

IN THE COURT OF APPEALS OF THE STATE OF OREGON

THREE RIVERS LANDOWNERS
ASSOCIATION, a nonprofit corporation,

Plaintiff-Appellant,

v.

JEFFERSON COUNTY, a political
subdivision of the State of Oregon,
RALPH DEMONTE, TRUSTEE OF THE
DEMONTE FAMILY TRUST,

Defendants-Respondents,

Allen Trust Company, Trustee of the
Herbert H. Anderson and Barbara B.
Anderson Revocable Trust,

Defendants.

Jefferson County Circuit
Court No. 16CV26227

CA No. A _____

NOTICE OF APPEAL

1.

Plaintiff-Appellant, Three Rivers Landowners Association, hereby gives notice of appeal from the “General Judgment” entered in this case on August 26, 2020 and from the “Amended General Judgment” also entered on August 26, 2020, each signed by Judge Annette C. Hillman in the Jefferson County Circuit Court.

2.

The parties to this appeal are:

Plaintiff-Appellant:

Three Rivers Landowners Association

Defendants-Respondents:

Jefferson County

Ralph DeMonte, Trustee of the DeMonte Family Trust

3.

The names, bar numbers, addresses, telephone numbers, and email addresses of the parties' attorneys are:

Attorneys for Plaintiff-Appellant Three Rivers:

Michael W. Peterkin, OSB No. 823670
PETERKIN BURGESS
222 NW Irving Avenue
Bend, Oregon 97703
Phone: (541) 389-2572
Email: mwp@peterkinburgess.com

Attorneys for Defendant-Respondent Jefferson County:

Timothy G. Elliott, OSB No. 952553
ELLIOTT RIQUELME & WILSON LLP
1133 NW Wall Street, Suite 105
Bend, Oregon 97703
Phone: (541) 383-3755
Email: tim@erwattorneys.com

Attorneys for Defendant-Respondent Ralph DeMonte:

Gregory S. Hathaway, OSB No. 731240
HATHAWAY LARSON LLP
1331 NW Lovejoy Street, Suite 950
Portland, Oregon 97209
Phone: (503) 205-8400
Email: greg@hathawaylarson.com

4.

Appellant designates the record in its entirety, including the trial court file, all exhibits, and the record of all oral proceedings.

5.

This appeal is timely and otherwise properly before the Court of Appeals under ORS 19.205(1) and ORS 19.255. The Notice of Appeal was filed within 30 days of August 26, 2020, the date on which the trial court entered the General Judgment and Amended General Judgment into the court register.

6.

Appellant hereby requests copies at Appellant's expense of the audio record designated in paragraph 4 of this notice of appeal. Copies are to be served on the parties to the appeal listed in paragraph 3 of this notice of appeal.

7.

Attached to this Notice of Appeal is a true copy of the General Judgment and Amended General Judgment being appealed.

8.

The certificate of service and certificate of filing within this Notice of Appeal shows filing allowed by ORAP 16.30 (3)(a) and ORAP 16.60 and service of the Notice of Appeal consistent with the requirements of ORS 19.260 (2).

9.

CERTIFICATE OF SERVICE

I certify that on August 27, 2020, I served a true copy of this **NOTICE OF APPEAL** on:

Gregory S. Hathaway
Hathaway Larson LLP
1331 NW Lovejoy St., Suite 950
Portland, OR 97209

By United States Postal Service, certified mail, return receipt requested

Timothy G. Elliott
Elliott Riquelme & Wilson, LLP
1133 NW Wall St., Suite 105
Bend, OR 97703

By United States Postal Service, certified mail, return receipt requested

///

///

Trial Court Administrator
Jefferson County Circuit Court
Jefferson County Courthouse
129 SW E Street
Madras, Oregon 97741

By Court of Appeals' eFiling System

Transcript Coordinator
Jefferson County Circuit Court
Jefferson County Courthouse
129 SW E Street
Madras, Oregon 97741

By Court of Appeals' eFiling System

10.

CERTIFICATE OF FILING

I certify that on August 27, 2020, I filed the original of this **NOTICE OF APPEAL** on:

ATTN: Appellate Court Administrator
Appellate Court Records Section
Supreme Court Building
1163 State Street
Salem, Oregon 97301

By Court of Appeals' eFiling System

Dated this 27 day of August, 2020.

PETERKIN BURGESS

s/ Michael W. Peterkin
MICHAEL W. PETERKIN
OSB #823670
mwp@peterkinburgess.com
Of Attorneys for Plaintiff-Appellant

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF JEFFERSON

THREE RIVERS LANDOWNERS
ASSOCIATION, a nonprofit
corporation,

Plaintiff,

v.

JEFFERSON COUNTY, a political
subdivision of the state of Oregon;
Ralph DeMonte, trustee of the
DeMonte Family Trust; Allen Trust
Company, Trustee of the Herbert H.
Anderson and Barbara B. Anderson
Revocable Trust,

Defendants.

Case No. 16CV26227

GENERAL JUDGMENT

1 This matter came before the Court for trial without a jury on July 29,
2 2019 through July 30, 2019. Plaintiff Three Rivers Landowners Association
3 appeared and was represented by its attorney Michael W. Peterkin;
4 Defendant Jefferson County appeared and was represented by its attorney
5 Timothy G. Elliott; and Defendant Ralph DeMonte, trustee of the DeMonte
6 Family Trust, appeared and was represented by his attorney Gregory S.
7 Hathaway.

8 Trial proceeded on Plaintiff’s First Claim for Relief and Fourth Claim
9 for Relief respectively seeking certain declarations regarding the legal

1 existence of E.H. Sparks Road and quieting title to land allegedly
2 burdened by the road right of way.

3 Plaintiff's Second Claim for Relief against Defendant Allen Trust
4 Company, trustee of the Herbert H. Anderson and Barbara B. Anderson
5 Revocable Trust, was dismissed by a Stipulated Limited Judgment entered
6 July 23, 2019. Defendant Allen Trust Company did not appear for trial.

7 Plaintiff's Third Claim for Relief (Estoppel) against Defendant
8 County was dismissed on the Court's order entered July 29, 2019 granting
9 the County's motion for summary judgment.

10 The Court heard and considered arguments of counsel, testimony
11 of witnesses, evidence offered and received, and reviewed the record
12 including pretrial and post-trial memorandums of the parties. Prior to
13 commencement of the trial, Plaintiff requested ORCP 62 findings of fact
14 and conclusions of law. The Court took the matter under advisement and
15 issued its written opinion on May 27, 2020. The Court reviewed Plaintiff's
16 ORCP 62 B request for alternate and additional findings and conclusions
17 of law together with Defendants' ORCP 62 B objections. On August 17,
18 2020 the Court issued its amended written opinion, and made different
19 and/or additional special findings stating that any requested alternate and

1 additional findings not addressed by the Court shall conclusively be
2 deemed denied.

3 **NOW, THEREFORE, IT IS HEREBY ADJUDGED AS FOLLOWS:**

4 1. Plaintiff's First Claim for Relief for Declaratory Judgment
5 against all Defendants that no public road exists with TRRA is denied.

6 2. EH Sparks Road (the "Road") is an existing public road that
7 was not vacated by operation of law on November 7, 1900 pursuant to
8 Section 4101, Hill's Code 2d ed. (1894).

9 3. That the 1942 Heising Land Patent ("Heising Deed") is not an
10 unassailable deed absolute that did not reserve the Road, but was taken
11 subject to and burdened by preexisting lawfully opened public roads,
12 including the Road.

13 4. The Heising Deed did not extinguish or vacate the Road and
14 this fact is not altered because the Heising Deed failed to reference the
15 Road.

16 5. That the Heising Deed is not unassailable with respect to the
17 Road under or on account of 43 U.S.C.A. 2506 for the reason the Heising
18 Deed was taken subject to the Road. Because no defendant sought to annul
19 or otherwise modify the Heising Deed to impose the Road, and because

1 the Heising Deed was taken subject to it, the Court makes no finding or
2 declaration as to Defendants' standing to annul or modify the Heising
3 Deed. Such finding is precluded by, or unnecessary to, the Court's decision
4 by reason of the Court's other rulings. Similarly, because the Court found
5 that use or construction is not required to open the Road, the Court makes
6 no finding or declaration with respect to Plaintiff's requested declaration
7 in the alternative to the effect that if single-track trail of some nature was
8 used by the public prior to 1936 the burden on Plaintiff's land is consistent
9 with the scope of that use. The Court has found the Road was lawfully
10 opened in 1896 by order of the Crook County Court and such declaration
11 shall issue.

12 6. Plaintiff's Fourth Claim for Relief to quiet title is denied.

1 7. Defendants De Monte and Jefferson County are the prevailing
2 parties and are entitled to recover costs and disbursements as requested.
3 The Court will retain limited jurisdiction for that purpose.

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Signed: 8/24/2020 04:51 PM



Annette C. Hillman, Circuit Court Judge

Submitted by:
HATHAWAY LARSON LLP

By: s/Gregory S. Hathaway
Gregory S. Hathaway, OSB # 731240
1331 NW Lovejoy Street, Ste. 950
Portland, OR 97209
Telephone: 503-303-3101
greg@hathawaylarson.com

*Of Attorneys for Defendant Ralph De
Monte, Trustee*

CERTIFICATE OF COMPLIANCE WITH UTCR 5.100 (1) AND 5.100 (2)

I hereby certify that I complied with UTCR 5.100(1) with respect to the **General Judgment** to which this certificate is attached by doing the following:

This proposed order or judgment is ready for judicial signature because:

1. Each opposing party affected by this order or judgment has stipulated to the order or judgment as shown by each opposing party's signature on the document being submitted.
2. Each opposing party affected by this order or judgment has approved the order or judgment as shown by signature on the document being submitted or by written confirmation of approval sent to me.
3. I have served a copy of this order or judgment on all parties entitled to service and:
 - a. No objection has been served on me.
 - b. I received objections that I could not resolve with the opposing party despite reasonable efforts to do so. I have filed a copy of the objections I received and indicated which objections remain unresolved
 - c. After conferring about objections, _____, attorney for _____ agreed to independently file any remaining objection.
4. The relief sought is against an opposing party who has been found in default.
5. An order of default is being requested with this proposed judgment.
6. Service is not required pursuant to subsection (3) of this rule, or by statute, rule or otherwise.
7. This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims' Assistance Section as required by subsection (4) of this rule.

DATED this 24th day of August 2020.

HATHAWAY LARSON LLP

By /s/ Gregory S. Hathaway
Gregory S. Hathaway, OSB #731240
*Of Attorneys for Defendant Ralph De Monte,
Trustee*

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **GENERAL JUDGMENT** on:

Michael W. Peterkin, OSB #
823670
Peterkin & Associates
222 NW Irving Avenue
Bend, OR 97703
mwp@peterkinpc.com

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Courier
- Email
- Via Odyssey File & Serve

Timothy G. Elliott
Elliott Riquelme Wilson
1558 SW Nancy Way, Ste. 101
Bend, OR 97702
tim@erwattorneys.com

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Courier
- Email
- Via Odyssey File & Serve

DATED this 24th day of August, 2020.

HATHAWAY LARSON LLP

By: s/Gregory S. Hathaway
Gregory S. Hathaway, OSB #731240
1331 NW Lovejoy St., Ste. 950
Portland, OR 97209
Of Attorneys for Defendant Ralph De Monte, Trustee

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF JEFFERSON

THREE RIVERS LANDOWNERS
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Plaintiff,

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JEFFERSON COUNTY, a political
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Ralph DeMonte, trustee of the
DeMonte Family Trust; Allen Trust
Company, Trustee of the Herbert H.
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Revocable Trust,

Defendants.

Case No. 16CV26227

**AMENDED GENERAL
JUDGMENT**

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2 2019 through July 30, 2019. Plaintiff Three Rivers Landowners Association
3 appeared and was represented by its attorney Michael W. Peterkin;
4 Defendant Jefferson County appeared and was represented by its attorney
5 Timothy G. Elliott; and Defendant Ralph DeMonte, trustee of the DeMonte
6 Family Trust, appeared and was represented by his attorney Gregory S.
7 Hathaway.

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10 County was dismissed on the Court's order entered July 29, 2019 granting
11 the County's motion for summary judgment.

12 The Court heard and considered arguments of counsel, testimony
13 of witnesses, evidence offered and received, and reviewed the record
14 including pretrial and post-trial memorandums of the parties. Prior to
15 commencement of the trial, Plaintiff requested ORCP 62 findings of fact
16 and conclusions of law. The Court took the matter under advisement and
17 issued its written opinion on May 27, 2020. The Court reviewed Plaintiff's
18 ORCP 62 B request for alternate and additional findings and conclusions

1 of law together with Defendants' ORCP 62 B objections. On August 17,
2 2020 the Court issued its amended written opinion, and made different
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13 unassailable deed absolute that did not reserve the Road, but was taken
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1 5. That the Heising Deed is not unassailable with respect to the
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5 the Heising Deed was taken subject to it, the Court makes no finding or
6 declaration as to Defendants' standing to annul or modify the Heising
7 Deed. Such a finding is precluded by, or unnecessary to, the Court's
8 decision by reason of the Court's other rulings. Similarly, because the
9 Court found that use or construction is not required to open the Road, the
10 Court makes no finding or declaration with respect to Plaintiff's requested
11 declaration in the alternative to the effect that if single-track trail of some
12 nature was used by the public prior to 1936 the burden on Plaintiff's land
13 is consistent with the scope of that use. The Court has found the Road was
14 lawfully opened in 1896 by order of the Crook County Court and such
15 declaration shall issue.

16 6. Plaintiff's Fourth Claim for Relief to quiet title is denied.

1 7. Defendants De Monte and Jefferson County are the prevailing
2 parties and are entitled to recover costs and disbursements as requested.
3 The Court will retain limited jurisdiction for that purpose.

4

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6

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8

9

Signed: 8/25/2020 05:01 PM



Annette C. Hillman, Circuit Court Judge

Submitted by:

HATHAWAY LARSON LLP

By: s/Gregory S. Hathaway
Gregory S. Hathaway, OSB # 731240
1331 NW Lovejoy Street, Ste. 950
Portland, OR 97209
Telephone: 503-303-3101
greg@hathawaylarson.com

*Of Attorneys for Defendant Ralph De
Monte, Trustee*

CERTIFICATE OF COMPLIANCE WITH UTCR 5.100 (1) AND 5.100 (2)

I hereby certify that I complied with UTCR 5.100(1) with respect to the **Amended General Judgment** to which this certificate is attached by doing the following:

This proposed order or judgment is ready for judicial signature because:

1. Each opposing party affected by this order or judgment has stipulated to the order or judgment as shown by each opposing party's signature on the document being submitted.
2. Each opposing party affected by this order or judgment has approved the order or judgment as shown by signature on the document being submitted or by written confirmation of approval sent to me.
3. I have served a copy of this order or judgment on all parties entitled to service and:
 - a. No objection has been served on me.
 - b. I received objections that I could not resolve with the opposing party despite reasonable efforts to do so. I have filed a copy of the objections I received and indicated which objections remain unresolved
 - c. After conferring about objections, _____, attorney for _____ agreed to independently file any remaining objection.
4. The relief sought is against an opposing party who has been found in default.
5. An order of default is being requested with this proposed judgment.
6. Service is not required pursuant to subsection (3) of this rule, or by statute, rule or otherwise.
7. This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime

Victims' Assistance Section as required by subsection (4) of this rule.

DATED this 25th day of August 2020.

HATHAWAY LARSON LLP

By /s/ Gregory S. Hathaway

Gregory S. Hathaway, OSB #731240

*Of Attorneys for Defendant Ralph De Monte,
Trustee*

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **GENERAL JUDGMENT** on:

Michael W. Peterkin, OSB #
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1558 SW Nancy Way, Ste. 101
Bend, OR 97702
tim@erwattorneys.com

- U.S. Mail
- Facsimile
- Hand Delivery
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- Via Odyssey File & Serve

DATED this 25th day of August, 2020.

HATHAWAY LARSON LLP

By: s/Gregory S. Hathaway
Gregory S. Hathaway, OSB #731240
1331 NW Lovejoy St., Ste. 950
Portland, OR 97209
Of Attorneys for Defendant Ralph De Monte, Trustee