

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LEMHI**

JOSHUA A. MCINTOSH,

Plaintiff,

v.

BRIAN CARPENTER and THERESA
CARPENTER, husband and wife.

Defendants.

Case. No.: CV30-23-0114

**ORDER RE: WALKERS' MOTION FOR
SUMMARY JUDGMENT ON EXPRESS
EASEMENT AND MCINTOSH'S
SECOND MOTION FOR SUMMARY
JUDGMENT**

BRIAN CARPENTER and THERESA
CARPENTER, husband and wife,

Plaintiffs,

v.

ROCKIE WALKER and LEANNA
WALKER, husband and wife.

Defendants.

I. INTRODUCTION

This matter came before the Court on February 18, 2025 pursuant to the Walkers' Motion for Summary Judgment Regarding Express Easement for North Ditch filed on November 22, 2024, Walkers' Motion to Dismiss, or alternatively, Motion for Summary Judgment Regarding Eminent Domain filed on November 22, 2024, Walkers' Motion for Preliminary Injunction filed on January 28, 2025, and McIntosh's Second Motion for Summary Judgment filed on November 26, 2024.

The Carpenters filed multiple documents purporting to be motions and/or counterclaims, most were also framed as objections to the Walkers' and McIntosh's motions. None of the Carpenters' filings were noticed up to be heard on February 18, 2025, but the Court addressed them for the sake of judicial economy. Those documents from the Carpenters include: 1)

“Memorandum #2 in Support of Motion for Summary Judgment Against Plaintiff Joshua A. McIntosh” filed on January 14, 2025, signed by only Brian Carpenter, without an accompanying motion; 2) “Carpenter’s [sic] Objection and Counter Claim for Joshua A. McIntosh’s Second Motion for Summary Judgment” filed on January 31, 2025 with signatures from both Brian and Theresa on the Certificate of Service but no signature on the document; 3) “Carpenters [sic] Objection and Counter Claim for McIntosh’s Second Motion for Summary Judgement [sic]” filed on February 2, 2025 with an accompanying memorandum that also has both signatures on the Certificate of Service but no signature on the memorandum itself; 4) “Objection and Counter Claim for Walkers’ Motion for Summary Judgment Regarding [sic] the North Ditch” filed on February 1, 2025 with an accompanying “Memorandum #2” in support; 5) “Objection and Counter Claim for Walkers’ Motion to Dismiss, or Alternatively, Motion for Summary Judgement [sic] Regarding [sic] Eminent Domain” filed on February 1, 2025 with an accompanying “Memorandum #3” in support; 6) “Motion to Extend All Deadlines” filed on January 29, 2025 with both signatures on the Certificate of Service but only Brian Carpenter’s signature on the document itself; 7) “Motion to Remove the Berm and or Health Risk on Walker Property” filed on January 31, 2025 signed only by Brian Carpenter; 8) “Motion for Criminal Referral” filed on January 31, 2025 with both signatures on the Certificate of Service but only Brian Carpenter’s signature on the document itself; 9) “Motion to Bury the Southwest Ditch on Carpenter [sic] Property” filed on January 31, 2025 with both signatures on the Certificate of Service but only Brian Carpenter’s signature on the document itself; and 10) “Motion to Disqualify and Remove TJ Budge” filed on January 31, 2025 without any signatures on the document or the Certificate of Service.

At the hearing, the Court granted the Walkers' Motion to Dismiss or Alternative Motion for Summary Judgment on Eminent Domain and signed a separate order memorializing that decision, and the Court also granted the Walkers' Motion for Preliminary Injunction and signed a separate order memorializing that decision. The Court also issued various rulings on the Carpenters' motions that will be memorialized in this written order. Finally, the Court took the Walkers' Motion for Summary Judgment Regarding Express Easement for the North Ditch and McIntosh's Second Motion for Summary Judgment under advisement.

II. LEGAL STANDARD

A court "must grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." I.R.C.P. 56(a). The burden of establishing the absence of a genuine issue of material fact rests with the party moving for summary judgment. *Finholt v. Cresto*, 143 Idaho 894, 896-97, 155 P.3d 695, 697-98 (2007). The record must be construed in the light most favorable to the party opposing the motion, and all reasonable inferences must be drawn in that party's favor. *Jenkins v. Boise Cascade Corp.*, 141 Idaho 233, 238, 108 P.3d 380, 385 (2005). However, "the adverse party may not rest upon mere allegations in the pleadings, but must set forth by affidavit specific facts showing there is a genuine issue for trial." *Rhodehouse v. Strutts*, 125 Idaho 208, 211, 868 P.2d 1224, 1227 (1994). "[T]he trial court is not required to search the record looking for evidence that may create a genuine issue of material fact; the party opposing the summary judgment is required to bring that evidence to the court's attention." *Valiant Idaho, LLC v. VP Inc.*, 164 Idaho 314, 328, 429 P.3d 855, 869 (2018).

III. ANALYSIS

For the Walkers' Motion for Summary Judgment, the Walkers asks the Court to find that there is not an express easement benefitting the Carpenters for use of the North Ditch. Previously, the Court found that the Southwest Ditch is the only ditch that physically crosses onto all the involved properties. As such, the Court found it to be the primary water delivery system for the Carpenter and McIntosh properties, and the Court has not been asked to reconsider this finding. The North Ditch has, undisputedly, existed solely on the two parcels owned by the Walkers currently and has never existed on the Carpenters property. The Carpenters claim that the North Ditch has delivered water to their property, but it was only through excess water travelling onto their property from the Walkers' use of flood irrigation on the Walkers' properties. The Court has already found the Carpenters reliance on water from the Walkers' use of flood irrigation is not a protectable water delivery system, and the Court has not been asked to reconsider this finding. The Carpenters do not even attempt to raise a genuine issue of material fact on the existence of an express easement for the North Ditch nor do they present any legal argument about the North Ditch. Instead, the Carpenters argue at length that the Southwest Ditch is not viable, there has been some fraud on the Court, the flood irrigation system was used before the parcels were split, and that the express easement in the North Ditch is implied. None of these arguments are responsive to the Walkers' Motion. The Court has already held that the Carpenters cannot force the Walkers to continue to flood irrigate the Walker parcels in lieu of actually installing a viable water delivery system to get their water from the Southwest Ditch to their point of use. As such, the Court will GRANT the Walkers' Motion as it does not appear the North Ditch was actually preserved in all relevant deeds.

For McIntosh's Second Motion for Summary Judgment, he asks the Court to find, as part of his claim for declaratory judgment, that the Carpenters are obligated to maintain the Southwest

Ditch on the Carpenter property under the Bylaws of the L8 Diversion Lateral Water Users Association. In opposition to this motion, the Carpenters again reargue facts that the Court has not been asked to reconsider and do not provide any relevant arguments responsive to the specific issue raised in McIntosh's motion. The Court has already held that the Southwest Ditch is the only water delivery system that carries water to McIntosh's property from the L8 diversion and that the law is clear that Carpenters cannot intentionally interfere with the delivery of water to McIntosh by blocking or altering the Southwest Ditch. All parties are members of the L8 Diversion Lateral Water User Association, and all members are required to maintain the ditch that is on their property or else the association will hire outside help to maintain the ditch which the property owner will then be responsible for. *Dec. of Joshua A. McIntosh in Support of Second Motion for Summary Judgment*, Ex. B, Article IV, § 6. While the statutory requirements for maintenance are different and depend on who the owner of the ditch is, the Bylaws are clear and must govern between the parties as they are all members of the L8 Diversion Later Water Users Association. For the purposes of McIntosh's declaratory judgment claim, summary judgment is appropriate as the Bylaws are clear that the property owner must maintain the ditch on their property.

To the extent the Carpenters attempted to "Counter Claim" their own motions for summary judgment against the Walkers and McIntosh in their oppositions, those attempts are procedurally flawed. Substantively, the Carpenters' requests against the Walkers and McIntosh cannot prevail with the unchallenged findings of the Court in the *Order Re: Motions for Summary Judgment* filed on November 7, 2024. As such, the Carpenters motions for summary judgment or counter claims, whichever those filings may have been, are hereby DENIED.

For the various documents filed by the Carpenters, the Court shall deny each of them as addressed below. For the "Motion for Criminal Referral" filed on January 31, 2025 with signatures

from both Brian and Theresa on the Certificate of Service but only Brian Carpenter's signature on the document itself, the Court made clear that it is the prosecutor of the County a crime is alleged to have occurred in who may bring criminal charges. The Court cannot "refer" a matter for criminal prosecution, and the Court cannot itself bring criminal charges against any person as that would invade the province of the elected Prosecuting Attorney. The Court will preside over any felony criminal case brought in Lemhi County by the duly elected Lemhi County Prosecuting Attorney, but the Court will not and cannot exceed that limit role.

For the "Motion to Remove the Berm and or Health Risk on Walker Property" filed on January 31, 2025 signed only by Brian Carpenter, the Carpenters have not provided any properly filed evidence in support of there being a health risk or any legal support for the Court's authority to order what the Carpenters request. Exhibits included within a memorandum are not properly presented. The exhibits that were attached to the various memos filed by the Carpenters lack foundation and would be stricken even if they had been included in an affidavit or declaration. The allegations that the berm and the Southwest Ditch are improper and/or illegal are brand new issues that are also factually unsupported in the record before the Court. As such, the Motion must be denied as it is factually unsupported and states a new claim that the Carpenters have not requested leave to include in their complaint.

For the "Motion to Bury the Southwest Ditch on Carpenter [sic] Property" filed on January 31, 2025 with both signatures on the Certificate of Service but only Brian Carpenter's signature on the document itself, burying the ditch is again a new claim or issue that has not been pled. The Carpenters have not provided any legal support for the Court's authority to enter this requested order. Additionally, the Carpenters again ignore that the Southwest Ditch is the only ditch that runs

to the McIntosh property as the North Ditch and run off from the Walkers' flood irrigation is not a viable water delivery system. This motion must be denied.

For the "Motion to Disqualify and Remove TJ Budge" filed on January 31, 2025 without any signatures on the document or the Certificate of Service, the Court must deny this motion as being improperly filed. There are no signatures from Brian and/or Theresa anywhere on the document. There is no legal support cited for the motion, and the exhibits are again improperly included in the memorandum instead of a declaration or exhibit. This motion must also be denied.

Finally, for the "Motion to Extend All Deadlines" filed on January 29, 2025 with both signatures on the Certificate of Service but only Brian Carpenter's signature on the document itself, the motion fails to list which deadlines the Carpenters seek to extend. It appears the Carpenters responded to each motion set to be heard on February 18, 2025, in fact they actually responded multiple times to some motions, and also filed ten of their own motions. Additionally, the motion was not noticed up or heard prior to the February 18, 2025 hearing so it is moot if the Carpenters were attempting to move or delay the February 18th hearing.

IV. CONCLUSION

Accordingly, the Walkers' Motion for Summary Judgment Regarding Express Easement for the North Ditch is hereby GRANTED. McIntosh's Second Motion for Summary Judgment is hereby GRANTED. The miscellaneous motions filed by the Carpenters are hereby DENIED. It appears the sole remaining claim in these consolidated cases is Count II brought by McIntosh seeking a monetary judgment under Idaho Code section 42-902.

IT IS SO ORDERED.

Dated 4/1/2025 10:36:22 AM.


Stevan H. Thompson, District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 4/1/2025 10:44 AM, I did send a true and correct copy of the foregoing document upon the parties listed below in the manner indicated.

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