner, rather, has been by historical use and, based upon that history, as deduced from the evidence, or as equity dictated, the court drew the arc.

c. Personalities. While each side may not think the best of the other side, and while each side may have its own understanding as to the court's prior rulings, as well as the evidence presented, the court is convinced neither side openly attempted to defy the prior rulings of the court. Rather, each side continued to interpret the court's prior rulings and even its present oral rulings with their own best interests in mind. Hopefully, the court's measurements and this memorandum will end the differences between the parties.

5. Conclusion. Please present findings of fact, conclusions

of law and order on December 8, consistent with the court's rulings.

DATED: November 26, 1997

  
MICHAEL E. COOPER  
Superior Court Judge

Entry ID: 79222A