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HR 1:41 P.M.
KORRI BLODGETT
CLERK OF THE DISTRICT COURT
S. Weston

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CAMAS**

JUDY CASH, an unmarried woman.

Petitioner.

vs.

PHILIP CASH AND DEBRA CASH, husband
and wife, and Does 1-5, unknown persons who
may claim interest.

Respondents.

Case No. CV-16-02

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Appearances:

For Petitioner Judy Cash: Daniel Beck, Idaho Falls

For Respondents Philip Cash and Debra Cash: Travis Thompson, Twin Falls

PROCEDURAL HISTORY

This matter came on for trial before the Court sitting without a jury on the 4th day of January, 2017. Although this is a Camas County case, counsel agreed the day before trial to hold the trial at the Blaine County Courthouse due to an impending snowstorm. The issues for trial

have been bifurcated, and Part I of the trial was completed in one day. The remaining issues to be tried are set for trial in Camas County on May 2, 2017. The primary issues to resolve in Part I of the trial are the validity of a Quitclaim Deed purportedly signed by Philip Cash deeding property in Camas County to Judy Cash, whether the deed properly conveys property in Camas County, whether the deed, if valid, conveys appurtenant water rights, and whether laches bars Judy Cash's ability to enforce the deed if it is otherwise valid.

The parties each prepared and filed Pre-trial Memorandums presenting their points of law. Various exhibits were admitted during the course of trial. Three witnesses were called and presented live testimony, one witness testified via telephone from Nakusp, British Columbia, and the deposition of John Tanner was admitted into evidence in lieu of his live testimony. The Court has thoroughly reviewed the exhibits admitted into evidence, including Tanner's deposition, has considered the briefs and the testimony of the witnesses, and has considered the opening and closing arguments made by counsel.

ISSUES

1. Whether Judy Cash has a valid Quitclaim Deed from Phil Cash deeding property in Camas County to her. That is, did Phil Cash sign the deed?
2. Whether the Quitclaim Deed is void for lack of delivery.
3. Whether the Quitclaim Deed is void because it was unlawfully or improperly notarized.
4. What is the affect of a patent ambiguity, if one exists?
5. Whether Judy Cash's quiet title action is prohibited due to laches, and whether a laches argument violates the statute of frauds.

6. Whether Judy Cash has a lawful claim to the water rights appurtenant to the property at issue, and whether shares in a water company are personal to the holder of the shares or transfer with the land.

FINDINGS OF FACT

1. The parties were previously married to each other for some length of time until October of 1998, when a partial decree of divorce was entered *nunc pro tunc* to September 23, 1998. Exhibit A.

2. The parties remained friendly toward each other after the divorce. The final Marital Property Settlement was not entered until February of 1999. Although they had separate residences, Phil spent a good deal of time at Judy's home in Bellevue after the divorce; among other things, John Tanner would see him there. John Tanner believed Phil Cash lived there in Bellevue for all the time John Tanner lived in Bellevue, which was from 1996 to 2007.

3. Judy is a real estate broker, and has been for about 50 years. She has operated her own brokerage for many years under the name Sun Land Investments. She has had a working relationship with First American Title for 35 years or more.

4. Judy brokered the sale of approximately 580 acres in Camas County to Phil Cash. This occurred in 1998, just after their partial decree of divorce. Exhibits B and C. Part of that property that Phil purchased was allegedly conveyed to Judy from Phil by virtue of the questioned quitclaim deed. Phil resides on that property. Judy also lived with Phil, or at least spent time with him at this Camas County property, between the time of its purchase and 2002. The parties had a falling out in 2002.

5. Phil was in the mining business and had mining interests extending from British Columbia and the Yukon to Oroville, in Butte County California. In Oroville Phil attempted to

develop a silica mine known as the Cherokee mine. The Cherokee mine was to be developed by Advanced Mineral Technology, Inc. ("AMT"), and Phil represented himself to be the president. (Exhibit 4).

6. After the parties were divorced, Judy "invested" \$150,000 with Phil into the Cherokee mine in California. He characterized it as an investment into the mining business. The first documents dated May 10, 2000 (Exhibit 3) refer to a Subscription Agreement for common shares of capital stock in a British Columbia company called Blue Emerald Resources, Inc., but it indicates at paragraph 1.2 that the proceeds of the subscription were to be advanced to AMT for use in its business, to be treated as an interest free loan. Exhibit 4 was a newsletter to subscribers or investors regarding the Cherokee mine from Phil Cash dated June 10, 2000. From additional exhibits, (e.g.-Exhibit S), it appears Judy raised money from others, and together they contributed about \$850,000 as an investment (or a loan) into Phil's mining business. That money was never repaid, and is the subject of several exhibits. These exhibits acknowledge Judy's \$150,000 debt or loan or "investment" in different fashion, and demonstrate various ways Phil sought to convey value to Judy over time either as collateral or in part payment of the debt. There is never any indication in the evidence, however, that any of the documents executed by Phil, or promises to pay from various mining companies, or certificates of shares in any mining company etc., ever had any value. In March of 2002, one month before the date of the questioned quitclaim deed, Phil was looking for about \$18M to fund his mining ventures (Exhibit 18).

7. Although Judy believed her money was being used by Phil or AMT in the Cherokee mine project in California, as near as she could tell her money went into a mining project in Canada. She never liked the fact her money went somewhere besides the Cherokee mine. Although Phil characterized Judy's loan as a lost investment, in which he also lost sizeable amounts, this issue

remained a sore spot between Judy and Phil for many years. Eventually, Judy hired local attorney Ed Lawson to try and recover her money. There is correspondence from Phil to Ed Lawson in which Phil is responding to inquiries from Lawson in 2012. Exhibit 19. According to Judy, and apparently around the date of Exhibit 18, (March of 2002) she talked to Phil about her loan or investment "every day." She wanted "every other 40 of the ranch-not the home or the buildings," as collateral or as "protection for her money." She had no other way of getting her money from Phil because "he didn't have any money." She knew the checkbook didn't have any money in it, and she wanted the property "long-term." Phil told her about then he was going to First American in Ketchum to sign a deed.

8. John Tanner was the manager of the Ketchum branch of First American Title. Judy Cash utilized the services of the Ketchum branch of First American Title for the purpose of real estate closings and title work about three or four times a year, although she utilized the services of other title companies in Blaine County as well. In that sense she was a "client" of First American. Judy had a professional relationship with John Tanner, although they were also neighbors in Bellevue. They each lived on a five acre plot about a quarter-mile from each other. John Tanner worked in the Ketchum office from 1995 until he quit managing the Ketchum office in 2005, and he lived in Bellevue during that time. He and Judy did not socialize with each other. John Tanner would see Phil Cash at Judy Cash's residence in Bellevue from time to time during the years he lived in Bellevue.

9. John Tanner was a notary public and he would sometimes notarize documents for Judy at Judy's home in Bellevue. He did that on more than one occasion. He notarized documents away from the Ketchum office as a courtesy to customers sometimes outside of business hours. First American also commonly recorded documents as a courtesy to clients, although they would

require written instructions in order to record, as well as the recording fee. John Tanner knew who Phil Cash was. He notarized Phil Cash's signature on the contested quitclaim deed, Exhibits 1 and 2. The first time John Tanner met Phil Cash was at Judy's house in Bellevue, when he notarized several documents for Phil and Judy. He notarized other documents for Phil and Judy at other times, although he has no recollection of what other documents he might have notarized. He met with them to do that, he would guess, two or three times. He would usually do that on his way home. He does not recall if Phil ever came to his Ketchum office, or where he would have notarized Exhibit 1. Tanner thinks most likely he would have notarized Phil's signature on Exhibit 1 at Judy Cash's home in Bellevue.

10. John Tanner would never notarize a signature unless the person signed the document in front of him or stood in front of him and verified to him that was their signature. If he did not know the person, he would require a driver's license and he would also have them sign his notary log, and he would have written the person's driver's license number in the notary log. He kept the notary log at the First American office, but he left it there when he ended his employment with First American in 2007. He asked the Ketchum employees to locate it for the purposes of this case, but it has not been found. He first became aware of the claims in this case when Judy Cash asked him if he had his notary log book.

11. The quitclaim deed in question was recorded April 1st 2002, over 14 years ago, in Camas County. None of the alleged parties to the transaction, Judy Cash, Phil Cash, or John Tanner, has any independent recollection as to its execution. No one seems to know who prepared the deed, although Tanner has prepared hundreds of deeds as a closing officer, and for those he would get written instructions. Phil Cash denied under oath that he signed Exhibit 1, although he acknowledges that the signature on the document was his. No one knows or claims to know

exactly when the deed was signed before Mr. Tanner or where. The deed recites on its face that it was recorded at the request of "First American." Mr. Tanner thinks "probably" someone from First American took the deed to Camas County and recorded it. It is dated March 27, 2002 above the signature of "H.P. Cash," but it is signed before notary Tanner on March 28th, 2002. Once a deed was recorded by First American, the original deed would always be sent to the "client." Although Judy was a First American client, Tanner's testimony was that the "client" in this case could have been Judy or Phil or both of them. First American routinely destroys their file documents after seven years, although the notary log books were apparently not part of that policy.

12. Judy received the original of the recorded deed in the mail within a few days of the time it was recorded from the title company. According to Judy, she was not surprised when she got the deed because of her earlier conversations with Phil about him going to the title company in Ketchum to sign one. Also according to Judy, she told Phil he could use the property (that was subject to the quitclaim deed) "as he saw fit" so long as he paid the taxes. Further, this offer or agreement had no beginning or ending date. She also testified she called Phil "when he had gone past the five years on the water rights" because she didn't want him to lose the water rights, and although it took Phil seven (7) years, eventually he "got it done."

13. Kathy Carlson is a full time forensic document examiner. She resides in Montrose, Colorado. Generally accepted forensic documents examination practice accepts that no two people write the same, that no one person writes the same all the time, and that all handwriting has a natural variation. She was asked to examine two questioned documents, being the two pages of Exhibit 1. She originally worked off of copies, which in this day and age is not an uncommon practice. After she got to Hailey, she looked at the original of Exhibit 1 as well. She

used documents contained in Exhibit 12 as known exemplars of Phil Cash's signature and initials, and she marked them K-1 through K-21. She found them to be internally consistent. In her opinion, the signature on the quitclaim deed, and the initials on page 2 of the quitclaim deed are the signature and initials of Phil Cash. He has a very consistent style, and doesn't lift his pen "99% of the time" in going from the HP to the Cash portions of his signature, and she describes further consistencies in his signature, such as a distinct loop in his H. She found his signature would be difficult to forge, and the writings on the quitclaim deed and its page 2 are consistent with the known exemplars. In her opinion, it is not possible that someone besides Phil Cash signed Exhibit 1. The Court has no reason to doubt her opinions and accepts them.

14. Between 2002 and 2015 Judy took no action to obtain possession of the property or force Phil off of it, and during that time Phil paid all of the accruing property taxes and water assessments. Judy explains that the reason she never took action to take possession of the property or force Phil off of it is because she "was going to let him use it." Phil filed claims in the Twin Falls water rights adjudication case and was issued partial decrees for the water rights in 2010 for all of the Camas County property he purchased in 1998. (Exhibits L,M,N,O.). Judy made no effort to contest Phil's claims putting the water rights in his name, and that issue has been the subject of at least one if not two summary judgment proceedings in this case.

15. Exhibit S is an email from Judy to Phil dated January 28, 2015. This was the first time since 2002 that Judy made any attempt to enforce the property rights given her by the contested quitclaim deed, although it is evident from the tone of the email the parties had been discussing what Judy owned for at least the two days prior, and that it made Phil angry or upset. In the email, Judy is offering to have Phil lease her 40 acre parcels from her. She acknowledges Phil has been paying the taxes on the property, but she again raises the non-payment of the \$150,000

"I gave you for one of your projects." She also references non-payment of money loaned from her grandmother and her parents, and the \$850,000 she obtained from her friends, (apparently lost "investment" money). She recites she "was going to give this property to the kids, but it is too much of a mess for them to inherit." She then states: "You never offer to pay me any income off the ranch, so I am either going to sell my 40 acre parcels or put some kind of a lease together with you for PART OF THE INCOME. I know I do not own the water or the pivot, but I know you make income off the cattle and the hay so let me know how you want to proceed, or I am going to sell my part of the ranch, and you can deal with the new owner. I own approximately 315 acres, by quitclaim deeds from you and I am going to sell my part for \$315,000. We can arrange 1st right of refusal. if we come to an agreement. on the lease."

16. She explains the email by saying she "...didn't see any point in talking about the water. I was trying to make a deal with him at the time and I was trying to be fair, and he got an attorney." She admits that, in reference to her deposition, her original intention was not to take the water away from Phil and she was not going to be able to do anything with the water because Phil's pivot covers "...3 of my 40s and one of his 40s. There's no way I can water every other 40. It doesn't make sense for me to try and water my every other 40 acre parcel. So what I am just trying to say is that I'm going to let him keep doing that. I didn't want to make a hardship." In her testimony, Judy acknowledges the email and testified that Phil lives there, that Phil has improved the property and made it more valuable, and "she wasn't going to do that"—(an apparent reference to her threat to sell), but that Phil got a lawyer and started this. She acknowledges she has had a hard time remembering things, but Phil does not necessarily seem to have any better recall of long ago events. Both parties acknowledge that due to the way the pivot waters the Camas County property belonging to Phil, as well as the disputed property described

in the quitclaim deed to Judy, it would be very difficult to carry on the current watering scheme if the property subject to the quitclaim deed was owned by Judy.

17. Exhibit 1 is the original of the Quitclaim Deed in question. Exhibit 2 is a certified copy of the same Quitclaim Deed. Phil's Exhibit 8 and his own testimony has raised a factual issue as to whether he was in Blaine County, or travelling between Gilbert, Arizona and Nakusp, British Columbia on those dates, and whether he signed the quitclaim deed. However, even Phil's own evidence establishes that Phil came to Blaine County sometime on the 27th and/or the 28th day of March, 2002, and would have been present somewhere in Blaine County in order to sign the quitclaim deed before Mr. Tanner as the notary, on the date indicated. Even in his testimony, Phil recites: "That's my signature" but he states flatly that "I did not sign this," and "I did not intend to sign this over to Judy." The Court finds that Phil Cash signed the quitclaim deed (Exhibit 1) to Judy on the date indicated before John Tanner, who properly notarized the signature of Phil Cash, and that Phil Cash placed his initials on page 2 of Exhibit 1.

18. On its face on page 1, the deed recites that it conveys and releases, remises, and forever quitclaims real property in **Blaine** County to Judy Cash. At the time the deed was executed, Phil *did not* own any real property in Blaine County, and admits that he did not intend to transfer any Blaine County property to Judy by virtue of Exhibit 1. Page 2 of the deed recites the legal description of the property conveyed to Judy, and recites that it is located in Camas County. At the time the deed was executed, Phil *did own* the property described on page 2 of the deed in Camas County. His initials appear on page 2 of the quitclaim deed (Exhibit 1). The quitclaim deed was duly recorded in Camas County within days of its execution and being notarized by John Tanner. The quitclaim deed recites on its face that it was "Recorded at the Request of First American." Aside from the testimony of Phil Cash that he never signed the document, the Court

has no reason to doubt that the deed was recorded at the request of First American. There is also no reason to doubt that Judy Cash received the deed in the mail within a few days of its recording from First American Title, and the court finds accordingly.

19. Exhibit 13, page 1, is a map of the Camas County property prepared by Bruce Smith, a long-time licensed surveyor, showing which parcels belong to Judy and which belong to Phil. Exhibit 13 page 3 is an accurate metes and bounds description of the same property described in the quitclaim deed, Exhibit 1.

20. By virtue of Exhibits 9 and 10, dated and recorded Sept. 28, 2012 and July 13, 2012 respectively, Phil deeded at least some of the property that he had previously deeded to Judy Cash to H. Philip Cash and Debra Cash. Phil and Debra were married in 2010.

21. As shown by Exhibits I, J, K, and perhaps others, Phil paid all the assessments for water on the property covered by the quitclaim deed to Judy as well as all the other property he owned. As shown by Exhibits Q and R, Phil also owns 280 shares of The Twin Lakes Reservoir and Irrigation Company for water which comes out of Mormon Reservoir when available. Phil has installed 3,000 feet of pipe to increase or facilitate this flow of water. There is a legal issue over whether these shares owned by Phil in the irrigation company are owned personally by Phil, or whether these simply evidence a water right that is appurtenant to real property.

PRINCIPLES OF LAW

1. Quiet Title Actions

“Idaho law presumes that the holder of title to property is the legal owner of that property.” *Hettinga v. Sybrandy*, 126 Idaho 467, 888 P.2d 772 (1994) (citing *Russ Ballard & Family Achievement Inst. v. Lava Hot Springs Resort, Inc.*, 97 Idaho 572, 579, 548 P.2d 72, 79 (1976)). Overcoming this presumption requires clear, satisfactory, and convincing evidence.

Russ Ballard & Family Achievement Inst. v. Lava Hot Springs Resort, Inc., 97 Idaho 572, 579, 548 P.2d 72, 79 (Idaho 1976).

Idaho Code § 55-601 allows in pertinent part, that “[a] conveyance of an interest in real property may be made by an instrument in writing, subscribed by the party disposing of the same...” For such a conveyance to validly transfer property, the written instrument must be delivered. *Crenshaw v. Crenshaw*, 68 Idaho 470, 199 P.2d 264 (1948). Valid delivery requires actual manual transfer of the deed to the grantee *and* intent to pass immediate and present title to the property. *Hartley v. Stibor*, 96 Idaho 157, 525 P.2d 353 (1974). The intention of the grantor is paramount in determining whether the grantor intended to pass title to the grantee. *Crenshaw*, 68 Idaho at 475.

But, the intention of the grantor becomes a secondary concern when the grantee is in possession of the deed because possession of a deed by a grantee, in the absence of evidence to the contrary, raises a presumption of valid delivery. *Hartley*, 96 Idaho at 160 (citing *Holland v. Beames*, 71 Idaho 343, 231 P.2d 741 (1951); *Brummund v. Romig*, 59 Idaho 312, 81 P.2d 1085 (1938)). The presumption of a valid delivery arises from the grantee’s possession of the deed, recordation of the deed at the grantor’s knowledge and direction, and other circumstances that evidence intent to deliver, and the intent to deliver is shown by “the circumstances surrounding the transaction.” *Garrett v. Garrett*, 154 Idaho 788, 302 P.3d 1061 (2013) (citing *Crenshaw v. Crenshaw*, 68 Idaho 470, 476, 199 P.2d 264, 267 (1948)). Again, overcoming a presumption of a valid delivery of a deed requires clear and convincing evidence. *Garrett*, 154 Idaho at 788 (citing *Russ Ballard & Family Achievement Inst. v. Lava Hot Springs Resort, Inc.*, 97 Idaho 572, 579, 548 P.2d 72, 79 (1976)).

Lastly, when determining the sufficiency of the description of property contained in a deed, Idaho's law is clear: a property description is sufficient so long as the quantity, identity, or boundaries of the property can be determined from the face of the document. *Adams v. Anderson*, 142 Idaho 208, 210, 127 P.3d 111, 113 (2005).

2. Water Rights

Under Idaho Code § 42-1402, a water right entered in the Snake River Basin Adjudication (SRBA) decree "shall be appurtenant to and shall become a part of the land on which the water is used, and such right will pass with the conveyance of such land..." Therefore, water rights adjudicated by the SRBA pass with the title of the land as an appurtenance.

The law in Idaho recognizes that shares of stock in a corporation are personal property. *State ex rel. Peterson v. Dunlap*, 28 Idaho 784, 801, 156 P. 1141 (1916). However, "[i]t is a generally accepted principle in the arid states that shares in a nonprofit irrigation company are appurtenant to the land of the shareholder irrigated through the system. *They pass upon conveyance of the land* and appurtenant water rights, although the stock may not be mentioned or the certificates formally transferred (emphasis added). *Pac. States Sav. & Loan Corp. v. Schmitt*, 103 F.2d 1002, 1004 (9th Cir. 1939); *See Ireton v. Idaho Irr. Co.*, 30 Idaho 310, 164 P. 687 (1917). The 9th Circuit Court of Appeals eloquently explains that while shares in a corporation are usually personal property not appurtenant to a piece of land, water applied to land via shares in an irrigation district is a water right appurtenant to land. Thus, shares in an irrigation company for water rights follow the title to the land as an appurtenance, unless otherwise severed or withheld in the written instrument conveying the land.

CONCLUSIONS OF LAW

1. Petitioner's Right To Quiet Title

a) Judy Cash is presumed to have a valid deed because she is the holder of title to the property, and the quitclaim deed sufficiently describes the property in question. Because Judy Cash has a valid deed, Phil Cash needed to provide clear, convincing, and satisfactory evidence to prove the deed was invalid. Phil Cash has failed to provide clear, convincing, and satisfactory evidence proving otherwise. Even if Phil only had to prove his claim that the deed to Judy was defective by a preponderance of the evidence, the Court would find he has failed to do so. Petitioner's claim to quiet title is premised on the validity of the deed in Exhibit 1. That deed is valid.

b) Exhibit 1 is ambiguous on its face with regard to whether Phil Cash intended to convey to Judy Cash real property in Blaine County or in Camas County. Both pages of the document create a patent ambiguity because each page references a different county when describing the land at issue: Blaine County is printed the first page, while Camas County is printed on the second page. One possible explanation for this is that, like Judy contended, she did not draft the deed. Rather, the inference the Court draws is that the deed was drafted by First American Title, who also recorded the deed. The Court draws this inference because it is likely that, as a Blaine County title company, First American Title is used to using deed forms describing property in Blaine County, and likely forgot to change page 1 of their form to reflect that the property at issue was located in Camas County. The Court's conclusion is that this is a scrivener's error—the reference in Blaine County on page 1 of the two-page document is a mistake. There is no other evidence or explanation for the ambiguity other than that. Phil Cash has provided no alternative extrinsic explanation (i.e.—the existence of property in Blaine County that he also

owns) that might explain this error. Phil Cash's intention in executing Exhibit 1 was to convey real property in Camas County to Judy.

c) The quitclaim deed is similarly not void for lack of delivery because Judy Cash is in possession of a valid deed and Phil Cash failed to provide clear, convincing, and satisfactory evidence that there was no delivery despite Judy Cash's possession of the quitclaim deed and the recordation of that deed in addition to the rest of the circumstances surrounding this case. Even if Phil only had to prove his claim that the deed to Judy was not delivered by a preponderance of the evidence, the Court would find he has failed to do so. Petitioner's claim to quiet title is premised on the delivery of the deed in Exhibit 1. That deed was delivered to Judy.

d) Phil Cash also failed to prove that the quitclaim deed was unlawfully notarized, and therefore void. The quitclaim deed was notarized by John Tanner and nothing in the record shows that John Tanner's actions were unlawful or in violation of his legal duties as a notary public. The quitclaim deed is not void because it was unlawfully notarized.

No agreement for the conveyance of land is required when a person possesses valid title. "Idaho law presumes that the holder of title to property is the legal owner of that property." *Hettinga*, 126 Idaho at 467 (citing *Russ Ballard & Family Achievement Inst. v. Lava Hot Springs Resort, Inc.*, 97 Idaho 572, 579, 548 P.2d 72, 79 (1976)). No written agreement is required for a valid claim of ownership. Judy Cash is the holder of title to the property at issue and is presumed to be the legal owner of that property. Phil Cash failed to provide clear, convincing, and satisfactory evidence to overcome this presumption; even if his burden of proof was by a preponderance of the evidence the Court would find this presumption has not been overcome. The absence of an agreement is immaterial to Judy Cash's quiet title action.

e) The deed (Exhibit 1) to Judy Cash recorded April 1st, 2002 as instrument number 075110 in the records of Camas County is senior to, and prior in time and in right to the deeds from Phil Cash to Phil and Debra Cash identified as Exhibits 9 and 10. To the extent Exhibits 9 and 10 purport to deed any property to Phil Cash and Debra Cash that was already deeded to Judy Cash in Exhibit 1, and only to that extent, Exhibits 9 and 10 recorded in Camas County as instrument numbers 2012-084708 and 2012-084519 are inferior to time and right to Exhibit 1. Judy's deed (Exhibit 1) is prior in time and in right to Exhibits 9 and 10.

f) Although Phil Cash has raised an affirmative defense of laches, and the facts would seem to indicate some delay by Judy Cash in enforcing her claims to title under the quitclaim deed, it is difficult to see, *insofar as pure title claims are involved*, how Phil Cash could be harmed by her inactivity. After all, Phil Cash has had exclusive possession and use of the property since 1998, and the evidence indicates he has enjoyed all the income generated by the property. In order to support a laches claim, part of Phil's argument is Phil went ahead and improved the property while in sole possession of it; that however, would seemingly be counter-balanced by his knowledge that he had deeded portions of the property away. In other words, it is difficult for Phil to claim that Judy's lack of enforcement of the deed somehow allowed him to conclude the land was solely his, or that he was somehow misled by Judy's inactivity. In addition, Phil still has claims remaining against Judy for unjust enrichment, etc, which would seem available to balance out his claims that he was left alone with use and possession of the property for some time. The Court cannot find that a claim of laches is viable under these circumstances.

g) Additionally, the law generally frowns upon a change of title (or here, a re-transfer of title from Judy Cash back to Phil Cash) based purely upon equitable principles. Phil makes no

claim that Judy orally transferred the property back to him. Idaho Code § 9-503 provides: “No estate or interest in real property...can be created, granted, assigned, surrendered, or declared, otherwise than by operation of law, or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same...”

2. Petitioner’s Right to Appurtenant Water Rights

There are water rights appurtenant to the property deeded from Phil Cash to Judy Cash. Those water rights passed to Judy Cash along with the quitclaim deed in Exhibit 1 pursuant to Idaho Code § 42-1402. Phil Cash failed to show by evidence or testimony that the water rights were specifically reserved when the quitclaim deed was delivered. In addition, the water rights associated with the property at issue were later decreed by the SRBA, albeit in Phil’s name. Since the water rights at issue were entered in the SRBA decree, they have been further identified and confirmed as water rights appurtenant to the land. Thus, the water rights passed to Judy Cash via the quitclaim deed as further confirmed by the SRBA and Idaho Code § 42-1402.

Petitioner’s Right to Shares in Irrigation District

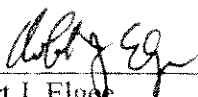
Petitioner’s shares in the Irrigation District are for water use rights. These shares are appurtenant to the land the water is applied on and follow the title to that land, unless otherwise reserved. Since the quitclaim deed makes no reservations of water rights or shares in the Twin Lakes Canal Company, Judy Cash will receive any of Phil Cash’s irrigation district shares that are applied to the land conveyed to Judy in the quitclaim deed, Exhibit 1.

ORDER

1. Judy Cash is the proper owner of the land described in Exhibit 1 in evidence. Title is quieted solely in her name. She is also the owner of all water rights appurtenant to the property described in Exhibit 1, free and clear of any claim of Phil Cash.

2. The deeds to Debra and Phil Cash described herein in paragraph (1)(e) of the Conclusions of Law are junior and inferior to the deed to Judy Cash, Exhibit 1.
3. Ownership of water rights appurtenant to the property described in Exhibit 1 and evidenced by shares in the Twin Lakes Irrigation Company in the name of Phil Cash passed to Judy Cash along with the real property described in the quitclaim deed, Exhibit 1.
4. This is not a final order from which an appeal may be taken. There are still issues to be resolved at a second trial.

Dated this 26 day of January, 2017.



Robert J. Elgee
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of January, 2017, I caused to be served a true copy of the foregoing document by the method indicated below, and addressed to each of the following:

Daniel R. Beck
Fuller & Beck Law Offices, PLLC
410 Memorial Drive, Suite 201
P.O. Box 50935
Idaho Falls, ID 83405-0935

☐ U.S. Mail, Postage Prepaid
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163 Second Avenue West
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Deputy Clerk