

DISTRICT COURT, BOULDER COUNTY, COLORADO <i>Court Address:</i> Boulder County Justice Center P.O. Box 4249 1777 6th Street Boulder, Colorado 80306-4249	▲ COURT USE ONLY ▲ <hr/> Case Number: 06CV982 Courtroom/Division: 12
RICHARD MCLEAN and EDITH STEVENS DK TRUST and DON KIRLIN	
Kimberly Hult, No. 31764 HUTCHINSON BLACK AND COOK, LLC 921 Walnut Street, Suite 200 Boulder, CO 80302 (303) 442-6514 (303) 442-6593 Attorneys for Plaintiffs	
MOTION FOR AMENDMENT OF JUDGMENT PURSUANT TO RULE 59(a)(4)	

Pursuant to Rule 59(a)(4) Plaintiffs Richard McLean and Edith Stevens move for an amendment of the Court's Order of October 17, 2007 for the reasons set forth below.

1. This Court conducted a bench trial of this matter on June 6-7, 2007, and July 26, 2007. By Order dated October 17, 2007, this Court found that Plaintiffs had adversely possessed the disputed land in the case and ordered title to such land transferred to Plaintiffs.

2. The Court's Order specifically held that "Plaintiffs have adversely possessed the disputed land as described in Plaintiff's Exhibit 1. The Court Orders that title to this land be transferred to Plaintiffs." Order at 9. Plaintiffs' Exhibit 1 is a Monumentation Land Survey prepared by William Wright of Drexel, Barrell & Co.

3. To define the precise legal description of the transferred land, Plaintiffs have requested that Mr. Wright prepare a "metes and bounds" description of the land based upon Plaintiffs' Exhibit 1. As set forth in the attached Exhibit A, Mr. Wright has prepared two (2) such descriptions. Mr. Wright's legal descriptions are based upon and wholly consistent with Plaintiffs' Exhibit 1 and includes one description (Exhibit 1 to the Wright Affidavit) that incorporates all of the transferred land up to the westerly edge of "Edie's Path" within the legal description of the land to be transferred, since the

Monumentation Land Survey identified only the centerline of that footpath.¹ The second description (Exhibit 2 to the Wright Affidavit) is limited to the centerline of that footpath, so would incorporate only half of the footpath.

4. To avoid any disputes regarding the chain of title, Plaintiffs respectfully request that a Judicial Decree be entered in this action, which quiets title in Plaintiffs to the disputed land and sets forth a legal description of the land so transferred in a way that includes all of Edie's Path (Exhibit 1 to the Wright Affidavit).

5. In addition, Plaintiffs note that there appears to be a few typographical errors in paragraph 1 of the Court's Findings of Fact. In particular, Plaintiffs believe that the Court intended to state the following (substituted language in bold italics).

1. The disputed property in this matter is delineated on Plaintiff's Exhibit 1 as a footpath beginning from a point on Hardscrabble Drive approximately three feet *southwest* of the *southeastern* most corner of lot 50 in the Shanahan Ridge Six Subdivision, Boulder, Colorado, and continuing in a north westerly semi-circle direction to a point approximately twelve and one tenths (12.1) feet to the *southwest* of the *northeastern* corner of lot 50. This footpath was commonly referred to throughout these proceedings as "Edie's Path."

Plaintiffs read Paragraph 1 of the Court's Findings of Fact to include the additional strip of northernmost portion of the disputed property as depicted in Plaintiffs' Exhibit 1, on which the garden and woodpile are located. See Plaintiffs' Exhibit 1. This property is, therefore, included in the metes and bounds descriptions provided by Mr. Wright, as well as the proposed Judicial Decree.

6. Plaintiffs have conferred with counsel for Defendants regarding this Motion. Defendants have indicated that they will oppose the Motion because there is no legal description in the record upon which the Court may rely. Defendants also indicated, however, that they may stipulate to the legal description prepared by Mr. Wright after reviewing it with their own surveyor.

7. The proposed form of Judicial Decree is being filed concurrently.

¹ At trial, Mr. Wright testified that the land monumentation survey specifically referenced the centerline of that path: "[W]e took observation along the approximate center line." June 6, 2007 Transcript at 217, ln 24-25.

Dated: October 29, 2007

Respectfully submitted,

HUTCHINSON BLACK AND COOK,
LLC

*/s/ Original maintained at
Hutchinson Black and Cook LLC*

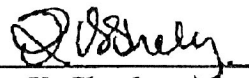
By: _____

Kimberly M. Hult, No. 31764
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on October 29, 2007 the foregoing Plaintiffs' Motion for Amendment of Judgment was filed and served using CourtLink, which will serve the following party:

William J. Kowalski
Timothy J. O'Neill
Caplan and Earnest LLC
1800 Broadway, Suite 200
Boulder, CO 80302-5289



Dawn K. Sheely

DISTRICT COURT, BOULDER COUNTY, COLORADO

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Plaintiffs: RICHARD MCLEAN and EDITH STEVENS

▲ COURT USE ONLY ▲

Defendants: SUSAN KIRLIN as Trustee of the DK TRUST
and DON KIRLIN

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Case Number: 06 CV 982
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Attorneys for Plaintiffs
Richard McLean and Edith Stevens

AFFIDAVIT OF WILLIAM K. WRIGHT

I, William K. Wright, make the following statements based on my personal knowledge and could competently testify as follows:

1. I am a licensed, professional land surveyor, and I prepared Plaintiffs' Exhibit 1, about which I testified on June 6, 2007, at the trial of this matter.

2. Attached hereto are two (2) true and correct legal descriptions of the disputed property as depicted in Plaintiffs' Exhibit 1. Because the approximate centerline of "Edie's Path" was depicted in Plaintiffs' Exhibit 1, the Legal Description attached hereto as Exhibit 1 adds nine (9) inches to the description along that path to capture all of Edie's Path. The footpath, as described, is 18 inches wide. The Legal Description attached as Exhibit 2 is limited to just the centerline of the path, as depicted in Plaintiffs' Exhibit 1.

