

2004

John R. Sudweeks and Deanna Sudweeks v. Miguel David Gedo and Maria A. Sanchez : Brief of Appellee

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Brett C. Anderson; Witt, Morley, Anderson; counsel for appellee.

Miguel David Gedo, Maria A. Sanchez; appellants pro se.

Recommended Citation

Brief of Appellee, *Gedo v. Sudweeks*, No. 20040767 (Utah Court of Appeals, 2004).

https://digitalcommons.law.byu.edu/byu_ca2/5199

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE COURT OF APPEALS OF THE STATE OF UTAH

JOHN R. SUDWEEKS and
DEANNA SUDWEEKS,

Plaintiffs/Appellees,

vs.

MIGUEL DAVID GEDO and
MARIA A. SANCHEZ,

Defendants/Appellants.

Case No. 20040767-CA

APPEAL FROM A FINAL JUDGMENT
OF THE FOURTH DISTRICT COURT OF UTAH COUNTY, UTAH
THE HONORABLE JAMES R. TAYLOR

BRIEF FOR APPELLEES, JOHN R. SUDWEEKS AND DEANNA SUDWEEKS

MIGUEL DAVID GEDO
MARIA A. SANCHEZ
1451 S. 50 E.
Orem, Utah 84058

BRETT C. ANDERSON
WITT, MORLEY & ANDERSON
Attorney for Appellees
110 S. Main St.
Pleasant Grove, UT 84062

FILED
UTAH APPELLATE COURTS
FEB 2005

IN THE COURT OF APPEALS OF THE STATE OF UTAH

JOHN R. SUDWEEKS and
DEANNA SUDWEEKS,

Plaintiffs/Appellees,

vs.

MIGUEL DAVID GEDO and
MARIA A. SANCHEZ,

Defendants/Appellants.

Case No. 20040767-CA

APPEAL FROM A FINAL JUDGMENT
OF THE FOURTH DISTRICT COURT OF UTAH COUNTY, UTAH
THE HONORABLE JAMES R. TAYLOR

BRIEF FOR APPELLEES, JOHN R. SUDWEEKS AND DEANNA SUDWEEKS

MIGUEL DAVID GEDO
MARIA A. SANCHEZ
1451 S. 50 E.
Orem, Utah 84058

BRETT C. ANDERSON
WITT, MORLEY & ANDERSON
Attorney for Appellees
110 S. Main St.
Pleasant Grove, UT 84062

TABLE OF CONTENTS

CASES.....	2
STATUTES.....	3
OTHER AUTHORITIES.....	3
STATEMENT OF JURISDICTION.....	3
STATEMENT OF THE ISSUES.....	3
CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES, AND REGULATIONS	16
STATEMENT OF THE CASE.....	17
STATEMENT OF FACTS.....	20
SUMMARY OF THE ARGUMENT.....	26
ARGUMENT	26
I. GEDO FAILED TO MARSHAL EVIDENCE AS REQUIRED ON APPEAL.....	29
A. <i>A Pro Se Litigant Cannot Avoid the Marshaling Requirement</i>	29
II. THE TRIAL COURT PROPERLY QUIETED TITLE IN THE SUDWEEKS.	31
A. <i>Sudweeks Presented Credible, Authoritative Evidence at Trial Regarding Correct Boundary Lines and Ownership of the Disputed Property</i>	31
B. <i>Gedo Cannot Claim to Be a Good Faith or Bona Fide Purchaser</i>	34
C. <i>Gedo's Deed Was Void for Want of a Grantor</i>	35
III. GEDO'S CLAIMS OF PROCEDURAL ERRORS ARE WITHOUT MERIT.	35
IV. GEDO'S CLAIMS OF CONSPIRACY AND EX PARTE COMMUNICATION ARE UNDERMINED BY FACTS IN THE RECORD	41
V. ATTORNEYS FEES WERE PROPERLY AWARDED AGAINST TWO DEFENDANTS FOR CONTEMPT UNDER THE TEMPORARY RESTRAINING ORDER.....	42

CONCLUSION	43
------------------	----

ADDENDUM

TABLE OF AUTHORITIES

Cases

<u>438 Main St. v. Easy Heat, Inc.</u> , 99 P.3d 801 (UT 2004).....	8, 9
<u>Anderson Development, Co. v. Tobias</u> , 116 P.3d 323, 331 (UT 2005).....	7
<u>Beaver County v. Quest, Inc.</u> , 31 P.3d 1147, 1149 (UT 2001)	5
<u>Bradshaw v. Kershaw</u> , 627 P.2d 528, 533 (Utah 1981).....	42
<u>Chen v. Stewart</u> , 123 P.3d 416, 425 (UT 2005)	12,30
<u>Colosmio v. Roman Catholic Bishop of Salt Lake City</u> , 104 P.3d 646, 651 (Ut. App. 2004)	4,16
<u>Gilbert v. Cosco, Inc.</u> , 989 F.2d 399, 403 (10 th Cir. 1993).....	36
<u>Hanks v. Christensen</u> , 354 P.2d 564 (UT 1960).....	7,9,10,11
<u>Jeffs v. Stubbs</u> , 970 P.2d 1234, 1244 (UT 1998)	13
<u>Johnson v. Peck</u> , 63 P.2d 251 (UT 1936).....	40
<u>Meagher v. Dean</u> , 91 P.2d 454 (Utah, 1939).....	34
<u>Neely v. Bennett</u> , 51 P.3d 724 (Utah App. 2002).....	30
<u>Nelson v. Jacobsen</u> , 669 P.2d 1207, 1213 (UT 1983)	29
<u>Norman v. Arnold</u> , 57 P.3d 997 (UT 2002)	40
<u>Pau v. Yosemite Park and Curry Co.</u> , 928 F.2d 880, 885 (9 th Cir. 1991).....	37
<u>Pender v. Dowse</u> , 265 P.2d 644 (UT 1954).....	35
<u>Platts v. Parents Helping Parents</u> , 947 P.2d 658, 661 (UT 1997)	6,11,14,15
<u>Pledger v. Gillespie</u> , 982 P.2d 572 (UT 1999)	6
<u>Pride Stables v. Homestead Golf Club, Inc.</u> , 82 P.3d 198 (Ut. App. 2003)	11
<u>Smith v. Welch</u> , 189 F.2d 832, 835 (10 th Cir. 1951).....	37
<u>State v. Cruz-Meza</u> , 76 P.3d 1165 (UT 2003).....	12
<u>State v. Hilton</u> , 121 P.3d 42, 46 (UT 2005).....	13
<u>State v. Spry</u> , 21 P.3d 675 (Ut. App. 2001).....	9,10,14,15,16
<u>State v. Taylor</u> , 884 P.2d 1293, 1296 (Utah Ct. App. 1994)	6
<u>State v. Whittle</u> , 989 P.2d 52 (UT 1999).....	12
<u>Strawberry Elec. Serv. Dist. v. Spanish Fork City</u> , 918 P.2d 870, 881 (UT 1996).....	8,9,38
<u>United States v. Wheeler</u> , 444 F.2d 385, 390 (10 th Cir. 1971).....	36
<u>Webb v. Webb</u> , 209 P.2d 201 (UT 1949).....	40
<u>Wilson v. Schneider's Riverside Golf Course</u> , 523 P.2d 1226 (UT 1974).....	34

Statutes	
Utah Code Ann. § 57-1-4	35
Utah Code Ann. § 57-3-102	26,34
Utah Code Ann. § 78-2-2(4).....	3
Utah Code Ann. § 78-2a-3(J)	3
Utah Code Ann. § 78-32-11	42

Utah Rules of Civil Procedure:

a. 5(d).....	38,40
b. 12(b)	38
c. 10(f)	4
d. 38(b) and (d).....	40
e. 63(b)(c)(2)	38

Other Authorities	
17 C.J.S. Contempt § 117 (1995)	42

STATEMENT OF JURISDICTION

The Utah Court of Appeals has jurisdiction to review this appeal from the judgment of the Fourth Judicial District Court in and for Utah County, State of Utah, dated August 3, 2004, pursuant to Utah Code Ann. §§ 78-2-2(4) (Supreme Court authority to transfer case to Ct. of App.) and 78-2a-3(J) (jurisdiction over cases transferred by Supreme Ct.).

STATEMENT OF THE ISSUES

The following is a verbatim presentation of issues presented by Appellants (hereafter, “Gedo”) in Gedo’s brief. Following each issue statement, Appellees (hereafter, “Sudweeks”) present the applicable standard of review.

ISSUE NO. 1. “Whether the trial court erred by allowing Appellees to commence this action alleging 5 (five) causes of action, to wit:

- (a) Boundary by acquiescence.
- (b) Prescriptive easement.
- (c) Trespass by Miguel David Gedo, James Gedo, and Maria Angelica Sanchez.
- (d) Forcible detainer by David Gedo, James Gedo, and Maria Angelica Sanchez.
- (e) Injunction;”

Standard of Review. As presented, this issue appears to suggest that the trial court should not have permitted Appellees to file their complaint with five causes of action related to ownership and control of real property in dispute. The statement thus presents a threshold question of the Sudweeks’ right of access to the court, and secondly, a question of the trial court’s discretion in dismissing claims.

Art. 1. § 11, Utah Constitution guarantees every person the right to a remedy by due course of law. Constitutional challenges to the application of statutes constitute questions of law which the appellate court reviews for correctness. Colosmio v. Roman Catholic Bishop of Salt Lake City, 104 P.3d 646, 651 (Ut. App. 2004).

Dismissal of actions in the trial court is governed under Utah R. Civ. P. 41. A trial court’s decision as to dismissal of claims for either lack of standing, jurisdiction or content, as broadly articulated in Utah R. Civ. P. 12(b), is subjected to a de novo review on appeal.

This issue was not preserved in the trial court. Gedo filed an answer to the subject complaint on June 4, 2001 wherein Gedo denied the “substantial allegations” and thereafter alleged counter-suit on a variety of claims including attempted theft, conspiracy, assault and impersonation of an officer. (Gedo Brief, Addendum #5)

ISSUE NO. 2. “Whether the trial court erred when Appellant challenged the jurisdiction of the court and made special appearance only to present official muniments of ownership sufficient to raise the issues of:

(a) Show there were no issues of title, or quiet title or boundary by acquiescence or prescriptive easement or trespass or forcible detainer or any other cause of action within the jurisdiction of the court relating to this case.

(b) Show that Appellees allegations and claims against Appellant failed to be factually and legally sufficient to show justiciability of the issues between them and the subject parcel to this action.

(c) Show lack of sufficient personal interest on the part of Appellees to confer standing to prosecute any claim against these Appellants.

(d) Show the absence of any private right of action in favor of Appellees.

(e) Show a proper basis for Appellees to accuse Appellant for contempt of the court and impose summary incarceration of Appellants due to non-adjudicated claim that Appellants committed crime against Appellees as a contempt of the trial court.

(f) Show that Appellees allegations and claims against Appellant were factually and legally insufficient to show that Appellants had violated mandatory state law governing the protection of, ownership of, use of and possession of private real estate.”

Standard of Review. As presented, this issue implies the improper exercise of jurisdiction; either subject matter or personal. Questions as to whether a court has subject matter jurisdiction are questions of law which the Court reviews for correctness, according no deference to the trial court’s determination. Beaver County v. Quest, Inc., 31 P.3d 1147, 1149 (UT 2001)

According to trial court documents filed and in the Sudweeks’ possession, this issue was not preserved in the trial court. No limited or special appearance was provided to the Sudweeks counsel. Gedo filed an answer to the Sudweeks complaint on June 4, 2001.

ISSUE NO. 3. “Whether the trial court erred by failing to properly consider Appellants timely Notice that the principles of laches precludes Appellee from bringing this action due to Appellees unreasonable delay and negligence in pursuing Appellees claim.”

Standard of Review. This issue, as presented, appears to raise either a question of fact as to whether an affirmative defense was timely asserted, or a question of law as

whether the trial court properly applied the law to facts presented. Questions of fact are reviewed under a clearly erroneous standard, with deference given to the trial court. Platts v. Parents Helping Parents, 947 P.2d 658, 661 (UT 1997). The trial court's application of law to the facts is reviewed for abuse of discretion. Id. Actions or events relating to waiver are factual in nature and should be reviewed as factual determinations, to which the appellate court gives a district court deference. Pledger v. Gillespie, 982 P.2d 572 (UT 1999).

This issue was not preserved in the trial court. Sudweeks can find no presentation of an affirmative defense by Gedo. Gedo answered Sudweeks' complaint on June 4, 2001. Said answer contained no affirmative defenses or mention of "laches" but rather, requested a trial setting at the soonest possible date. (Gedo Brief, Addendum #5)

ISSUE NO. 4. "Whether the trial court erred when it denied Appellants' motion to dismiss and denied Appellant's request for declaratory judgment and summary judgment against Appellee based upon Appellants officially recorded muniments of ownership, and records of tax payments and presumptions of possession and ownership according to Utah Code and based upon Appellants official survey plat map, all of which are redundantly dispositive of Appellees claims against Appellants."

Standard of Review. As stated, this issue raises a question of law with regard to a motion to dismiss, as well as issues of law related to summary judgment. A trial court's ruling on a motion to dismiss is a question of law, reviewed for correctness, with no deference to the district court's ruling. State v. Taylor, 884 P.2d 1293, 1296 (Utah Ct. App. 1994). No appeal lies from denial of summary judgment (Utah R. Civ. P. rule 56) however, a court's denial of summary judgment is reviewed for correctness, with no

deference to the trial court's determinations. Anderson Development, Co. v. Tobias, 116 P.3d 323, 331 (UT 2005).

This issue was not specifically preserved in the trial court by any filing or written objection to the court's order. Moreover, no motions matching the description provided were supplied to Sudweeks, and neither are believed to be part of any court proceeding in this matter.

ISSUE NO. 5. "Whether the trial court erred by allowing Appellees (sic) attorney to fail to respond to many official documents and issues properly interjected by Appellant into this case and which established justiciable issues and requests for the court to rule upon."

Standard of Review. As stated, this issue appears to present a question as to the trial court's conduct and handling of discovery, hearings and other aspects of litigation—and papers which may or may not have been properly presented by Gedo in the process. A trial court judge's rulings related to management of a case are not disturbed unless they are clearly arbitrary and unreasonable and prejudice the objecting party. Hanks v. Christensen, 354 P.2d 564 (UT 1960).

This issue was not preserved in the trial court by any filing in Sudweeks' possession, nor do Sudweeks possess any document to which the "issue" might refer.

ISSUE NO. 6. "Whether the trial court Judge Hansen erred by issuing a preliminary injunction and/or temporary restraining order, when and while the court failed to require Appellee to provide the court with verifiable articulable probable cause in support of Appellees (sic) motion for temporary restraining order."

Standard of Review. As stated, this issue raises the question of the trial court judge's ruling on facts presented in favor of injunctive relief. On appellate review, a grant of injunction is overturned only upon showing that the district court abused its

discretion or that the decision is clearly against the weight of the evidence. Strawberry Elec. Serv. Dist. v. Spanish Fork City, 918 P.2d 870, 881 (UT 1996).

This issue is believed to have been preserved in the trial court inasmuch as the issue of injunctive relief for the Sudweeks was presented to the trial court, with an opportunity for ruling. 438 Main St. v. Easy Heat, Inc., 99 P.3d 801 (UT 2004).

ISSUE NO. 7. “Whether the Court erred by committing unlawful actions of issuing an injunction when and while Appellee failed to show then and now can not show any proper evidence of ownership.”

Standard of Review. As stated, this issue appears to question the trial court’s ruling on a motion for injunctive relief. Rulings on injunction motions are reviewed for abuse of discretion and will only be overturned if there is a showing that the district court abused its discretion or that the decision is clearly against the weight of the evidence. Strawberry Elec. Serv. Dist. v. Spanish Fork City, 918 P.2d 870, 881 (UT 1996).

This issue was preserved in the trial court inasmuch as the issue of injunctive relief for Sudweeks was presented to the trial court, with an opportunity for ruling. 438 Main St. v. Easy Heat, Inc., 99 P.3d 801 (UT 2004).

ISSUE NO. 8. “Whether the trial court erred when it denied Appellants (sic) motion for a temporary restraining order and preliminary injunction against Appellees when and while Appellants had then and have now all of the official muniments of ownership pertaining to the subject parcel.”

Standard of Review. As stated, this issue appears to question the trial court’s ruling on a motion for injunctive relief. Rulings on injunction motions are reviewed for abuse of discretion and will only be overturned if there is a showing that the district court

abused its discretion or that the decision is clearly against the weight of the evidence.

Strawberry Elec. Serv. Dist. v. Spanish Fork City, 918 P.2d 870, 881 (UT 1996).

This issue is believed to have been preserved in the trial court inasmuch as the issue of injunctive relief for Sudweeks was presented to the trial court, with an opportunity for ruling. 438 Main St. v. Easy Heat, Inc., 99 P.3d 801 (UT 2004).

ISSUE NO. 9. “Whether the trial court erred when it allowed Appellees (sic) attorney, Judge Taylor and the State of Utah Fourth District Court personnel tampering with the State of Utah Rules of Civil Procedure process and the U.S. Postal Service system, all of which resulted in numerous official failures to timely notify Appellant of crucial, indispensable hearings, documents, litigation and other information pertinent to this case, all of which are required by law to be noticed to Appellant affirmatively throughout this action.”

Standard of Review. As stated, this issue suggests the judicial mishandling of procedural requirements. The proper interpretation of a rule of procedure is a question of law and is reviewed for correctness. State v. Spry, 21 P.3d 675 (Ut. App. 2001). A trial court judge’s rulings related to management of a case are not disturbed unless they are clearly arbitrary and unreasonable and prejudice the objecting party. Hanks v. Christensen, 354 P.2d 564 (UT 1960).

This issue was not preserved in the trial court by any filing properly served upon the Sudweeks.

ISSUES NO. 10. “Whether the trial court erred when on June 19, 2003, Appellee scheduled pretrial conference ex parte for change of judge from Judge Hansen, Division 7 Civil, to Judge Taylor, Division 1 Criminal Felony in violation of Utah Rules of Civil Procedure, Rule 63A Change of judge as a matter of right.”

Standard of Review. As stated, this issue calls into question procedural matters having to do with a change of the judge assigned in the trial court. The proper

interpretation of a rule of procedure is a question of law and is reviewed for correctness.

State v. Spry, 21 P.3d 675 (Ut. App. 2001). A trial court judge's rulings related to management of a case are not disturbed unless they are clearly arbitrary and unreasonable and prejudice the objecting party. Hanks v. Christensen, 354 P.2d 564 (UT 1960).

This issue was not preserved in the trial court by any document filed in the trial court and in the possession of the Sudweeks.

ISSUE NO. 11. "Whether the trial court erred by conducting ex parte hearings with Judge Taylor and Appellee, which resulted in (sic) summary deprivation of Appellants (sic) civil rights by Appellee and Judge Taylor court."

Standard of Review. As stated, this issue presents accusations of judicial misconduct. The proper interpretation of a rule of procedure is a question of law and is reviewed for correctness. State v. Spry, 21 P.3d 675 (Ut. App. 2001). A trial court judge's rulings related to management of a case are not disturbed unless they are clearly arbitrary and unreasonable and prejudice the objecting party. Hanks v. Christensen, 354 P.2d 564 (UT 1960).

This issue was not preserved in any document filed and in the possession of the Sudweeks.

ISSUE NO. 12. "Whether the trial court erred by allowing the complaint to be materially changed by Appellee and the trial court ex parte."

Standard of Review. As stated, this issue calls into question the matters of civil procedure in the trial court's administration of the case. The proper interpretation of a rule of procedure is a question of law and is reviewed for correctness. State v. Spry, 21 P.3d 675 (Ut. App. 2001). A trial court judge's rulings related to management of a case

are not disturbed unless they are clearly arbitrary and unreasonable and prejudice the objecting party. Hanks v. Christensen, 354 P.2d 564 (UT 1960). Furthermore, whether to grant or deny a motion to amend is a matter within the broad discretion of the trial court and will not be disturbed on appeal unless the appealing party established an abuse of discretion resulting in prejudice. Pride Stables v. Homestead Golf Club, Inc., 82 P.3d 198 (Ut. App. 2003).

This issue was not preserved in the trial court by any document filed with the court and in the Sudweeks' possession.

ISSUE NO. 13. "Whether the reviewing judge erred by denying Appellants (sic) motion for Change of Judge under Utah Rules of Civil Procedure, Rule 63(b)."

Standard of Review. As stated this issue raises a question of judicial administration of the case below. A trial court judge's rulings related to management of a case are not disturbed unless they are clearly arbitrary and unreasonable and prejudice the objecting party. Hanks v. Christensen, 354 P.2d 564 (UT 1960).

This issue was preserved in the trial court by virtue of Gedo filing a Request for Change of Judge, thus presenting the issue for the court's consideration and ruling.

ISSUE NO. 14. "Whether the trial court erred in denying Appellants (sic) timely request for Jury Trial."

Standard of Review. This issue presents a question of fact as to the timeliness of the request for jury trial and a question of law as to the trial court's application of law to facts. Questions of fact are reviewed under a clearly erroneous standard, with deference given to the trial court. Platts v. Parents Helping Parents, 947 P.2d 658, 661 (UT 1997). The trial court's application of law to the facts is reviewed for abuse of discretion. Id.

This issue was not preserved in the trial court by virtue of Gedo making the request and thus presenting the issue for the court's consideration and ruling.

ISSUE NO. 15. "Whether the trial court erred when it allowed the Appellee at trial for this case, to enter into evidence, over appellant's instant, timely and proper objection, an unofficial criminal simulation plat map and which that said objection immediately sent Appellant to jail summarily."

Standard of Review. This issue, as stated, calls into question the trial court's handling of evidence. The admission or exclusion of evidence is a question of law reviewed on appeal under an abuse of discretion standard. Chen v. Stewart, 123 P.3d 416, 425 (UT 2005); also, State v. Cruz-Meza, 76 P.3d 1165 (UT 2003); State v. Whittle, 989 P.2d 52 (UT 1999).

This issue may have been preserved in the trial court by Gedo's filing of a "Demand to Quash Complaint, Terminate Injunction and Litigation Fees" wherein Gedo challenged the authenticity and reliability of Sudweeks evidence and accused the trial court of rejecting Gedo's proffer of evidence. (Gedo Brief, Addendum #5)

ISSUE NO. 16. "Whether the trial court erred when it allowed presentation by official surveyor John B. Stahl of an unrecorded plat map as evidence of Appellees ownership of the subject parcel, and which said criminal simulation plat map has not to this day been recorded at the Utah County Records office."

Standard of Review. This issue, as stated, appears to be redundant to the previously-stated issue, and calls into question the trial court's handling of evidence. The admission or exclusion of evidence is a question of law reviewed on appeal under an abuse of discretion standard. Chen v. Stewart, 123 P.3d 416, 425 (UT 2005); also, State v. Cruz-Meza, 76 P.3d 1165 (UT 2003); State v. Whittle, 989 P.2d 52 (UT 1999).

This issue may have been preserved in the trial court by Gedo's filing of a "Demand to Quash Complaint, Terminate Injunction and Litigation Fees" wherein Gedo challenged the authenticity and reliability of Sudweeks evidence and accused the trial court of rejecting Gedo's proffer of evidence. (Gedo Brief, Addendum #5)

ISSUE NO. 17. "Whether the trial court erred by dismissing at the conclusion of trial all of Appellees (sic) original claims that were used by Appellee as justification for the issuance under oath, of Temporary Restraining Order and Preliminary Injunction and (sic) quieted Appellants (sic) title to the parcel to Appellees."

Standard of Review. As stated, this issue calls into question the substance of the trial court's final legal conclusions and order. The trial court's factual findings are reviewed for clear error and its legal conclusions for correctness. State v. Hilton, 121 P.3d 42, 46 (UT 2005); Jeffs v. Stubbs, 970 P.2d 1234, 1244 (UT 1998).

This issue may have been preserved in the trial court, to the extent that Gedo's filing of a notice of appeal could preserve issues related to final orders—but it was not presented to the Sudweeks prior to Gedo's initial brief, as it was not mentioned in the Gedo Docketing Statement.

ISSUE NO. 18. "Whether the trial court erred by failing in the final order to direct Appellants to deliver the warranty deed or other documents to Appellee as required by Utah Code, Utah Rules of Civil Procedure, Rule 70, Judgment for specific acts; vesting title, and thereby properly resulting in nullification of all the court judgment and orders in this case."

Standard of Review. As stated, this issue appears to raise questions as to the sufficiency of the trial court's final order. A trial court's factual findings are reviewed for clear error and its legal conclusions for correctness. State v. Hilton, 121 P.3d 42, 46 (UT 2005); Jeffs v. Stubbs, 970 P.2d 1234, 1244 (UT 1998).

This issue may have been preserved in the trial court, to the extent that Gedo's filing of a notice of appeal could preserve issues related to final orders—but it was not presented to the Sudweeks prior to Gedo's initial brief, as it was not mentioned in the Gedo Docketing Statement.

ISSUE NO. 19. "Whether the trial court erred by failing to require Appellees to prepare the final order within the time limits of Utah Rules of Civil Procedure, Rule 58A. (d) Entry, and Rule 5, Service."

Standard of Review. As stated, this issue appears to raise a question as to the trial court's application of procedural rules and a question of fact as to timeliness of the final order. Questions of fact are reviewed under a clearly erroneous standard, with deference given to the trial court. Platts v. Parents Helping Parents, 947 P.2d 658, 661 (UT 1997). The trial court's application of law to the facts is reviewed for abuse of discretion. Id. The proper interpretation of a rule of procedure is a question of law and is reviewed for correctness. State v. Spry, 21 P.3d 675 (Ut. App. 2001).

This issue may have been preserved in the trial court, to the extent that Gedo's filing of a notice of appeal could preserve issues related to final orders—but it was not presented to the Sudweeks prior to Gedo's initial brief, as it was not mentioned in the Gedo Docketing Statement.

ISSUE NO. 20. "Whether the trial court erred when months after trial and without proper notice to Appellant, Judge Taylor peremptorily signed and mailed copy of the final order in this case to (sic) Appellants several year old officially superceded address in a blatant attempt to deprive Appellants of their right of appeal, and post judgment remedies."

Standard of Review. As stated, this issue appears to raise a question as to the trial court's application of procedural rules and a question of fact as to timeliness of the

signing and mailing of the final order. Questions of fact are reviewed under a clearly erroneous standard, with deference given to the trial court. Platts v. Parents Helping Parents, 947 P.2d 658, 661 (UT 1997). The trial court's application of law to the facts is reviewed for abuse of discretion. Id. The proper interpretation of a rule of procedure is a question of law and is reviewed for correctness. State v. Spry, 21 P.3d 675 (Ut. App. 2001).

This issue may have been preserved in the trial court, to the extent that Gedo's filing of a notice of appeal could preserve issues related to final orders—but it was not presented to the Sudweeks prior to Gedo's initial brief, as it was not mentioned in the Gedo Docketing Statement.

ISSUE NO. 21. “Whether the Court erred when, as shown by Court records, the court (sic) failed to send Appellant copy of the final order in violation of Appellants right to due process, notice and opportunity to defend with post judgment remedies and to legally challenge the trial court final orders in this case.”

Standard of Review. As stated, this issue raises a question of civil procedure post-judgment. The proper interpretation of a rule of procedure is a question of law and is reviewed for correctness. State v. Spry, 21 P.3d 675 (Ut. App. 2001). Questions of fact as to the timeliness of mailing or circumstances surrounding that process would be reviewed under a clearly erroneous standard, with deference given to the trial court. Platts v. Parents Helping Parents, 947 P.2d 658, 661 (UT 1997).

This issue may have been preserved in the trial court, to the extent that Gedo's filing of a notice of appeal could preserve issues related to final orders—but it was not presented to the Sudweeks prior to Gedo's initial brief, as it was not mentioned in the Gedo Docketing Statement.

ISSUE NO. 22. “Whether the court erred by denying Appellant the protection of the due process clauses included in all three of the United States of America Constitution, the State of Utah Constitution and the Utah Code Annotated Rules of Civil Procedure and other holdings in the Utah Code, and all of which are specifically constructed to insure, simplify and expedite the resolution of frivolous lawsuits from escalation from one 15 (fifteen) minute pretrial hearing to a case that has lasted 4 (four) years wherein Appellants have been subjected to involuntary servitude of being deprived of officially recorded real property and forced to litigate against professional attorneys without the assistance of counsel to protect and defend their officially owned realty, and continues to this very day.”

Standard of Review. As stated by Gedo, this issue implies a question of due process violations arising from the redundant challenge to the trial court’s management of the case below. Constitutional challenges to the application of statutes constitute questions of law which the appellate court reviews for correctness. Colosmio v. Roman Catholic Bishop of Salt Lake City, 104 P.3d 646, 651 (Ut. App. 2004). The proper interpretation of a rule of procedure is a question of law and is reviewed for correctness. State v. Spry, 21 P.3d 675 (Ut. App. 2001).

This issue was not specifically preserved in the trial court by any document filed with the court and in the Sudweeks’ possession. It is noted, however, that among the allegations raised in Gedo’s “Demand to Quash Complaint, Terminate Injunction and Litigation Fees” and Gedo’s “Request to Change Judge” are references to the deprivation of Constitutional rights.

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES, AND REGULATIONS

The full text of cited provisions, statutes, ordinances, rules and regulations is included in Exhibit “A” of the Addendum hereto.

1. United States Constitution, 1st Amendment (right to petition for redress)

2. United States Constitution, 14th Amendment (due process)
3. Utah Constitution, Art. 1. § 11 (right to a remedy by due course of law)
4. Utah Rules of Civil Procedure:
 - a. 5(d)
 - b. 10(f)
 - c. 12(b)
 - d. 38(b) and (d)
 - e. 63(b)(c)(2)

STATEMENT OF THE CASE

Nature of the Case

Gedo has appealed a final order entitled “Order and Judgment” filed August 3, 2004 in the Fourth District Court in and for Utah County by Judge James R. Taylor.

The case arises from conflicting claims of ownership of a 33’ wide strip of land running South and away from 200 South Street (Battle Creek Drive) in Pleasant Grove, Utah at approximately 1610 East (the “disputed property”). The disputed property was part of the Sudweeks property description when they purchased two adjoining lots at 200 South, 1610 East, Pleasant Grove, Utah in 1972. From the time of their purchase, the Sudweeks treated the land in all respects as belonging to them by landscaping, improving and using the land—as well as paying taxes assessed for the land. The conflict with Gedo (Miguel David Gedo, James Gedo and Maria Sanchez) began in the spring of 2001, 29 years after the Sudweeks’ purchase.

Sometime after 1999, Gedo began to occasionally use the strip of land to access property Gedo had purchased South and East of the Sudweeks property. Noting the Gedo

intrusion, Sudweeks filed an action May 10, 2001 in the Fourth District Court in Provo, Utah, seeking to quiet title to the 33' strip of property. Summons and complaint were served upon Gedo May 18, 2001 and a hand-written answer to the complaint was filed June 4, 2001.

In reaction to the Sudweeks complaint, Gedo parked a wrecking truck directly in front of Sudweeks' motor home which was parked on the strip of land. The positioning of Gedo's wrecking truck preventing use or movement of the motor home. On or about July 2, 2001, James and Miguel Gedo threatened John Sudweeks' health and safety and that of his wife and family. A temporary restraining order was issued and then, after a hearing on the matter, in which the Gedo defendants were present and heard, Judge Hansen subsequently converted the TRO to a Preliminary Injunction against David and James Gedo.

Course of Proceeding and Disposition Below

By motion the Sudweeks were permitted to amend their complaint in 2003 to add causes of action for boundary by acquiescence and prescriptive easement.

Trial took place December 15 and 16, 2003. During opening statements, David Gedo ignored the court's repeated direction to be quiet and wait his turn and was eventually found in contempt and temporarily incarcerated. He was then permitted to re-enter the court room to continue the trial, on his promise to be quiet and wait his turn. All the evidence relied upon in the Court's findings and ruling was presented after all Defendants were again present in the court, with opportunity to examine and cross-examine witnesses.

In its final Order and Judgment entered August 3, 2004, the trial court found that based on the evidence presented by Sudweeks and their witnesses, the 33' wide strip of land did not validly exist and the county maps indicating its existence were in error. The Court found that a mistaken description in a neighboring lot, made years earlier, had been propagated into descriptions for the Sudweeks' lots, resulting in a gap 33' wide that the Utah County Recorder's office had shown, at various times, in various places on maps.

With chain of title research on all affected lots, and a comprehensive survey of the same, a corrected property description was drafted which, when compared to existing, historic fence lines and markers, exactly fit those indicia for the two lots purchased by Sudweeks in 1972, and for each of the neighboring lots as well.

Based on these findings, the court quieted title to the disputed 33' wide parcel in Sudweeks. The court then dismissed alternative claims by Sudweeks for boundary by acquiescence and prescriptive easement as unnecessary or moot. By Sudweeks' own motion, the court then dismissed the forcible detainer action. Finally, finding that Gedo claimed rightful use of the disputed parcel, the court dismissed Sudweeks' trespass claim.

The court then proceeded to find that Miguel David Gedo and James Gedo had violated the Temporary Restraining Order and Preliminary Injunction entered by the court in September 2001 by placing threatening telephone calls to Sudweeks on or about June 24 and June 26, 2003. The court therefore found David and James Gedo in contempt and granted Sudweeks a permanent injunction, restraining Gedo from using, occupying or trespassing on the Sudweeks' property, including the disputed parcel, and from having any contact with Sudweeks or Sudweeks' family members, and then

awarded attorney fees and costs of \$14,182.70 to be paid by the two Defendants found in contempt.

Prior to the trial court signing its final order, Gedo had filed a notice of appeal January 9, 2004 and then an attempted “Docketing Statement” on March 19, 2004 and a transcript request April 26, 2004. The Court of Appeals, on a sua sponte Motion for Summary Disposition filed April 2, 2004, called for memoranda from Gedo and Sudweeks as to whether or not the Gedo appeal filed January 9, 2004 should be dismissed for lack of jurisdiction. The Court of Appeals declined to exercise jurisdiction and dismissed the first Gedo appeal June 17, 2004.

Upon presentation of an affidavit of attorney fees and costs to the trial court, the trial court, Judge James Taylor, entered Order and Judgment as a final order in the case on August 3, 2004. This appeal followed.

STATEMENT OF FACTS

It is noted that Rule 24, Utah R. App. P. requires as part of the Statement of Facts, references to proceedings below as cited in the record of the case. As the appellate court record shows, Gedo first failed to request a transcript under Rule 11, Ut. R. App. P., and then failed to submit a statement of evidence as required under Rule 11(g), Ut. R. App. P. Since no record is available from the trial court, the parties are left to provide a “record” based on filings in the trial court. These material documents are included herein as exhibits in the Addendum.

1. The disputed property is a 33' wide strip of property located on the Eastern edge of Sudweeks' property in Pleasant Grove, Utah. (Amended Complaint, ¶¶ 3-9, Exhibit "B", Addendum.)

2. Gedo consists of three individuals (Maria Angelica Sanchez, Migel David Gedo and James Gedo) residing in Utah County, Utah. (Complaint, ¶ 2, Exhibit "C", Addendum.)

3. Sudweeks consists of two individuals (John and Deanna Sudweeks) who are husband and wife, residing at 1610 East 200 South, Pleasant Grove, Utah 84062. (Complaint, ¶ 1, Exhibit "C", Addendum.)

4. Sudweeks own two adjoining parcels of real property in Pleasant Grove City, Utah County, State of Utah, one parcel which is described in the Warranty Deed from Joseph Best and Elaine P. Best to Plaintiffs, dated June 21, 1972, and recorded June 22, 1972 as Entry No. 9195, Book 1279 and Page 224 of the Records of the Utah County Recorder's Office and the second parcel which is described in the Warranty Deed from Boyd M. Collings and Geraldine L. Collings to Sudweeks, dated August 25, 1972 as Entry No. 13361, Book 1290 and page 108 of the Records of the Utah County Recorder's Office. (Amended Complaint, pp. 1-2, ¶3; Exhibit "B", Addendum; Lots 5d and 5b, Stahl survey/findings, Exhibit "D", Exhibit "O", Addendum.)

5. Sudweeks have been the sole and exclusive owners of the above described parcels since they purchased the same in 1972. (Amended Complaint, pg.2, ¶4; Exhibit "B", Exhibit "O", Addendum.)

6. Johnny Ray O’Conner and Martha O’Conner are the owners of a parcel of real property in Pleasant Grove City, County of Utah , State of Utah (“O’Conner Property”) which is located directly to the East of Sudweeks’ parcels, as referred to in the Warranty Deed from Susan S. Hardinger to the O’Connors dated August 10, 1994 as Entry No. 64616, Book 3507 and Pages 855 and 856 of the Records of the Utah County Recorder’s Office. (Amended Complaint, pg.2, ¶5; Exhibit “B”, Addendum; Lot 2b, Stahl survey/findings, Exhibit “D”, O’Conner Deed, Exhibit “P”, Addendum.)

7. Gedo claims an ownership interest in real property in Pleasant Grove City which is described in the Quit Claim Deed from Miguel David Gedo to Maria Angelica Sanchez dated October 8, 2000 and recorded October 19, 2000 as Entry No. 112433, Book 5248 and Pages 654-656 of the Records of the Utah County Recorder’s Office. (Amended Complaint, pg.2, ¶6; Exhibit “B”, Addendum; Lot 59, 1978 Utah County Plat, NW-NE section 27, township 5 south, range 2 east #14044, 2 of 4, Exhibit “E”, Gedo Deeds, Exhibit “G”, Addendum)

8. In 1972 the decree of distribution for the estate of Ivadell Tomlinson mistakenly located the east line of certain real property in the Tomlinson estate (including the Sudweeks property; *see* lots 5a, 5b, 5c, and 5d, Stahl survey/findings, Exhibit “D”, Addendum) westward 33 feet from its correct position. (Order and Judgment, pg.2, ¶2; Exhibit “F”, Addendum; Stahl survey/findings, Exhibit “D”, Addendum.)

9. The Tomlinson estate was subsequently divided into four parcels; lot 5b (the eastern most parcel owned by Sudweeks), lot 5d (Sudweeks west parcel), lot 5a (adjacent and west of Sudweeks), and lot 5c (adjacent and west of 5a). The legal

descriptions of the lots perpetuated the error previously described, shifting the legal descriptions of each of these properties westward 33 feet. (Order and Judgment, pg.2, ¶4; Exhibit “F”, Addendum; Stahl survey/findings, Exhibit “D”, Addendum.)

10. Modifications were subsequently made to the descriptions of parcels on either side of the Tomlinson estate properties (lot 3 and lots 2a, 2b, and 2c, Stahl survey/findings, Exhibit “D”, Addendum.)

11. These modifications arose from boundary line agreements, surveys and deed exchanges. (Order and Judgment, pg.3, ¶6; Exhibit “F”, Addendum; Stahl survey/findings, Exhibit “D”, Addendum.)

12. Even though the boundaries between the Sudweeks’ eastern most parcel (lot 5b, Stahl Survey, lot 16 on Utah County plat, Exhibit “E”, Addendum) and O’Connors (lot 2b, Stahl Survey, lot 57 , Utah County Plat, Exhibit “E”, Addendum) are contiguous, the modifications previously described purported to create a new parcel 33 feet wide between those two lots. This purported parcel (“disputed property”) was referred to as lot 59 in the records of the Utah County Recorder. (Order and Judgment, pg.3, ¶7; Exhibit “F”, Addendum; Utah County Plat, Exhibit “E”, Addendum.)

13. As a function of the confusion caused by the errant descriptions, the “gap” lot was shown at different locations at different times, as a comparison of sequential county plat maps indicate. (Other County Maps, Exhibit “Q”, Addendum.)

14. The boundary between the O’Conner property and the disputed property is marked by a fence and driveway, both of which have been in existence for a long time,

the fence having been constructed by Sudweeks shortly after Sudweeks' purchase of their parcels in 1972. (Amended Complaint, pg.3, ¶9; Exhibit "B", Addendum.)

15. The corresponding boundary line which is marked by the fence and driveway has been recognized and treated by the parties and their predecessors in interest as the Sudweeks' East boundary since 1972 when the Sudweeks purchased their two parcels. (Amended Complaint, pg.3, ¶10; Exhibit "B", Addendum.)

16. Sudweeks reasonably believed that their property line extended up to the fence and driveway line since they purchased their parcels in 1972, and they have continued to use and occupy the same since that time, and have planted fruit trees, grass, plants, and have laid an asphalt pad on the same. (Amended Complaint, pg.3, ¶11; Exhibit "B", Addendum.)

17. In 1999 Gedo allegedly purchased the 33' wide parcel appearing as lot 59 on the Utah County Plat by warranty deed from Alan Strasburg. (Exhibit "G", Addendum)

18. Sudweeks filed an action May 10, 2001 in the Fourth District Court in Provo, Utah, seeking to quiet title to the 33' strip of property. (Complaint, Exhibit "C", Addendum.)

19. Summons and complaint were served upon Gedo May 18, 2001 (Exhibit "H", (Summons) Addendum) and a hand-written answer to the complaint was filed June 4, 2001. (Gedo Brief, Addendum #5)

20. Some time prior to July 2001, Gedo knowingly and intentionally drove a wrecking truck upon and did park the same on the Sudweeks' property directly in front of

Plaintiff's motor home, and between it and the street—thereby depriving Sudweeks of the use of their motor home. (Temporary Restraining Order and Order to Show Cause, pg.2, ¶5; Exhibit “I”, Addendum.)

21. Gedo refused to remove the truck when repeatedly requested by Sudweeks, claiming title to the disputed property. (Amended Complaint, pg.3, ¶14; Exhibit “B”, Addendum.)

22. On or about July 2, 2001 David and James Gedo approached John Sudweeks on his property and threatened his health and safety and that of his wife and family. (Temporary Restraining Order and Order to Show Cause, pg.2, ¶4; Exhibit “I”, Addendum.)

23. Sudweeks was granted a Temporary Restraining Order which was converted to a Preliminary Injunction after hearing before Judge Hansen, Fourth District Court, August 8, 2001. (Order and Preliminary Injunction, Exhibit “J”, Addendum.)

24. On or about June 24, 2003 and June 26, 2003, David and James Gedo violated the Temporary Restraining Order by placing threatening telephone calls to Sudweeks. (Order and Judgment, p.5, ¶16, Exhibit “F”, Addendum.)

25. Trial was held in the Fourth District Court on December 15th and 16th, 2003 before Judge James R. Taylor. (Order and Judgment, p.1, Exhibit “F”, Addendum.)

26. A final Order and Judgment was entered by Judge Taylor August 3, 2004, wherein he quieted title in the disputed property to Sudweeks, found David and James Gedo in contempt for violating the restraining order, granted a permanent injunction against Gedos and then awarded attorney fees and costs to be paid by David Gedo and

James Gedo in the amount of \$14,182.70. (Order and Judgment, p.1, Exhibit “F”, Addendum.)

SUMMARY OF THE ARGUMENT

I. GEDO FAILED TO MARSHAL ANY EVIDENCE AS REQUIRED ON APPEAL.

While the Gedo brief a constant barrage of sometimes-indecipherable jabs at the trial court’s factual findings and even the court itself, Gedo ducks the essential appellant obligation to: 1) marshal evidence in support of the trial court’s findings, and then, 2) show that it is insufficient to support or justify the trial court’s ruling. This Court and the Utah Supreme Court have firmly held that a failure to properly marshal evidence results in the appellate court accepting the appellee’s factual statements as true.

II. THE TRIAL COURT PROPERLY QUIETED TITLE IN SUDWEEKS.

The trial court properly quieted title in Sudweeks based upon the only credible evidence presented at trial. Sudweeks’ expert, John Stahl provided an authoritative, logical explanation for the conflicts in property descriptions for the disputed property and nearby lots, and offered the only appropriate solution.

Utah’s notice statute for recorded documents (UCA § 57-3-102) negates Gedo’s claim of ownership. One who deals with real property is charged with notice of what is shown or now shown on the county records, and by implication is charged with notice of what the county records did not show, i.e., a lack of record title in his grantor.

Sudweeks had no notice from the public record of any error in the description of their property. The mistake in Sudweeks’ boundary description was the offspring of a

description error that occurred in property two parcels away from the Sudweeks, and before the Sudweeks' parcels were created by subdivision. Thus, the error was perpetuated consistently in the subdivided parcels and would not be distinguishable in the Sudweeks chain of title. Indeed, it could not be discovered without a comprehensive survey and title search on all neighboring properties, which was performed by John B. Stahl, a licensed Utah Surveyor.

Gedo's deed was recorded almost 30 years after the Sudweeks deed to the same property. Hence, under Utah's notice statute, Gedo had notice of flaws in title. Such notice imposed the duty to investigate, which would have shown that Gedo had no valid claim of ownership because there was no deed in the chain of title that created the parcel Gedo claims to own. In essence, Gedo's deed was void for want of a grantor.

III. GEDO'S CLAIMS OF PROCEDURAL ERRORS ARE WITHOUT MERIT.

Gedo's various allegations of procedural impropriety in the trial court are unfounded under the rules of civil procedure. The Gedo brief repeatedly alleges that the trial court acted improperly—seemingly in violation of the Utah Rules of Civil Procedure.

In each act or omission alleged, documents on file with the trial court show that any dissatisfaction was the result of Gedo's misunderstanding of the appropriate procedure or Gedo's own misapplication of the rules. In no case can it be said that the court acted inappropriately or that Gedo was prejudiced by a procedural error of the court.

IV. GEDO'S CLAIMS OF CONSPIRACY AND EX PARTE COMMUNICATION ARE UNDERMINED BY FACTS IN THE RECORD.

Gedo's accusations of conspiracy, ex parte communication and other illegal or improper conduct by the court and counsel, (and the purported deprivation of fundamental rights as a result) are wholly unsupported and are undermined by the pleadings on file.

The only evidence of ex parte communication in the entire case is the court's rejection of an attempt by Gedo to communicate with Judge Hansen ex parte. Similarly, the many references by Gedo to mailing errors by the trial court ignore the central duty of litigants to supply the court with a current address. In any event, since Gedo was present at every hearing; and was never denied a motion or defaulted for failure to appear or respond, if there was any error in mailing, it was harmless.

V. ATTORNEYS FEES WERE PROPERLY AWARDED AGAINST TWO DEFENDANTS IN LIGHT OF THE COURT'S CONTEMPT FINDING AGAINST THOSE DEFENDANTS UNDER THE TEMPORARY RESTRAINING ORDER.

The trial court properly awarded attorney fees and costs as a sanction against James and David Gedo for their violation of a Temporary Restraining Order. A Temporary Restraining Order was first issued by Judge Hansen upon evidence that those two individuals had approached Mr. Sudweeks on his property, holding a breaker bar in hand, where they made threats against his health and safety, and that of his wife and family.

At trial, evidence was presented which confirmed that these same two individuals subsequently placed threatening phone calls on two different days, to Sudweeks' home, again threatening Mr. Sudweeks and his wife and family with physical violence.

An award of attorney fees is wholly appropriate as a contempt sanction for violation of a court order. Unless limited by statute or constitutional provisions, the extent of punishment for contempt is discretionary with the court. Thus, the trial court has a considerable amount of discretion, and absent an abuse of that discretion, the trial court's order should stand.

ARGUMENT

I. GEDO FAILED TO MARSHAL ANY EVIDENCE AS REQUIRED ON APPEAL.

The Gedo brief makes repeated but oft-times indecipherable allegations regarding the trial court's factual findings and even the court itself. In the process of doing so, Gedo ignores the essential appellant obligation to first, marshal every scrap of evidence in support of the trial court's findings, and secondly, to then show that it is insufficient, legally, to support or justify the trial court's ruling.

A. Even a Pro Se Appellant Cannot Avoid the Marshaling Requirement.

Even in light of Gedo's pro se appearance, and even acknowledging Supreme Court cautions that a layman acting as his own attorney should be indulged, (see Nelson v. Jacobsen, 669 P.2d 1207, 1213 (UT 1983)) the duty of any appellant to present all competent evidence supporting the court's findings cannot be disregarded completely. In 2002 this very Court stressed the point that,

. . . in order to properly discharge the duty of marshaling the evidence, the challenger must present, in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which support the very findings the appellant resists.

Neely v. Bennett, 51 P.3d 724, 728 (UT 2002) (emphasis omitted). The Utah Supreme Court explained the requirement further, in Chen v. Stewart, 100 P.3d 1177 (UT 2004), when it declared:

The challenging party must ‘temporarily remove its own prejudices and fully embrace the adversary’s position’; he or she must play the ‘devil’s advocate.’ . . . Furthermore, appellants cannot shift the burden of marshaling by falsely claiming that there is no evidence in support of the trial court’s findings. This would inappropriately force an appellee to marshal the evidence in order to refute an appellant’s assertion of the absence of evidence.

Chen v. Stewart, 100 P.3d 1177, 1195 (UT 2004) (citations omitted) (emphasis added).

Finally, the Supreme Court explains the purpose of the strict marshaling requirement:

. . . to promote two interrelated court objectives: efficiency and fairness. [a] proper marshaling of the evidence promotes efficiency by avoiding ‘retrying the facts’ and by assisting the appellate court in its ‘decision-making and opinion writing.’ It promotes fairness by requiring that the appellants bear the expense and time of marshaling the evidence rather than putting the appellee in the ‘precarious position’ of performing the appellant’s work at ‘considerable time and expense.’ . . . If the marshaling requirement is not met, the appellate court has grounds to affirm the court’s findings on that basis alone. If appellants have failed to properly marshal the evidence, we assume that the evidence supports the trial court’s findings.

Id. at 1195-1196 (citations omitted) (emphasis added).

Sudweeks respectfully assert that they have already been required to shoulder an unfair burden in this appeal as they have been forced to compensate for the lack of a coherent docketing statement or brief, and undertake the research to identify issues and

then present standards of review. That having been said, they acknowledge the necessity of responding to the Gedo brief in order to promote the second purpose stated for the marshaling requirement: “assisting the appellate court in its ‘decision-making and opinion writing.’” Chen at 1196.

II. THE TRIAL COURT PROPERLY QUIETED TITLE IN THE SUDWEEKS.

The Trial Court properly quieted title in Sudweeks based upon credible evidence presented at trial by Sudweeks’ expert, John Stahl, who explained the source of conflicting ownership claims.

A. *Sudweeks Presented Credible, Authoritative Evidence at Trial Regarding Correct Boundary Lines and Ownership of the Disputed Property.*

Evidence presented at trial by Sudweeks’ expert witness, Mr. John Stahl, a licensed Utah surveyor, provided an authoritative, logical explanation for the conflicting claims of ownership in this case, and suggested the appropriate solution. Relating his research and findings, Mr. Stahl offered a comprehensive survey and comparison of historic property descriptions for real property parcels surrounding and including those claimed by Sudweeks and Gedo. Because a transcript is not available, Mr. Stahl’s testimony is summarized briefly below.

Mr. Stahl’s research proved that in 1972, a decree of distribution of the estate of Ivadell Tomlinson (which estate included the property now owned by Sudweeks) contained an erroneous legal description that mistakenly moved the east line of parcel 3 (Stahl Survey), which adjoined the Tomlinson property, westward 33 feet from its correct position. The error also changed the location of the deed “tie” from the North Quarter

Corner to the Northeast Corner of Section 27 (see Stahl survey/findings, Exhibit “D”, Addendum.)

The errant description properly determined the amount of frontage available between the two properties located on either side of the Tomlinson property; parcel 2 (property east of the Tomlinson estate) and parcel 3 (property west of the Tomlinson estate). However the description for the Tomlinson property overlapped parcel 3 (west) by 33 feet and also resulted in a gap between the Tomlinson property eastern line and the west line of parcel 2 (property east of the Tomlinson property, now owned by O’Conner).

Mr. Stahl’s title research, as explained to the trial court, showed that the subsequent division of the Tomlinson property into four sub-parcels (parcels 5a, 5b, 5c and 5d on Stahl survey, Exhibit “D”, Addendum) perpetuated the same description error as was contained in the original decree of distribution.

The error was also propagated into the adjoining descriptions for parcels 3 and 4 (property west of the Tomlinson property) and parcel 2 (property east of the Tomlinson property) as they were modified to agree with the mistaken position of Parcel 5. Indeed, Stahl’s research showed that with the mistaken shift in boundaries, some interim descriptions showed the west line of parcel 4 pushed 33 feet out into the middle of 1500 East Street.

East of what was the Tomlinson property, following the inadvertent boundary shift to the west, the Utah County Assessor’s records began to reflect the existence of a new parcel occupying the space between parcel 2b (O’Conner) and 5b (Sudweeks). Mr. Stahl showed that by proper description, the boundaries of these parcels are contiguous and no

property exists in that location. The Utah County Assessor's maps were thus shown to be in error as the several maps could not decide where the "ghost" parcel should be placed, (See Exhibit "Q", Addendum) and showed the parcels between the O'Conner's property and 1500 East Street in the westward-shifted position, based upon the improper location of the Tomlinson property (parcel 5 in Stahl survey) in the distribution decree.

Based upon his findings, and referencing documentation presented as evidence to the trial court, (aerial photographic overlay, deeds/chains of title for all lots, survey) Mr. Stahl testified that the proper solution to the problem is to record and map corrected descriptions for each of the affected parcels (parcels 4, 3, 5c, 5a, 5d and 5b, Stahl survey/findings, Exhibit "D", Addendum) shifting them east 33 feet.

With regard to the disputed property in which Gedo claims ownership, Mr. Stahl further testified that his research turned up no conveyance of record that describes the parcel claimed by Gedo (parcel 59, Utah County Plat Map, Exhibit "E", Addendum.) That parcel is currently being assessed to Miguel David Gedo and a survey has been performed and filed, based upon the gap description. However, he found no conveyance document which creates the boundaries of the Gedo claim as it is located by the recorded survey and described in the tax notice, with the exception of one portion of the boundary created by a 1986 boundary line agreement between other parties.

Based on records research and on-site inspection, Mr. Stahl testified that the adjoining owners of Parcels 5 and 2a (Sudweeks and O'Connors) have clearly occupied and paid taxes on their respective sides of the common boundary line. Moreover, Mr.

Stahl verified that the taxes being currently assessed for the Gedo gap parcel are merely a duplicate assessment, since the property is already being assessed to Sudweeks.

B. Gedo Cannot Claim to Be a Good Faith or Bona Fide Purchaser.

When Gedo took title to the disputed property, the errors in description (that led to the false assumption that the disputed property existed) were a matter of public record.

Utah Code Annotated, § 57-3-102 (Record Imparts Notice) states, in pertinent part:

(1) Each document executed, acknowledged, and certified, in the manner prescribed by this title, . . . shall, from the time of recording with the appropriate county recorder, impart notice to all persons of their contents.

The Utah Supreme Court has held that whatever is notice enough to excite attention and put a purchaser on his guard and call for inquiry is notice of everything to which such inquiry might have led. *See Meagher v. Dean*, 91 P.2d 454 (UT, 1939). Based on this inquiry responsibility, the Supreme Court has held that where an overlap in descriptions of properties created a tract that was sold to both the plaintiff and the defendant under separate deeds--leading to a quiet title action, because the plaintiff recorded its notice of purchase prior to the recording of the defendant's deed, the defendants took with notice of the plaintiff's interest, and title to the tract was properly quieted in the plaintiffs.

Wilson v. Schneider's Riverside Golf Course, 523 P.2d 1226 (UT 1974).

In the present case, inadvertent mistakes in property descriptions resulted in the same strip of land being conveyed to Sudweeks and to Gedo. Aside from the fact that Gedo's deed was void for want of a grantor, as asserted below, the Sudweeks deed was recorded 27 years prior to the Gedo purchase, giving full notice to Gedo of a need for inquiry and disqualifying Gedo as a good faith or bona fide purchaser.

C. *Gedo's Deed Was Void for Want of a Grantor.*

A notable difference between this case and the Wilson case previously cited is that in this case, what Gedo would have discovered upon reasonable inquiry into the chain of title was that the lot being sold to him by Alan Strasburg in 1999 did not actually or validly exist. It was the creation of mistaken mapping, not any patent or deed. Gedo had a duty to inquire beyond the deeds and maps supplied to him by Mr. Strasburg, the seller. *See Pender v. Dowse*, 265 P.2d 644 (UT 1954) (to be bona fide, purchaser's inquiry must go beyond persons known to have an interest in concealing the existence of an outstanding interest.) An inquiry by Gedo would have shown what Mr. Stahl's research showed: essentially Gedo's deed was void for want of a valid grantor because Mr. Strasburg had no deed or patent granting him the property. (*See Utah Code Ann. § 57-1-4* (attempt to convey more than grantor owns)) All Mr. Strasburg had to support a claim was a tax assessment created when the Utah County Assessor noticed a gap lot (created by the mistaken description) and assigned it to Strasburg. Meanwhile, the Sudweeks were also being assessed for the same property.

III. GEDO'S CLAIMS OF PROCEDURAL ERRORS ARE WITHOUT MERIT.

Gedo's various allegations of procedural impropriety in the trial court lack any real basis under the rules of civil procedure. The Gedo brief repeatedly alleges that the trial court acted improperly. This particular class of allegations concern actions governed by rules of civil procedure. The claims include: (1) exclusion of evidence, (2) denial of motions and defenses, (3) improper exercise of jurisdiction, (4) improper changes of

assigned judges, (5) improper service, (6) denial of jury request, and (7) improper permission to amend complaint. The oft-repeated allegation of a conspiracy between the court, the U.S. Postal service and Sudweeks counsel to deprive Gedo of notice of court proceedings is addressed separately.

Because Gedo failed to marshal the evidence to show that the trial court acted without justification, Sudweeks respectfully lists the allegations by category and refers the court to authorities and information from the trial court files that contradicts the Gedo claims.

(1) exclusion of evidence:

Rule 1005 of the Rules of Evidence requires, in pertinent part, that:

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. . .

By Gedo's own admission, the trial court refused to accept "muniments of title" that Gedo attempted to introduce as evidence because there was no one from the county recorder's office to authenticate the offerings. Nothing in Gedo's brief points to improper rejection of evidence under the applicable rules.

"Trial court judges are, necessarily, afforded considerable discretion in determining the conduct of a trial, including the orderly presentation of evidence."

Gilbert v. Cosco, Inc., 989 F.2d 399, 403 (10th Cir. 1993). In facilitating the presentation of evidence, the trial judge "is allowed to participate in a trial and ask questions of witnesses in order to ascertain the facts," United States v. Wheeler, 444 F.2d 385, 390

(10th Cir. 1971), and to “clarify the issues [and] assist the jury in eliminating immaterial matters.” Smith v. Welch, 189 F.2d 832, 835 (10th Cir. 1951).

Because a trial judge is given considerable discretion in determining the conduct of a trial, “[t]he standard for reversal on the basis of judicial misconduct in a civil trial is quite high.” Pau v. Yosemite Park and Curry Co., 928 F.2d 880, 885 (9th Cir. 1991).

Reversal is not required where the judge emphasizes evidence or expresses skepticism at a witness’ answer, provided the witness has an opportunity to respond. Id. Additionally, “[c]utting comments to counsel, particularly those relating to skill rather than good faith or integrity, will not generally mandate reversal.” Id.

(2) denial of motions and defenses:

It is noted that Gedo did not plead laches as an affirmative defense in the trial court, nor was that claim made in any motion, styled as such. Moreover, Gedo did not ever file a motion to dismiss or a summary judgment motion. The documents filed by Gedo with the trial court are included in the Gedo brief as Addendum #5 and include: “Request for Change of Judge”, “Demand to Quash Complaint, Terminate Injunction, and Litigation Fees” “Request for Dismissal Quiet Title and Request for Defense Fees \$10,000.00, Request to Quash Complaint Orders,” “Affidavit and Request for Disqualification of Judge Nunc Pro Tunc and Certificate of Counsel,” and “Motion for Temporary Restraining Order”

Judge Hansen of the Fourth District Court entered a memorandum decision striking Gedo’s “Demand to Quash Complaint, Terminate Injunction, Litigation Fees” and Defendants’ “Request for Dismissal Quiet Title and Request for Defense Fees”

(Gedo Brief, Addendum #5) (Judge Hansen's Memorandum Decision is Exhibit "K", Addendum.) The ruling was based on the fact that Rule 10(f), Utah R. Civ. P. provides that parties may be required to substitute properly prepared pleadings for nonconforming pleadings. Additionally, Rule 5(d) provides that papers filed with the court "shall be accompanied by a certificate of service showing the date and manner of service completed by the person effecting service." Finding the documents illegible and improper, Judge Hansen struck the pleadings and invited Gedo to submit properly prepared pleadings. Gedo did not do so.

Gedo's "Request for Change of Judge" was ruled on by Judge Taylor (Gedo Brief Addendum #5.) Therein he noted Gedo's request required referral to the reviewing judge under Rule 63(b)(C)(2). He therefore denied Sudweeks' motion to strike, and referred Gedo's request to Judge Stott for review.

On review, Judge Stott found that the request did not comply with requirements of applicable rules; the court was unable to understand either the allegations or the basis for the request, and not being able to identify any impropriety occurred by Judge Taylor or anyone else, Judge Stott denied the request and referred the case back to Judge Taylor. (Exhibit "L", Addendum.) The Gedo motion for restraining order was a cross-motion to Sudweeks' prior motion. Gedo's motion was negated when the Sudweeks opposing motion was granted after hearing before Judge Hansen. (Exhibit "I", Addendum.) The denial of injunctive relief is reviewed by an abuse of discretion, which occurs only when the trial court bases its decision on an erroneous conclusion of law or where there is no rational basis in the evidence for the ruling. *See Strawberry Elec. Serv. Dist. v. Spanish*

Fork City, 918 P.2d 870, 881 (Utah 1996). Comparison of the information filed with the court regarding the cross motions for temporary restraining order, it is clear that the trial court had a rational basis for granting injunctive relief to Sudweeks and not to Gedo.

(3) improper exercise of jurisdiction:

Gedo argues at pages 17 and 19 of the brief that Gedo attempted a special or limited appearance only to submit “muniments of ownership.” However, the court record shows that Gedo filed an answer to the Sudweeks complaint on May 26, 2001 (Gedo Brief, Addendum #5) wherein Gedo did not enter any defenses specifically, did not claim or call for a special appearance, did not allege lack of jurisdiction, but *did* assert counterclaims against Sudweeks. Even disregarding the fact that Gedo resides in Utah County, the subject property is in Utah County and all parties are in Utah County and therefore, jurisdiction is proper in the Fourth District Court pursuant to UCA §78-3-4(1), Gedo’s filing of an answer and counterclaims without any mention of a limited appearance acted as a general appearance and submission to the trial court’s jurisdiction. Barber v. Calder, 522 .2d 700 (UT 1974).

(4) improper changes of assigned judges:

Inasmuch as this case was initiated by complaint in April of 2001 and did not go to trial until December of 2003, it is not surprising that under the standard rotation schedule in the Fourth District Court, at least one change of judges would occur, as it did. Not understanding the local court management, Gedo has improperly assumed something sinister in the rotation.

(5) improper service:

Proof of proper service upon Miguel David Gedo, James Gedo and Maria Sanchez is included as Exhibit “M”, Addendum.

(6) denial of jury request:

Rule 38, Utah R. Civ. P. provides in sub-section (d) (Waiver) the failure of a party to pay the statutory fee, to serve a demand as required by this rule (not later than 10 days after service of the last pleading directed to the issue to be tried) and to file it as required by Rule 5(d) constitutes a waiver by him of trial by jury. Granting or denying a belated demand for jury trial is within the discretion of the trial court. Webb v. Webb, 209 P.2d 201 (UT 1949).

From the court record, after almost 3 years of litigation, at the pre-trial conference, when all motions and pleadings had long since been filed and the trial was scheduled in less than 30 days, Gedo claimed a right to a jury trial. Gedo never made the proper demand as required under the rules, nor did Gedo proffer the necessary fee. The trial court was well within its discretion in denying the demand.

(7) improper permission to amend complaint:

Motions to amend the complaint are left to the sound discretion of the trial court. Norman v. Arnold, 57 P.3d 997 (UT 2002). Furthermore, liberality should be shown in allowance of amendments to pleadings for purpose of permitting complete adjudication of matters in controversy and in furtherance of justice. Johnson v. Peck, 63 P.2d 251 (UT 1936).

After protracted discovery was completed, Sudweeks felt that the introduction of additional facts warranted the addition of two new theories of ownership and petitioned

the court for leave to amend. Court documentation shows that no ex parte hearing took place. A copy of the motion was mailed to the addresses on file for Gedo. No opposition was submitted and the motion was eventually granted. Gedo cannot claim prejudice because the amendment came almost a year before the trial was set.

For each allegation of wrong-doing, documents from the court or from Gedo, show that any dissatisfaction was the result of Gedo's misunderstanding of the appropriate procedural requirements or Gedo's own misapplication of the rules. In no case can it be said that the court acted inappropriately or that Gedo was prejudiced by a procedural error of the court.

IV. GEDO'S CLAIMS OF CONSPIRACY AND EX PARTE COMMUNICATION ARE UNDERMINED BY FACTS IN THE RECORD.

Gedo's accusations of conspiracy, ex parte communication and other illegal or improper conduct by the court and counsel, (and the purported deprivation of fundamental rights as a result) are wholly unsupported and are undermined by the pleadings on file.

The only evidence of ex parte communication in the entire case is the court's rejection of an attempt by Gedo to communicate with Judge Hansen ex parte. (Exhibit "N", Addendum.) Similarly, the many references by Gedo to mailing errors are purely distractive to the central duty of litigants to supply the court with their proper address. Gedo's claim of a conspiracy is made moot by the fact that Gedo appeared at every hearing and conference that was held in this matter. Since Gedo was in attendance at every hearing and conference; since Gedo received notice of every decision in time to

respond; and since no motion was granted for lack of a response from Gedo, if there was any error, it was harmless.

V. ATTORNEYS FEES WERE PROPERLY AWARDED AGAINST TWO DEFENDANTS FOR CONTEMPT UNDER THE TEMPORARY RESTRAINING ORDER.

The trial court properly awarded attorney fees and costs as a sanction against James and David Gedo for their violation of a Temporary Restraining Order. A Temporary Restraining Order was first issued by Judge Hansen upon evidence that those two individuals had approached Mr. Sudweeks on his property, holding a breaker bar in hand, where they made threats against his health and safety, and that of his wife and family. (Exhibit “I”, Addendum.) These same two individuals were present in the court hearing when the Temporary Restraining Order was converted to a Preliminary Injunction against them—prohibiting any communication or contact with the Sudweeks. (Exhibit “J”, Addendum.)

At trial, evidence was presented which confirmed that these same two individuals subsequently placed threatening phone calls on two different days to Sudweeks’ home, again threatening Mr. Sudweeks and his wife and family with physical violence.

“Unless limited by statute or constitutional provisions, the extent of punishment for contempt is discretionary with the court . . .” 17 C.J.S. Contempt § 117 (1999). Under Utah Code Ann., § 78-32-11 (1992) (as amended) attorney fees may be awarded in a contempt proceeding brought for a party’s failure to comply with an order. See, Bradshaw v. Kershaw, 627 P.2d 528, 533 (Utah 1981). An award of attorney fees is wholly appropriate as a contempt sanction for violation of a court order, particularly

where violent threats are involved. Thus, the trial court had a considerable amount of discretion in sanctioning Miguel David Gedo and James Gedo, and absent an abuse of that discretion, the trial court's order should stand.

CONCLUSION

The trial court's judgment quieting title in the Sudweeks is supported by credible evidence as well as appropriate statutory guidelines related to public records of title. At trial, the Sudweeks demonstrated the nature and cause of the boundary description error leading to conflicting ownership claims. The evidence showed that two different deeds (the first to Sudweeks in 1972, the second to Gedo in 1999) purported to convey the same 33' wide strip of property. Chain of title research demonstrated that at the time the property was conveyed to Sudweeks, the grantors were vested with title to the land, but the property description was mistakenly offset by 33 feet to the west. In direct contrast, never at any time was title properly vested in Gedo's grantor; there being no deed or patent that granted the disputed parcel to Mr. Strasburg, Gedo's predecessor. Therefore, the trial court's ruling is proper and should be upheld.

Gedo's claims of impropriety are groundless, and arise from a misunderstanding of procedural requirements. They create no basis for relief from the Court. This is particularly true in light of Gedo's failure to marshal evidence as required for all appeals. Sudweeks respectfully ask that the appeal be denied on all points and that the trial court ruling stand.

Dated this 8th day of February, 2006.

 for Brett C. Anderson

BRETT C. ANDERSON

Attorney for Appellee

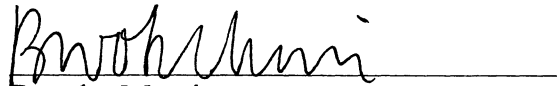
110 South Main Street

Pleasant Grove, UT 84062

CERTIFICATION OF HAND-DELIVERY

I Certify that on the 9th day of February, 2006, I caused two copies of BRIEF FOR APPELLEES, JOHN R. SUDWEEKS AND DEANNA SUDWEEKS to be hand-delivered to Appellants Miguel David Gedo and Maria A. Sanchez, to the address on Appellant's brief, as follows:

1451 S. 50 E.
Orem, Utah, 84058


Brooke Murri

ADDENDUM

1. Exhibit “A” Provisions, statutes, ordinances, rules and regulations
2. Exhibit “B” Amended Complaint
3. Exhibit “C” Complaint
4. Exhibit “D” Stahl survey/findings
5. Exhibit “E” Utah County Plat
6. Exhibit “F” Order and Judgment
7. Exhibit “G” Deeds- Geddo
8. Exhibit “H” Summons
9. Exhibit “I” Temporary Restraining Order and Order to Show Cause
10. Exhibit “J” Order and Preliminary Injunction
11. Exhibit “K” Memorandum Decision-Judge Hansen
12. Exhibit “L” Judge Taylor order, Judge Stott order
13. Exhibit “M” Proof of proper service upon Miguel David Gedo
14. Exhibit “N” Notice of ex parte Communication
15. Exhibit “O” Deeds to Sudweeks
16. Exhibit “P” O’Conner deed
17. Exhibit “Q” other county plat maps—“ghost parcel”

Exhibit “A”

Provisions, statutes, ordinances, rules and regulations

United States Constitution: Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution: Amendment XIV

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Utah Constitution, Article I, Section 11. [Courts open -- Redress of injuries.]

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

57-1-4. Attempted conveyance of more than grantor owns -- Effect.

A conveyance made by an owner of an estate for life or years, purporting to convey a greater estate than he could lawfully transfer, does not work a forfeiture of his estate, but passes to the grantee all the estate which the grantor could lawfully transfer.

**57-3-102. Record imparts notice -- Change in interest rate -- Validity of document -
- Notice of unnamed interests -- Conveyance by grantee.**

(1) Each document executed, acknowledged, and certified, in the manner prescribed by this title, each original document or certified copy of a document complying with Section **57-4a-3**, whether or not acknowledged, each copy of a notice of location complying with Section **40-1-4**, and each financing statement complying with Section **70A-9a-502**, whether or not acknowledged shall, from the time of recording with the appropriate county recorder, impart notice to all persons of their contents.

(2) If a recorded document was given as security, a change in the interest rate in accordance with the terms of an agreement pertaining to the underlying secured obligation does not affect the notice or alter the priority of the document provided under Subsection (1).

(3) This section does not affect the validity of a document with respect to the parties to the document and all other persons who have notice of the document.

(4) The fact that a recorded document recites only a nominal consideration, names the grantee as trustee, or otherwise purports to be in trust without naming beneficiaries or stating the terms of the trust does not charge any third person with notice of any interest of the grantor or of the interest of any other person not named in the document.

(5) The grantee in a recorded document may convey the interest granted to him free and clear of all claims not disclosed in the document in which he appears as grantee or in any other document recorded in accordance with this title that sets forth the names of the beneficiaries, specifies the interest claimed, and describes the real property subject to the interest.

78-2-2. Supreme Court jurisdiction.

(1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States.

(2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction.

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

- (a) a judgment of the Court of Appeals;
- (b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals;
- (c) discipline of lawyers;
- (d) final orders of the Judicial Conduct Commission;
- (e) final orders and decrees in formal adjudicative proceedings originating with:
 - (i) the Public Service Commission;
 - (ii) the State Tax Commission;
 - (iii) the School and Institutional Trust Lands Board of Trustees;
 - (iv) the Board of Oil, Gas, and Mining;
 - (v) the state engineer; or
 - (vi) the executive director of the Department of Natural Resources reviewing actions of the Division of Forestry, Fire and State Lands;
- (f) final orders and decrees of the district court review of informal adjudicative proceedings of agencies under Subsection (3)(e);
- (g) a final judgment or decree of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of the United States or the Utah Constitution;
- (h) interlocutory appeals from any court of record involving a charge of a first degree or capital felony;
- (i) appeals from the district court involving a conviction or charge of a first degree felony or capital felony;
- (j) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction; and
- (k) appeals from the district court of orders, judgments, or decrees ruling on legislative subpoenas.

(4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except:

- (a) capital felony convictions or an appeal of an interlocutory order of a court of record involving a charge of a capital felony;
- (b) election and voting contests;
- (c) reapportionment of election districts;
- (d) retention or removal of public officers;
- (e) matters involving legislative subpoenas; and
- (f) those matters described in Subsections (3)(a) through (d).

(5) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall review

those cases certified to it by the Court of Appeals under Subsection (3)(b).

(6) The Supreme Court shall comply with the requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its review of agency adjudicative proceedings.

78-2a-3. Court of Appeals jurisdiction.

(1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:

- (a) to carry into effect its judgments, orders, and decrees; or
- (b) in aid of its jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, School and Institutional Trust Lands Board of Trustees, Division of Forestry, Fire and State Lands actions reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas, and Mining, and the state engineer;

(b) appeals from the district court review of:

(i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and

(ii) a challenge to agency action under Section **63-46a-12.1**;

(c) appeals from the juvenile courts;

(d) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;

(e) appeals from a court of record in criminal cases, except those involving a conviction or charge of a first degree felony or capital felony;

(f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;

(g) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony;

(h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, parent-time, visitation, adoption, and paternity;

(i) appeals from the Utah Military Court; and

(j) cases transferred to the Court of Appeals from the Supreme Court.

(3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.

(4) The Court of Appeals shall comply with the requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its review of agency adjudicative proceedings.

78-32-11. Damages to party aggrieved.

If an actual loss or injury to a party in an action or special proceeding, prejudicial to his rights therein, is caused by the contempt, the court, in addition to the fine or imprisonment imposed for the contempt or in place thereof, may order the person proceeded against to pay the party aggrieved a sum of money sufficient to indemnify him and to satisfy his costs and expenses; which order and the acceptance of money under it is a bar to an action by the aggrieved party for such loss and injury.

UT. R. Civ. P., Rule 5. Service and filing of pleadings and other papers.

(a) Service: When required.

(a)(1) Except as otherwise provided in these rules or as otherwise directed by the court, every judgment, every order required by its terms to be served, every pleading subsequent to the original complaint, every paper relating to discovery, every written motion other than one heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties.

(a)(2) No service need be made on parties in default except that:

(a)(2)(A) a party in default shall be served as ordered by the court;

(a)(2)(B) a party in default for any reason other than for failure to appear shall be served with all pleadings and papers;

(a)(2)(C) a party in default for any reason shall be served with notice of any hearing necessary to determine the amount of damages to be entered against the defaulting party;

(a)(2)(D) a party in default for any reason shall be served with notice of entry of judgment under Rule 58A(d); and

(a)(2)(E) pleadings asserting new or additional claims for relief against a party in default for any reason shall be served in the manner provided for service of summons in Rule 4.

(a)(3) In an action begun by seizure of property, whether through arrest, attachment, garnishment or similar process, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

(b) Service: How made and by whom.

(b)(1) Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy or by mailing a copy to the last known address or, if no address is known, by leaving it with the clerk of the court.

(b)(1)(A) Delivery of a copy within this rule means: Handing it to the attorney or to the party; or leaving it at the person's office with a clerk or person in charge

thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or, if consented to in writing by the person to be served, delivering a copy by electronic or other means.

(b)(1)(B) Service by mail is complete upon mailing. If the paper served is notice of a hearing and if the hearing is scheduled 5 days or less from the date of service, service shall be by delivery or other method of actual notice. Service by electronic means is complete on transmission if transmission is completed during normal business hours at the place receiving the service; otherwise, service is complete on the next business day.

(b)(2) Unless otherwise directed by the court:

(b)(2)(A) an order signed by the court and required by its terms to be served or a judgment signed by the court shall be served by the party preparing it;

(b)(2)(B) every other pleading or paper required by this rule to be served shall be served by the party preparing it; and

(b)(2)(C) an order or judgment prepared by the court shall be served by the court.

(c) Service: Numerous defendants. In any action in which there is an unusually large number of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing. All papers after the complaint required to be served upon a party shall be filed with the court either before or within a reasonable time after service. The papers shall be accompanied by a certificate of service showing the date and manner of service completed by the person effecting service. Rule 26(i) governs the filing of papers related to discovery.

(e) Filing with the court defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may accept the papers, note thereon the filing date and forthwith transmit them to the office of the clerk.

UT. R. Civ. P., Rule 10. Form of pleadings and other papers.

(a) Caption; names of parties; other necessary information. All pleadings and other papers filed with the court shall contain a caption setting forth the name of the court, the title of the action, the file number, the name of the pleading or other paper, and the name, if known, of the judge (and commissioner if applicable) to whom the case is assigned. In the complaint, the title of the action shall include the names of all the parties, but other pleadings and papers need only state the name of the first party on each side with an indication that there are other parties. A party whose name is not known shall be designated by any name and the words "whose true name is unknown." In an action in rem, unknown parties shall be designated as "all unknown persons who claim any interest in the subject matter of the action." Every pleading and other paper filed with the court shall also state the name, address, telephone number and bar number of any attorney representing the party filing the paper, which information shall appear in the top left-hand corner of the first page. Every pleading shall state the name and address of the party for whom it is filed; this information shall appear in the lower left-hand corner of the last page of the pleading. The plaintiff shall file together with the complaint a completed cover sheet substantially similar in form and content to the cover sheet approved by the Judicial Council.

(b) Paragraphs; separate statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by reference; exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading, or in any motion. An exhibit to a pleading is a part thereof for all purposes.

(d) Paper quality, size, style and printing. All pleadings and other papers filed with the court, except printed documents or other exhibits, shall be typewritten, printed or photocopied in black type on good, white, unglazed paper of letter size (8 ½" x 11"), with a top margin of not less than 2 inches above any typed material, a left-hand margin of not less than 1 inch, a right-hand margin of not less than one-half inch, and a bottom margin of not less than one-half inch. All typing or printing shall be clearly legible, shall be double-spaced, except for matters customarily single-spaced or indented, and shall not be smaller than 12-point size. Typing or printing shall appear on one side of the page only.

(e) Signature line. Names shall be typed or printed under all signature lines, and all signatures shall be made in permanent black or blue ink.

(f) Enforcement by clerk; waiver for pro se parties. The clerk of the court shall examine all pleadings and other papers filed with the court. If they are not prepared in conformity with this rule, the clerk shall accept the filing but may require counsel to substitute properly prepared papers for nonconforming papers. The clerk or the court may waive the requirements of this rule for parties appearing pro se. For good cause shown, the court may relieve any party of any requirement of this rule.

(g) Replacing lost pleadings or papers. If an original pleading or paper filed in any action or proceeding is lost, the court may, upon motion, with or without notice, authorize a copy thereof to be filed and used in lieu of the original.

UT. R. Civ. P., Rule 12. Defenses and objections.

(a) When presented. Unless otherwise provided by statute or order of the court, a defendant shall serve an answer within twenty days after the service of the summons and complaint is complete within the state and within thirty days after service of the summons and complaint is complete outside the state. A party served with a pleading stating a cross-claim shall serve an answer thereto within twenty days after the service. The plaintiff shall serve a reply to a counterclaim in the answer within twenty days after service of the answer or, if a reply is ordered by the court, within twenty days after service of the order, unless the order otherwise directs. The service of a motion under this rule alters these periods of time as follows, unless a different time is fixed by order of the court, but a motion directed to fewer than all of the claims in a pleading does not affect the time for responding to the remaining claims:

(1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten days after notice of the court's action;

(2) If the court grants a motion for a more definite statement, the responsive pleading shall be served within ten days after the service of the more definite statement.

(b) How presented. Every defense, in law or fact, to claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join an indispensable party. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion or by further pleading after the denial of such motion or objection. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) Motion for judgment on the pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the

pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) Preliminary hearings. The defenses specifically enumerated (1)-(7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearings and determination thereof be deferred until the trial.

(e) Motion for more definite statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within ten days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within twenty days after the service of the pleading, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of defenses. A party who makes a motion under this rule may join with it the other motions herein provided for and then available. If a party makes a motion under this rule and does not include therein all defenses and objections then available which this rule permits to be raised by motion, the party shall not thereafter make a motion based on any of the defenses or objections so omitted, except as provided in subdivision (h) of this rule.

(h) Waiver of defenses. A party waives all defenses and objections not presented either by motion or by answer or reply, except (1) that the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and except (2) that, whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. The objection or defense, if made at the trial, shall be disposed of as provided in Rule 15(b) in the light of any evidence that may have been received.

(i) Pleading after denial of a motion. The filing of a responsive pleading after the denial of any motion made pursuant to these rules shall not be deemed a waiver of such motion.

(j) Security for costs of a nonresident plaintiff. When the plaintiff in an action resides out of this state, or is a foreign corporation, the defendant may file a motion to require the plaintiff to furnish security for costs and charges which may be awarded against such plaintiff. Upon hearing and determination by the court of the reasonable necessity therefor, the court shall order the plaintiff to file a \$300.00 undertaking with sufficient sureties as security for payment of such costs and charges as may be awarded against such plaintiff. No security shall be required of any officer, instrumentality, or agency of the United States.

(k) Effect of failure to file undertaking. If the plaintiff fails to file the undertaking as ordered within 30 days of the service of the order, the court shall, upon motion of the defendant, enter an order dismissing the action.

UT. R. Civ. P., Rule 38. Jury trial of right.

(a) Right preserved. The right of trial by jury as declared by the constitution or as given by statute shall be preserved to the parties.

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by paying the statutory jury fee and serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party.

(c) Same: specification of issues. In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party, within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) Waiver. The failure of a party to pay the statutory fee, to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

UT. R. Civ. P., Rule 63. Disability or disqualification of a judge.

(a) Substitute judge; Prior testimony. If the judge to whom an action has been assigned is unable to perform the duties required of the court under these rules, then any other judge of that district or any judge assigned pursuant to Judicial Council rule is authorized to perform those duties. The judge to whom the case is assigned may in the exercise of discretion rehear the evidence or some part of it.

(b) Disqualification.

(1)(A) A party to any action or the party's attorney may file a motion to disqualify a judge. The motion shall be accompanied by a certificate that the motion is filed in good faith and shall be supported by an affidavit stating facts sufficient to show bias, prejudice or conflict of interest.

(B) The motion shall be filed after commencement of the action, but not later than 20 days after the last of the following:

(i) assignment of the action or hearing to the judge;

(ii) appearance of the party or the party's attorney; or

(iii) the date on which the moving party learns or with the exercise of reasonable diligence should have learned of the grounds upon which the motion is based.

If the last event occurs fewer than 20 days prior to a hearing, the motion shall be filed as soon as practicable.

(C) Signing the motion or affidavit constitutes a certificate under Rule 11 and subjects the party or attorney to the procedures and sanctions of Rule 11. No party may file more than one motion to disqualify in an action.

(2) The judge against whom the motion and affidavit are directed shall, without further hearing, enter an order granting the motion or certifying the motion and affidavit to a reviewing judge. If the judge grants the motion, the order shall direct the presiding judge of the court or, if the court has no presiding judge, the presiding officer of the Judicial Council to assign another judge to the action or hearing. The presiding judge of the court, any judge of the district, any judge of a court of like jurisdiction, or the presiding officer of the Judicial Council may serve as the reviewing judge.

(3)(A) If the reviewing judge finds that the motion and affidavit are timely filed, filed in good faith and legally sufficient, the reviewing judge shall assign another judge to the action or hearing or request the presiding judge or the presiding officer of the Judicial Council to do so.

(B) In determining issues of fact or of law, the reviewing judge may consider any part of the record of the action and may request of the judge who is the subject of the motion and affidavit an affidavit responsive to questions posed by the reviewing judge.

(C) The reviewing judge may deny a motion not filed in a timely manner.

Exhibit “B”
Amended Complaint

COPY

FILED
FOURTH JUDICIAL DISTRICT COURT
OF UTAH COUNTY, STATE OF UTAH
2003 AUG 11 PM 1:49

Brett C. Anderson, #8134
HANSEN WITT MORLEY & ANDERSON, P. C.
Attorney for Plaintiffs
110 South Main Street
Pleasant Grove, Utah 84062
Telephone: (801) 785-5350
Facsimile: (801) 785-0853

AUG 15 2003

**IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH, PROVO DEPARTMENT**

125 North 100 West, Provo, Utah 84601

**JOHN R. SUDWEEKS, and
DEANNA SUDWEEKS,**

Plaintiffs,

vs.

**MARIA ANGELICA SANCHEZ
MIGUEL DAVID GEDO, JAMES GEDO,
JOHNNY RAY O'CONNOR, and
MARTHA O'CONNOR.**

Defendants.

AMENDED COMPLAINT

Case No. 01-0402488

Judge James R. Taylor

COME NOW, Plaintiffs, John R. Sudweeks and Deanna Sudweeks, by and through counsel, Brett C. Anderson, of the law firm Hansen Witt Morley & Anderson, P.C. and Complain against the Defendants above named, and allege as follows:

1. Plaintiffs are individuals residing in Utah County, State of Utah.
2. Defendants Maria Angelica Sanchez, Miguel David Gedo, James Gedo, Johnny Ray O'Conner and Martha O'Conner, are individuals residing in Utah County, State of Utah.
3. Plaintiffs own two parcels of real property in Pleasant Grove City, Utah County, State of Utah (the "Sudweeks Property"), one parcel which is described in the Warranty Deed from Joseph Best and Elaine P. Best to Plaintiffs, dated June 21, 1972, and recorded June 22, 1972 as Entry No. 9195, Book 1279 and Page 224 of the Records of the Utah County Recorder's Office, and the second

parcel which is described in the Warranty Deed from Boyd M. Collings and Geraldine L. Collings to Plaintiffs, dated August 25, 1972 as Entry No. 13361, Book 1290 and Page 108 of the Records of the Utah County Recorder's Office. A copy of each of these Deeds is attached hereto as Exhibit "A" and Exhibit "B" to this Complaint.

4. The Sudweeks have been the sole and exclusive owners of the above described parcels since they purchased the same in 1972.

5. Defendants Johnny Ray O'Conner and Martha O'Conner are the owners of a parcel of real property in Pleasant Grove City, County of Utah, State of Utah (the "O'Conner Property"), which is located directly to the east of Plaintiffs' parcels, above described, as referred to in the Warranty Deed from Susan S. Hardinger to Defendants O'Conner dated August 10, 1994 as Entry No. 64616, Book 3507 and Pages 855 and 856 of the Records of the Utah County Recorder's Office. A copy of the Deed is attached hereto as Exhibit "C".

6. Defendant Maria Angelica Sanchez and Defendant Miguel David Gedo claim an ownership interest in real property in Pleasant Grove City, County of Utah, State of Utah (the "Subject Property"), which is described in the Quit Claim Deed from Miguel David Gedo to Maria Angelica Sanchez dated October 8, 2000 and recorded October 19, 1999 as Entry No. 112433, Book 5248 and Pages 654-656 of the Records of the Utah County Recorder's Office. A copy of this Deed is attached hereto as Exhibit "D" to this Complaint.

7. The subject real property parcel is approximately 33 feet wide and lies directly between the Sudweeks Property on the east, and the O'Conner property on the west, and is the subject of this action.

8. The subject real property parcel and the O'Conner Property were part of a larger tract of land which was owned by the Defendants' predecessors in interest.

9. The boundary between the O'Conner Property on the west and the subject real property parcel on the east is marked by a fence and driveway, which have both been in existence for a long time, and the fence was erected by the Plaintiffs shortly after the purchase of their parcels in 1972.

10. The corresponding boundary line which is marked by the fence and driveway, has been recognized and treated by the parties and their predecessors in interest as the boundary between the subject real property parcel on the west and the Plaintiff's property on the east since 1972 when the Plaintiffs purchased their two parcels which are above described.

11. The Plaintiffs have reasonably believed that their property line extended up to the fence and driveway line since they purchased their parcels in 1972, and they have continued to use and occupy the same since that time, and have planted fruit trees, grass, plants, and have laid an asphalt pad on the same.

12. Defendants Miguel David Gedo, James Gedo and Maria Angelica Sanchez did knowingly and intentionally drive a wrecking truck upon and did park the same on the Plaintiff's property directly in front of the Plaintiff's motor home.

13. The parking of the wrecking truck does prohibit the Plaintiffs from using their motor home since they cannot remove it from their property.

14. Notwithstanding the demands from Plaintiffs to Defendants Miguel David Gedo, James Gedo and Maria Angelica Sanchez, requesting that the wrecking truck be removed from in front of Plaintiffs' motor home, said Defendants have refused to remove the wrecking truck from in front of Plaintiffs' motor home, claiming said Defendants have title to the subject property as above described.

FIRST CAUSE OF ACTION

(Quiet Title)

15. Plaintiffs re-allege and incorporate all of the foregoing paragraphs herein by this reference.

16. Plaintiffs are the record owners of the two parcels of real property as described in paragraph 3 herein.

17. Plaintiffs have been the sole and exclusive fee simple owners of said two parcels of real property since they acquired the same in 1972.

18. Plaintiffs have solely and exclusively used and occupied the said two parcels of real property since they acquired the same in 1972, to the exclusion of all others.

19. Plaintiffs have been the sole and exclusive fee simple owners of the subject 33 foot wide parcel described in paragraph 6 herein to the exclusion of all others since Plaintiffs acquired the same in 1972.

20. Plaintiffs have solely and exclusively used and occupied the said subject 33 foot wide parcel of real property described in paragraph 6 herein, to the exclusion of all others.

21. Plaintiffs are entitled to a decree and order quieting title in Plaintiffs, and against Defendants herein named, in the parcels of real property described in Paragraphs 3 and 6 herein.

SECOND CAUSE OF ACTION

(Boundary by Acquiescence)

22. Plaintiffs re-allege and incorporate all of the foregoing paragraphs herein by this reference.

23. Plaintiffs have occupied their respective property and treated it as their own up to the line which is marked by a fence and driveway on the east side of the subject 33 foot wide parcel which is claimed to be owned by Defendant Sanchez and Defendant Miguel David Cuello.

and Plaintiffs have so occupied the same continuously since 1972.

24. Defendants or their predecessors in interest have occupied their respective property only up to and on the east side of the fence, driveway and corresponding line, which fence, driveway and corresponding line are located on the east side of the subject 33 foot wide parcel claimed to be owned by Defendant Sanchez and Defendant Daivd Miguel Gedo.

25. The parties and their predecessors in interest have acquiesced in the boundary line, which is marked by the fence and driveway, and corresponding line, as the boundary between the O'Conner property and the Sudweeks property.

26. The Plaintiffs and Defendants O'Conner are adjoining landowners, as were Plaintiffs and Defendant O'Conner's predecessors in interest.

27. Plaintiffs are entitled to a decree of the Court determining that the fence, driveway and corresponding line on the east side of the subject parcel, above described, is the boundary between the O'Conner Property and the Sudweeks Property.

28. In the alternative to the Quiet Title Claim, Plaintiffs are entitled to a decree of the Court determining that Plaintiffs have acquired sole and exclusive title to the above described 33 foot wide subject parcel via the doctrine of boundary by acquiescence.

THIRD CAUSE OF ACTION

(Prescriptive Easement)

29. Plaintiffs re-allege and incorporate all of the foregoing paragraphs herein by this reference.

30. Plaintiffs have openly used and occupied the subject parcel which is described in paragraph 6 above and have treated it as their own up to the line which is marked by a fence and driveway on the east side of the parcel which is claimed to be owned by Defendant Sanchez and Defendant Miguel David Gedo, and Plaintiffs have so occupied the same continuously since

1972.

31. During Plaintiffs' use and occupation of the subject parcel, Plaintiffs have erected a fence, planted trees, grass and plants, and have constructed an asphalt pad on the subject property and used the same to park their motor home.

32. Plaintiffs' use of the subject parcel has at all times been adverse to the Defendants and their predecessors in interest.

33. Plaintiffs' use of the subject parcel has at all times been notorious.

34. In the alternative to the Quiet Title and Boundary by Acquiescence claims, Plaintiffs are entitled to a decree of the Court determining that the Plaintiffs have a prescriptive easement in the subject parcel which runs with the same, and that said prescriptive easement shall include all of the subject parcel up to the fence and driveway line on the east side of the same, and it shall provide for the use of parking vehicles, growing and maintaining plants, trees, and grass, and other typical and general uses.

FOURTH CAUSE OF ACTION

(Trespass by Miguel David Gedo, James Gedo and Maria Angelica Sanchez)

35. Plaintiffs re-allege and incorporate all of the foregoing paragraphs herein by this reference.

36. Defendants Miguel David Gedo and Maria Angelica Sanchez have acted in such a manner as to damage the Plaintiffs' property, and have prohibited them from the quiet use and enjoyment of the same.

37. Plaintiffs are entitled to judgment against Defendants Miguel David Gedo, James Gedo and Maria Angelica Sanchez for damages and for injury to Plaintiffs' property in an amount to be shown at trial.

38. Plaintiffs are also entitled to punitive damages as a result of Defendant Miguel

David Gedo's, Defendant James Gedo's, and Defendant Maria Angelica Sanchez' intentional trespass on Plaintiffs' property with knowing and intentional disregard for Plaintiffs' rights therein, in an amount to be determined at trial.

FIFTH CAUSE OF ACTION

(Forcible Detainer by Miguel David Gedo, James Gedo and Maria Angelica Sanchez)

39. Plaintiffs re-allege and incorporate all of the foregoing paragraphs herein by this reference.

40. Defendants Miguel David Gedo, James Gedo and Maria Angelica Sanchez did unlawfully enter a portion of Plaintiffs' property in Plaintiffs' absence and have excluded Plaintiffs from use and possession of Plaintiffs' property by parking a wrecking truck or causing the same to be parked on Plaintiffs' property between Plaintiffs' motor home and the public street.

41. The actions of Defendants Miguel David Gedo, James Gedo and Maria Angelica Sanchez have damaged the Plaintiffs and have prohibited them from the quiet use and enjoyment of their property.

42. Defendants Miguel David Gedo, James Gedo and Maria Angelica Sanchez have refused to surrender Plaintiffs' property being unlawfully occupied by said Defendants after demand was made on said Defendants for the surrender of the premises unlawfully entered.

43. Plaintiffs are entitled to judgment against Defendants Miguel David Gedo, James Gedo and Maria Angelica Sanchez for damages arising from said Defendants' forcible detainer in an amount to be shown at trial.

44. Pursuant to Utah Code Ann. §78-36-10, Plaintiffs are entitled to have their damages against Defendants Miguel David Gedo, James Gedo and Maria Angelica Sanchez for

forcible detainer trebled in an amount to be shown at trial.

45. Pursuant to Utah Code Ann. §78-36-10.5, Plaintiffs are entitled to an order of restitution directing Defendants Miguel David Gedo, James Gedo and Maria Angelica Sanchez to vacate that portion of Plaintiffs' property being unlawfully occupied by said Defendants and to remove all property of said Defendants and to restore said premises to Plaintiffs or be forcibly removed by a sheriff or constable.

SIXTH CAUSE OF ACTION

(Injunction)

46. Plaintiffs re-allege and incorporate all of the foregoing paragraphs herein by this reference.

47. Plaintiffs are entitled to injunctive relief permanently enjoining the Defendants from occupying or trespassing on Plaintiffs' property.

48. Plaintiffs are entitled to injunctive relief directing Defendants Miguel David Gedo, James Gedo and Maria Angelica Sanchez to remove from Plaintiffs' property the wrecking truck and any other property placed on Plaintiffs' property by or under the direction of said Defendants.

WHEREFORE, Plaintiffs John R. Sudweeks and Deanna Sudweeks pray for judgment against the Defendants as follows:

1. On the First Cause of Action for an order quieting title in Plaintiffs to the parcels of real property described in paragraphs 3 & 6 above.
2. On the Second Cause of Action in the alternative, awarding to Plaintiffs, the parcel of real property described in paragraph 6 above, under the doctrine of Boundary by Acquiescence.
3. On the Third Cause of Action in the alternative, declaring a prescriptive easement

in Plaintiffs to the real property described in paragraph 6 above for use of parking vehicles, growing and maintaining trees, plants and grass, and other typical and general uses.

4. On the Fourth Cause of Action hereof for actual and punitive damages against Defendants Miguel David Gedo, James Gedo and Maria Angelica Sanchez in an amount to be shown at trial.

5. On the Fifth Cause of Action hereof for trebled damages against Defendants Miguel Daivid Gedo, James Gedo and Maria Angelica Sanchez in an amount to be determined at trial, and an order of restitution directing Defendants Miguel David Gedo, James Gedo and Maria Angelica Sanchez to vacate that portion of the subject parcel being unlawfully occupied by said Defendants and to restore said premises to Plaintiffs.

6. On the Sixth Cause of Action hereof an injunction permanently enjoining Defendants Miguel David Gedo, James Gedo and Maria Angelica Sanchez from using, occupying or trespassing on the subject parcel of real property and directing said Defendants to remove said property the wrecking truck and any other property placed on the subject parcel of real property by or under the direction of said Defendants.

7. For an order that Defendants Miguel Daivd Gedo, James Gedo and Maria Angelica Sanchez pay for Plaintiffs' costs and attorney fees incurred herein.

8. For such other and further relief as the Court may deem appropriate under the circumstances.

DATED this 29th, day of July, 2003.

HANSEN WITT MORLEY & ANDERSON, P.C.



BRETT C. ANDERSON
Attorney for Plaintiffs

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing, **AMENDED COMPLAINT**, postage prepaid by first-class mail, on this 8th day of August, 2003, to the following:

Maria Angelica Sanchez
361 West 800 North
Provo, Utah 84061

Miguel David Gedo
PO Box 970002
Orem, Utah 84097

Miguel David Gedo
361 West 800 North
Provo, Utah 84061

James Gedo
361 West 800 North
Provo, Utah 84061

Johnny Ray O'Connor
1640 East Battlecreek Dr.
Pleasant Grove, Utah 84062

Martha O'Connor
1640 East Battlecreek Dr.
Pleasant Grove, Utah 84062

John and Deanna Sudweeks
1610 East 200 South
Pleasant Grove, Utah 84062

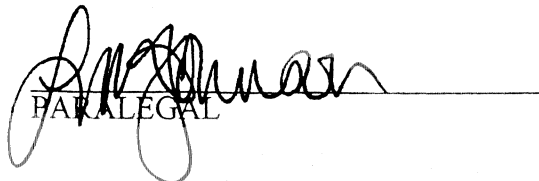

PARALEGAL

Exhibit “C”
Complaint

COPY

4TH DISTRICT COURT
PROVO DEPARTMENT

exhibit
C

MAY 10 P 2:59

Brett C. Anderson, Bar No. 8134
Gordon W. Duval, Bar No. 6532
DUVAL HANSEN WITT & MORLEY, P.C.
Attorneys for Plaintiffs
110 South Main Street
Pleasant Grove, UT 84062
Telephone (801) 785-5350
Facsimile (801) 785-0853

MAY 21 2001

IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH
125 North 100 West, Provo, Ut 84601

JOHN R. SUDWEEKS, and
DEANNA SUDWEEKS,

Plaintiffs,

vs.

MARIA ANGELICA SANCHEZ, MIGUEL
DAVID GEDO, JAMES GEDO, JOHNNY
RAY O'CONNOR, and MARTHA
O'CONNOR,

Defendants.

COMPLAINT

Civil No. 010402480

Judge: 7

COME NOW, Plaintiffs, John R. Sudweeks and Deanna Sudweeks, by and through
counsel, Brett C. Anderson, DUVAL HANSEN WITT & MORLEY, P.C. and Complain against
the Defendants above named, and allege as follows:

1. The Plaintiffs are individuals residing in Utah County, State of Utah.
2. Defendants Maria Angelica Sanchez, Miguel David Gedo, James Gedo, Johnny

Ray O'Connor and Martha O'Connor, are individuals residing in Utah County, State of Utah.

3. Plaintiffs own two parcels of real property in Pleasant Grove City, Utah County, State of Utah (the "Sudweeks Property"), one parcel which is described in the Warranty Deed from Joseph Best and Elaine P. Best to Plaintiffs, dated June 21, 1972, and recorded June 22, 1972 as Entry No. 9195, Book 1279 and Page 224 of the Records of the Utah County Recorder's Office, and the second parcel which is described in the Warranty Deed from Boyd M. Collings and Geraldine L. Collings to Plaintiffs, dated August 25, 1972 as Entry No. 13361, Book 1290 and Page 108 of the Records of the Utah County Recorder's Office. A copy of each of these Deeds is attached hereto as Exhibit "A" and Exhibit "B" to this Complaint.
4. The Sudweeks have been the sole and exclusive owners of the above described parcels since they purchased the same in 1972.
5. Defendants Johnny Ray O'Connor and Martha O'Connor are the owners of a parcel of real property in Pleasant Grove City, County of Utah, State of Utah (the "O'Connor Property"), which is located directly to the east and to the north of the Sanchez Property as described in the Warranty Deed from Susan S. Hardinger to Defendants O'Connor dated August 10, 1994 as Entry No. 64616, Book 3507 and Pages 855 and 856 of the Records of the Utah County Recorder's Office. A copy

of the Deed is attached hereto as Exhibit "C".

6. Defendant Maria Angelica Sanchez owns property in Pleasant Grove City, County of Utah, State of Utah (the "Sanchez Property"), which is described in the Quit Claim Deed from Miguel David Gedo to Maria Angelica Sanchez dated October 8, 2000 and recorded October 19, 1999 as Entry No. 112433, Book 5248 and Pages 654 - 656 of the Records of the Utah County Recorder's Office. A copy of this Deed is attached hereto as Exhibit "D" to this Complaint.
7. The Sanchez Property contains two separate parts, one part which is approximately 33 feet wide and lies directly between the Sudweeks Property on the east, and the O'Connor Property on the west, and the second part which lies directly to the south of the O'Connor Property.
8. The Sanchez Property which is approximately 33 feet wide and lies directly between the Sudweeks Property and the O'Connor Property is the subject of this action.
9. Both parts of the Sanchez Property and the O'Connor Property were part of a larger tract of land which was owned by the Defendants' predecessors in interest.
10. The boundary between the O'Connor Property on the west and the Sanchez Property on the east is marked by a fence and driveway, which have both been in existence for a long time, and the fence was erected by the Plaintiffs shortly after

the purchase of their parcels in 1972.

11. The corresponding boundary line which is marked by the fence and driveway, has been recognized and treated by the parties and their predecessors in interest as the boundary between the Sanchez Property on the west and the Plaintiffs' property on the east since 1972 when the Plaintiffs purchased their two parcels which are above described.
12. The Plaintiffs have reasonably believed that their property line extended up to the fence and driveway line since they purchased their parcels in 1972, and they have continued to use and occupy the same since that time, and have planted fruit trees, grass, plants, and have laid an asphalt pad on the same.
13. Defendants Miguel David Gedo, James Gedo and Maria Angelica Sanchez did knowingly and intentionally drive a wrecking truck upon and did park the same on the Plaintiffs' property directly in front of the Plaintiffs' motor home.
14. The parking of the wrecking truck does prohibit the Plaintiffs from using their motor home since they cannot remove it from their property.
15. Notwithstanding the demands from Plaintiffs to Defendants Miguel David Gedo, James Gedo and Maria Angelica Sanchez, requesting that the wrecking truck be removed from in front of Plaintiffs' motor home, said Defendants have refused to remove the wrecking truck from in front of Plaintiffs' motor home.

FIRST CAUSE OF ACTION
(Boundary by Acquiescence)

16. Plaintiffs reallege and incorporate all of the foregoing paragraphs herein by this reference.
17. Plaintiffs have occupied their respective property and treated it as their own up to the line which is marked by a fence and driveway on the east side of the parcel which is now owned by the Defendant Sanchez, and Plaintiffs have so occupied the same continuously since 1972.
18. Defendants or their predecessors in interest have occupied their respective property only up to and on the east side of the fence, driveway and corresponding line, which fence, driveway and corresponding line are located on the east side of the property now owned by Defendant Sanchez.
19. The parties and their predecessors in interest have acquiesced in the boundary line, which is marked by the fence and driveway, as the boundary between the parcel which is now owned by the Defendant Sanchez and the parcel which is now owned by the Plaintiffs.
20. The Plaintiffs and Defendant Sanchez are adjoining landowners, as were Plaintiffs and Defendant Sanchez' predecessors in interest.
21. Plaintiffs are entitled to a decree of the Court determining that the fence, driveway

and corresponding line on the east side of the Sanchez Property, above described, is the boundary between the smaller Sanchez Property and the Sudweeks Property.

**SECOND CAUSE OF ACTION
(Prescriptive Easement)**

22. Plaintiffs reallege and incorporate all of the foregoing paragraphs herein by this reference.
23. Plaintiffs have openly used and occupied the subject property which is described in paragraph 8 above and have treated it as their own up to the line which is marked by a fence and driveway on the east side of the parcel which is now owned by Defendant Sanchez, and Plaintiffs have so occupied the same continuously since 1972.
24. During Plaintiffs' use and occupation of the subject property, Plaintiffs have erected a fence, planted trees, grass and plants, and have constructed an asphalt pad on the subject property and used the same to park their motor home.
25. Plaintiffs' use of the subject property has at all times been adverse to the Defendants and their predecessors in interest.
26. Plaintiffs' use of the subject property has at all times been notorious.
27. In the alternative to the Boundary by Acquiescence claim, Plaintiffs are entitled to

a decree of the Court determining that the Plaintiffs have a prescriptive easement in the subject property which runs with the same, and that said prescriptive easement shall include all of the subject property up to the fence and driveway line on the east side of the same, and it shall provide for the use of parking vehicles, growing and maintaining plants, trees and grass, and other typical and general uses.

THIRD CAUSE OF ACTION
(Trespass by Miguel David Gedo, James Gedo and Maria Angelica Sanchez)

28. Plaintiffs reallege and incorporate all of the foregoing paragraphs herein by this reference.
29. Defendants Miguel David Gedo and Maria Angelica Sanchez have acted in such a manner as to damage the Plaintiffs' property, and have prohibited them from the quiet use and enjoyment of the same.
30. Plaintiffs are entitled to judgment against Defendants Miguel David Gedo, James Gedo and Maria Angelica Sanchez for damages and for injury to Plaintiffs' property in an amount to be shown at trial.
31. Plaintiffs are also entitled to punitive damages as a result of Defendant Miguel David Gedo's, Defendant James Gedo's, and Defendant Maria Angelica Sanchez'

intentional trespass on Plaintiffs' property with knowing and intentional disregard for Plaintiffs' rights therein, in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

(Forcible Detainer by Miguel David Gedo, James Gedo and Maria Angelica Sanchez)

32. Plaintiffs reallege and incorporate all of the foregoing paragraphs herein by this reference.
33. Defendants Miguel David Gedo, James Gedo and Maria Angelica Sanchez did unlawfully enter a portion of Plaintiffs' property in Plaintiffs' absence and have excluded Plaintiffs from possession of the portion of Plaintiffs' property by parking a wrecking truck or causing the same to be parked on Plaintiffs' property between Plaintiffs' motor home and the public street.
34. The actions of Defendants Miguel David Gedo, James Gedo and Maria Angelica Sanchez have damaged the Plaintiffs and have prohibited them from the quiet use and enjoyment of their property.
35. Defendants Miguel David Gedo, James Gedo and Maria Angelica Sanchez have refused to surrender Plaintiffs' property being unlawfully occupied by said Defendants after demand was made on said Defendants for the surrender of the premises unlawfully entered.

36. Plaintiffs are entitled to judgment against Defendants Miguel David Gedo, James Gedo and Maria Angelica Sanchez for damages arising from said Defendants' forcible detainer in an amount to be shown at trial.
37. Pursuant to Utah Code Ann. §78-36-10, Plaintiffs are entitled to have their damages against Defendants Miguel David Gedo, James Gedo and Maria Angelica Sanchez for forcible detainer trebled in an amount to be shown at trial.
38. Pursuant to Utah Code Ann. §78-36-10.5, Plaintiffs are entitled to an order of restitution directing Defendants Miguel David Gedo, James Gedo and Maria Angelica Sanchez to vacate that portion of Plaintiffs' property being unlawfully occupied by said Defendants and to remove all property of said Defendants and to restore said premises to Plaintiffs or be forcibly removed by a sheriff or constable.

**FIFTH CAUSE OF ACTION
(Injunction)**

39. Plaintiffs reallege and incorporate all of the foregoing paragraphs herein by this reference.
40. Plaintiffs are entitled to injunctive relief permanently enjoining the Defendants from occupying or trespassing on Plaintiffs' property.
41. Plaintiffs are entitled to injunctive relief directing Defendants Miguel David

Gedo, James Gedo and Maria Angelica Sanchez to remove from Plaintiffs' property the reeking truck and any other property placed on Plaintiffs' property by or under the direction of said Defendants.

WHEREFORE, Plaintiffs John R. Sudweeks and Deanna Sudweeks pray for judgment against the Defendants as follows:

1. On the First Cause of Action hereof quieting title in Plaintiffs to all property west of the boundary fence and driveway on the basis of boundary by acquiescence.
2. On the Second Cause of Action in the alternative, declaring a prescriptive easement in Plaintiffs to all property west of the fence and driveway for use of parking vehicles, growing and maintaining trees, plants and grass, and other typical and general uses.
3. On the Third Cause of Action hereof for actual and punitive damages against Defendants Miguel David Gedo, James Gedo and Maria Angelica Sanchez in an amount to be shown at trial.
4. On the Fourth Cause of Action hereof for trebled damages against Defendants Miguel David Gedo, James Gedo and Maria Angelica Sanchez in an amount to be determined at trial, and an order of restitution directing Defendants Miguel David Gedo, James Gedo and Maria Angelica Sanchez to vacate that portion of the subject property being unlawfully occupied by said Defendants and to restore said

premises to Plaintiffs.

5. On the Fifth Cause of Action hereof an injunction permanently enjoining Defendants Miguel David Gedo, James Gedo and Maria Angelica Sanchez from occupying or trespassing on the subject property and directing said Defendants to remove from said property the wrecking truck and any other property placed on said property by or under the direction of said Defendants.
6. For Plaintiffs' costs and attorney fees incurred herein.
7. For such other and further relief as the Court may deem appropriate under the circumstances.

DATED this 27th day of April, 2001.

DUVAL HANSEN WITT & MORLEY, P.C.

A handwritten signature in black ink, appearing to read "Brett C. Anderson", written over a horizontal line.

BRETT C. ANDERSON
Attorney for Plaintiffs

Plaintiffs' Address:
c/o Brett C. Anderson, Esq.
DUVAL HANSEN WITT & MORLEY, P.C.
110 South Main Street
Pleasant Grove, Utah 84062

Exhibit “D”
Stahl survey/findings

North Quarter Corner
Sec 27 T5N R2E SL&M
Found GLO Monument

Northeast Closing Corner
Sec 27 T5N R2E SL&M
Found GLO Monument

GRAPHIC SCALE

723.30

723.30

723.30

723.30

723.30

723.30

723.30

723.30

723.30

723.30

723.30

723.30

723.30

723.30

723.30

723.30

723.30

723.30

723.30

723.30

I, John B. Stahl, Salt Lake
License No. 7600 as per
following described property

Parcel No	Doc Type
1	Patent
2	WD
2a	WD
2b	WD
2c	WD
3	WD
4	WD
5	WD
5a	WD
5b	WD
5c	WD

Parcel No	Doc Type
1	WD
1	WD
1	QCD
1	QCD
2a	BLA
2a	QCD
2a	QCD
2b	QCD
2b	QCD
2c	QCD
2c	QCD
2c	QCD
3	QCD
3	WD
4	QCD
4	QCD
5a	WD
5b	WD
5c	WD

I further certify that this plat
improvements located and
described property enclosed
adjoining properties enclosed

John B. Stahl
License No.

Sec 27 T5N R2E SL&M
Found UTCo Monument

CORNERSTONE, INC.
PROFESSIONAL LAND SURVEYORS
2028 East 7000 South, Suite 204
Salt Lake City, Utah 84121
(801) 943-4090 FAX (801) 943-7600
ALTA SURVEYS, COMPUTER MAPPING
BOUNDARY CONSULTATION & RESEARCH

REGISTERED LAND SURVEYOR
LICENSE
#7600
JOHN B
STAHL
STATE OF UTAH

No	Date	By	REVISIONS	Notes
1	Dec. 12, 2003	JBS		Add 1a to Parcel 2 & Label 5d

Drawing Name HMA0501-1	Plot Date Sep 9 2003	Drawing Scale Horizontal= 1"=30 Vertical= None
---------------------------	-------------------------	--

Title CERTIFICATE OF SURVEY SUDWEKS & NIMER PROPERTY 1610 East 200 South, Pleasant Grove, Utah	Client Brett Anderson 110 S Main St Pleasant Grove UT 84062	Project Address 1610 E 200 S Pleasant Grove UT	Project Location NW1/4 Sec 27 T5S R2E SL&M
---	--	---	---

Project No

Exhibit “E”
Utah County Plat

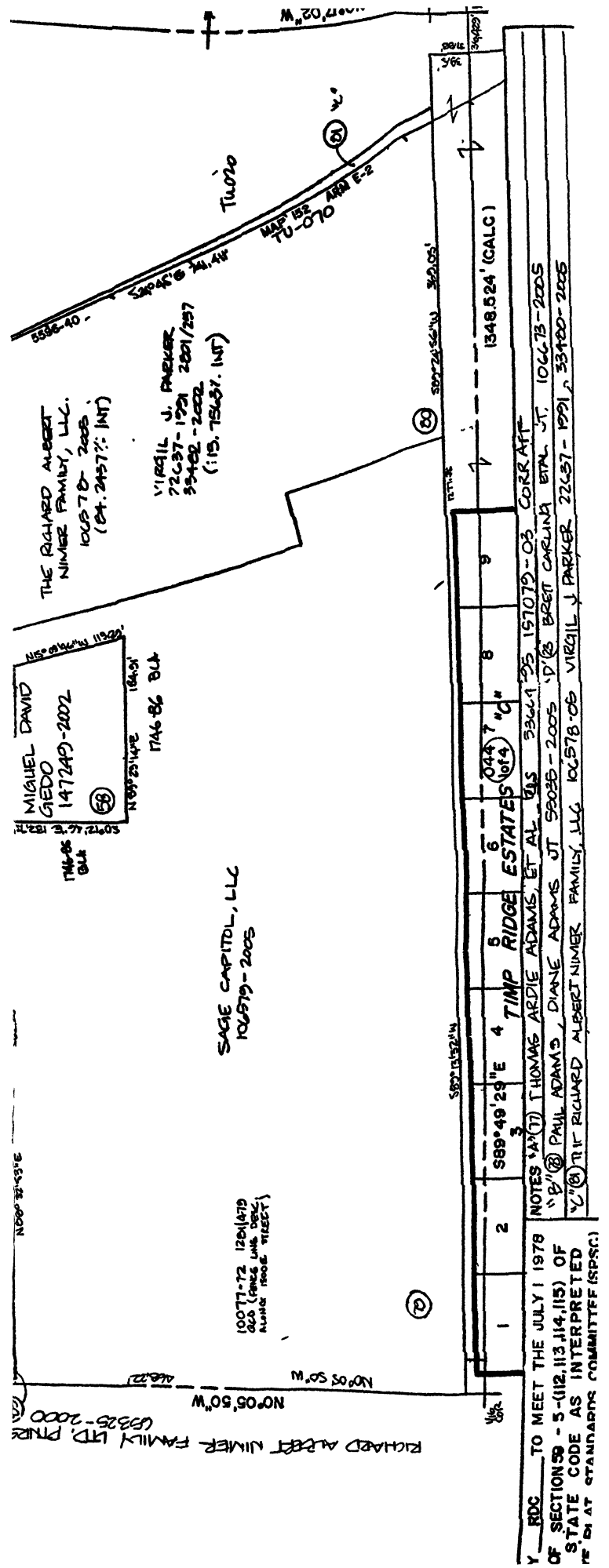


Exhibit “F”
Order and Judgment

COPY

Brett C. Anderson, Bar No. 8134
WITT MORLEY & ANDERSON, P.C.
Attorney for Plaintiffs
110 South Main Street
Pleasant Grove, Utah 84062
Telephone: (801) 785-5350
Facsimile: (801) 785-0853

FILED
Fourth Judicial District Court
of Utah County, State of Utah

8-3-04 Deputy *SW*
9.58

**IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH, PROVO DEPARTMENT**

125 North 100 West, Provo, Utah 84601

JOHN R. SUDWEEKS, and
DEANNA SUDWEEKS

Plaintiffs,

vs.

MARIA ANGELICA SANCHEZ,
MIGUEL DAVID GEDO, JAMES GEDO,
JOHNNY RAY O'CONNOR, and MARTHA
O'CONNOR,

Defendants.

ORDER AND JUDGMENT

Case No. **01-0402488**

Judge: James R. Taylor

On December 15 and 16, 2003, a trial was conducted in the above-mentioned matter, the Honorable James R. Taylor presiding. Plaintiffs, John R. Sudweeks and Deanna Sudweeks, appeared in person and were represented by counsel of record, Brett C. Anderson, WITT MORLEY & ANDERSON, P.C. Defendants Maria Angelica Sanchez, Miguel David Gedo,

James Gedo, Johnny Ray O'Connor, and Martha O'Connor appeared in person, *pro se*. The Court heard evidence from the parties.

The Court, having reviewed the file, and being otherwise fully apprized in the matter, hereby makes the following FINDINGS OF FACT:

1. The Court finds John B. Stahl's testimony convincing and therefore adopts Plaintiffs' Exhibit #1.
2. The Court finds that the deed of distribution of the estate of Ivadell Tomlinson in 1972 contained an erroneous legal description. The decree mistakenly located the east line of lot 11 (parcel 1-40-440011) westward 33 feet from its correct position.
3. This mistake shifted the west boundary of the estate of Ivadell Tomlinson by 33 feet.
4. The estate of Ivadell Tomlinson was subsequently divided into real property consisting of four parcels or lots, to wit: (1) lot 16 (parcel 1-40-440016), (2) lot 13 (parcel 1-40-440013), (3) lot 14 (parcel 1-40-440014), and (4) lot 15 (parcel 1-40-440015). The legal descriptions of the above-mentioned lots perpetuated the error in paragraph 3, shifting the legal descriptions of these properties westward 33 feet.
5. The error was propagated into legal descriptions of adjoining real property, including lot 11 (parcel 1-40-440011) and lot 12 (parcel 1-40-440012) to the East, and lots 57 (parcel 1-40-440057), 52 (parcel 1-40-440052), and 58 (parcel 1-40-440058) to the West of the former Ivadell Tomlinson estate.

6. Modifications were subsequently made to the descriptions of lot 57 (parcel 1-40-440057), lot 52 (parcel 1-40-440052), and lot 58 (parcel 1-40-440058) which altered the boundary lines by agreements, surveys, and deed exchanges.
7. Even though the boundaries between lot 16 (parcel 1-40-440016) and lot 57 (parcel 1-40-440057) are contiguous, the modifications mentioned in paragraph 6 purported to create a new parcel of 33 feet in width between lots 16 and 57. This purported parcel is referred to as lot 59 (parcel 1-40-440059) in the records of the Utah County Recorder.
8. Defendants Maria Angelica Sanchez, Miguel David Gedo and James Gedo claimed an interest in the 33-foot wide parcel of real property known as lot 59 (parcel 1-40-440059) in the Utah County Recorder's Office.
9. The Court finds that lot 59 (parcel 1-40-440059), as described in the records of the Utah County Recorder, does not exist and that the county records are in error.
10. The Court finds that the metes and bounds description prepared by John B. Stahl, of the disputed parcel (referred to in the Utah County Recorder's Office as lot 59 or parcel 1-40-440059), in addition to that of lots 13 and 16 (indisputably owned by Plaintiffs), describes exactly the two lots purchased by Plaintiffs approximately thirty years ago.
11. Therefore, the Court finds that Title should be quieted in Plaintiffs John and Deanna Sudweeks in real property referred to in paragraph 10 and more particularly described as follows:

Commencing at the North Quarter corner of Section 27, Township 5 South, Range 2 East, of the Salt Lake Base and Meridian, thence South 729.55 feet (South 729.35 feet and 730.08 feet by record and South 00°05'49" East by Utah County State Plane Coordinate System) along the section line and North 89°39'57" East 33.00 feet (East 33.0 feet by record) to a point on the east line of 1500 East Street and the south line of Battle Creek Drive, Pleasant Grove, Utah; thence continuing along the south line of said Battle Creek Drive North 89°39'57" East 356.74 feet (North 89°05' East 356.74 feet by record) to the northeast corner of that certain parcel originally described in Book 1241 at Page 262 as Entry 13592:1971 in the office of the Utah County Recorder, said northeast corner being the True Point of Beginning of the herein described parcel; and running thence and continuing along said south line of Battle Creek Drive North 89°39'57" East 171.24 feet (North 89°05' East 171.26 feet by record) to the northwest corner of that certain parcel originally described in Book 672 at Page 511 as Entry 1276:1955 said corner being common with that certain parcel described in a Quit Claim Deed as Entry 35258:2003 recorded March 10, 2003, said corner also being South 89°39'57" West 176.74 feet from that certain fence corner originally described in Book 672 at Page 511 as Entry 1276:1955 and as described in those certain Boundary Line Agreements recorded in Book 2275 at Page 838 as Entry 1746:1986 and in Book 2966 at Page 465 as Entry 35388:1992; thence South 00°00'07" East 132.90 feet (South 0°13' West 132.90 feet by record) along the west line of said parcel originally described in Book 672 at Page 511 as Entry 1276:1955; thence South 89°01'32" West 153.35 feet (South 89°05' West 171.27 feet by record) to the southwest corner of said parcel originally described in Book 1241 at Page 262 as Entry 13592:1971, said southwest corner being North 89°01'32" East 180.02 feet (North 89°05' East 180 feet by record) from the southeast corner of that certain parcel originally described in Book 679 at Page 617 as Entry 5772:1955; thence North 00°03'00" East 134.81 feet (North 0°16' East 132.90 feet by record) to the True Point of Beginning.

12. Title to this real property being quieted in the Plaintiffs, the Court finds that the issue of boundary by acquiescence is therefore moot.
13. The issue of prescriptive easement is similarly moot.

14. The Court finds that Plaintiffs' claim for forcible detainer should be dismissed based on Plaintiff's own motion.
15. The Court finds that Defendants Miguel David Gedo, James Gedo and Maria Angelica Sanchez claimed rightful use of the disputed parcel, and as a result, the Plaintiffs' claim for trespass should be denied.
16. Defendants Miguel David Gedo and James Gedo violated the Temporary Restraining Order and Preliminary Injunction, which were entered by this Court on or about September 6, 2001, by placing threatening telephone calls to Plaintiffs on or about June 24, 2003 and June 26, 2003.
17. Therefore, the Court finds that Plaintiffs have met their burden with regards to Rule 65A of the Utah Rules of Civil Procedure and, as a result, Defendants Miguel David Gedo and James Gedo are permanently restrained and enjoined from using, occupying or trespassing on Plaintiff's real property, including the real property described in paragraph 11, herein, and from having any contact with Plaintiffs or Plaintiffs' family members.
18. Plaintiffs incurred \$14,182.70 in reasonable attorney fees and costs, as testified to by Plaintiffs' attorney, Brett C. Anderson of WITT MORLEY & ANDERSON, P.C., in the Affidavit of Brett C. Anderson. Accordingly, Plaintiffs should be awarded \$14,182.70 for their attorney fees and costs included herein, and judgment should be entered against Miguel David Gedo and James Gedo in the amount of \$14,182.70.

Based on the above, and for good cause showing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The records of the Utah County Recorder shall be corrected in conformance to the survey performed by John B. Stahl (Plaintiff's Exhibit #1) to show that lot 59 (parcel 1-40-440059) does not exist.
2. Title to the disputed 33-foot wide parcel of real property – former lot 59 (parcel 1-40-440059) – is quieted in John and Deanna Sudweeks, as part of the following described real property:

Commencing at the North Quarter corner of Section 27, Township 5 South, Range 2 East, of the Salt Lake Base and Meridian, thence South 729.55 feet (South 729.35 feet and 730.08 feet by record and South 00°05'49" East by Utah County State Plane Coordinate System) along the section line and North 89°39'57" East 33.00 feet (East 33.0 feet by record) to a point on the east line of 1500 East Street and the south line of Battle Creek Drive, Pleasant Grove, Utah; thence continuing along the south line of said Battle Creek Drive North 89°39'57" East 356.74 feet (North 89°05' East 356.74 feet by record) to the northeast corner of that certain parcel originally described in Book 1241 at Page 262 as Entry 13592:1971 in the office of the Utah County Recorder, said northeast corner being the True Point of Beginning of the herein described parcel; and running thence and continuing along said south line of Battle Creek Drive North 89°39'57" East 171.24 feet (North 89°05' East 171.26 feet by record) to the northwest corner of that certain parcel originally described in Book 672 at Page 511 as Entry 1276:1955 said corner being common with that certain parcel described in a Quit Claim Deed as Entry 35258:2003 recorded March 10, 2003, said corner also being South 89°39'57" West 176.74 feet from that certain fence corner originally described in Book 672 at Page 511 as Entry 1276:1955 and as described in those certain Boundary Line Agreements recorded in Book 2275 at Page 838 as Entry 1746:1986 and in Book 2966 at Page 465 as Entry 35388:1992; thence South 00°00'07" East 132.90 feet (South 0°13' West 132.90 feet by record) along the west line of said parcel originally described in Book 672 at Page 511 as Entry 1276:1955; thence South 89°01'32" West 153.35 feet (South 89°05' West 171.27 feet by record) to the southwest corner of said parcel originally described in Book 1241 at Page 262 as Entry 13592:1971, said southwest corner being

North 89°01'32" East 180.02 feet (North 89°05' East 180 feet by record) from the southeast corner of that certain parcel originally described in Book 679 at Page 617 as Entry 5772:1955; thence North 00°03'00" East 134.81 feet (North 0°16' East 132.90 feet by record) to the True Point of Beginning.

3. Plaintiffs John and Deanna Sudweeks own lots 13 (parcel 1-40-440013) and 16 (parcel 1-40-440016) up to the western boundary of lot 57 (parcel 1-40-440057), more particularly described in paragraph 2 of this Order.
4. Plaintiffs' claim for forcible detainer is dismissed on Plaintiffs' own motion.
5. Plaintiffs' claim against Defendants Miguel David Gedo, James Gedo and Maria Angelica Sanchez for trespass is denied.
6. Defendants Miguel David Gedo and James Gedo are permanently restrained and enjoined from using, entering, occupying, trespassing on, or otherwise interfering with Plaintiffs' quiet use and enjoyment of their real property, including the real property described in paragraph 2 of this Order
7. Defendants Miguel David Gedo and James Gedo are permanently restrained and enjoined from contacting, annoying, harassing, harming, or otherwise communicating directly or indirectly with Plaintiffs or Plaintiffs' family members.
8. Defendants Miguel David Gedo and James Gedo shall pay Plaintiff's attorney fees and costs in the amount of \$14,182.70.

DATED this 3 day of Aug 2004.

BY THE COURT:

/S/ JAMES R. TAYLOR

James R. Taylor
DISTRICT COURT JUDGE

NOTICE OF INTENT TO SUBMIT FOR SIGNATURE

To: James Gedo, Miguel David Gedo, Maria Angelica Sanchez, Johnny Ray O'Connor, Martha O'Connor; Defendants,

Please take notice that the undersigned attorney for Plaintiffs will submit the above and foregoing ORDER & JUDGMENT to the Fourth District Court in and for Utah County for signature upon the expiration of five (5) days from the date of this notice, plus three (3) days for mailing, unless written objection is filed prior to that time pursuant to Rule 4-504 of the Utah Rules of Judicial Administration.

DATED this 20th day of July, 2004.

WITT MORLEY & ANDERSON, P.C.

A handwritten signature in black ink, appearing to read "Brett C. Anderson", written over a horizontal line.

BRETT C. ANDERSON
Attorney for Plaintiffs

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing, ORDER AND JUDGMENT, postage prepaid by first-class mail, on this 20th day of July, 2004, to the following:

Maria Angelica Sanchez
361 West 800 North
Provo, Utah 84601

Miguel David Gedo
PO Box 970002
Orem, Utah 84097

Miguel David Gedo
361 West 800 North
Provo, Utah 84601

James Gedo
361 West 800 North
Provo, Utah 84601

Johnny Ray O'Connor
1640 East Battlecreek Dr.
Pleasant Grove, Utah 84062

Martha Ray O'Connor
1640 East Battlecreek Dr.
Pleasant Grove, Utah 84062

John and Deanna Sudweeks
1610 East 200 South
Pleasant Grove, Utah 84062



Legal Assistant

Exhibit “G”
Deeds- Geddo

WHEN RECORDED RETURN TO:
Miguel David Gedo
1640 East 200 South
Pleasant Grove, Utah 84062

ENT 109680 BK 5241 PG 19
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
1999 Oct 12 9:09 am FEE 16.00 BY SS
RECORDED FOR EQUITY TITLE AGENCY INC

WARRANTY DEED

ALAN R. STRASBURG grantor(s)

of Pleasant Grove, County of Utah State of UT hereby
Convey and Warrant to

MIGUEL DAVID GEDO

of Pleasant Grove, County of Utah, State of Utah grantee(s)

for the sum of TEN DOLLARS and other good and valuable consideration
the following described tract of land in Utah County, State of UTAH, to wit:

PARCEL 2: SEE ATTACHED EXHIBIT "A"

Sidwell No. 14:044:0059

Subject to covenants, conditions and restrictions of record.

WITNESS, the hands of said grantors, this 8th day of October 1999, A.D.
Signed in the presence of

Alan R. Strasburg
ALAN R. STRASBURG

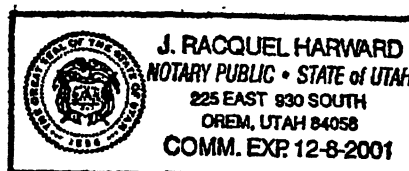
STATE OF UTAH)
 : ss
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this 8th day of October, 1999, by

Alan R. Strasburg

J. Racquel Harvard
Notary Public
Residing in: Orem, UT

My Commission Expires: 12-8-2001



PARCEL 2

COMMENCING AT A POINT ON SOUTH SIDE OF BATTLE CREEK DRIVE PLEASANT GROVE, UTAH, THENCE NORTH 89 DEG. 59' WEST ALONG THE SECTION LINE 2075 10 FEET AND SOUTH 720 02 FEET FROM THE NORTHEAST CORNER OF SECTION 27 TOWNSHIP 5 SOUTH, RANGE 2 EAST SALT LAKE BASE AND MERIDIAN. THENCE SOUTH 29' WEST ALONG A RETAINING WALL AND WELL EXTENDED 146 85 FEET, THENCE NORTH 89 DEG 05' EAST 70.39 FEET, THENCE SOUTH 14 DEG 44' EAST 119 29 FEET, THENCE SOUTH 89 DEG 55' WEST 184 91 FEET, THENCE NORTH 13 EAST 260 FEET, THENCE NORTH 89 DEG 05' EAST 84 45 FEET TO BEGINNING

LESS AND EXCEPTING

COMMENCING AT THE NORTHEAST CORNER OF SECTION 27, TOWNSHIP 5 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, THENCE SOUTH 0 DEG 27'58" EAST ALONG THE SECTION LINE 1382 51 FEET, THENCE NORTH 89 DEG 49'36" WEST ALONG THE ONE-SIXTEENTH SECTION LINE 1386 88 FEET, THENCE NORTH 1 DEG 45'27" WEST ALONG A FENCE LINE 37 88 FEET, THENCE SOUTH 89 DEG 24'56" WEST 429 15 FEET, THENCE SOUTH 89 DEG 13'32" WEST ALONG THE NORTH BOUNDARY OF PLAT "C" TIMP RIDGE ESTATES 879.87 FEET, THENCE NORTH 0 DEG 05'48" WEST ALONG THE ONE-QUARTER SECTION LINE 468 22 FEET, THENCE NORTH 88 DEG 32'53" EAST PARTIALLY ALONG A FENCE LINE 562 53 FEET, THENCE SOUTH 0 DEG 12'46" EAST 132 75 FEET, THENCE NORTH 89 DEG 29'14" EAST 184 19 FEET, THENCE NORTH 15 DEG 09'46" WEST 119.29 FEET THENCE NORTH 8 DEG 06'12" EAST ALONG A FENCE LINE 148 31 FEET, THENCE NORTH 88 DEG 39'14" EAST 204 56 FEET, THENCE NORTH 2 DEG 00'13" WEST 69 49 FEET, THENCE NORTH 48 DEG 15' EAST 172 00 FEET THENCE NORTH 64 DEG 45 EAST 405 50 FEET, THENCE NORTH 19 DEG 57' EAST 73 26 FEET, THENCE NORTH 17 DEG 20'46" WEST 85 20 FEET, THENCE NORTH 42 DEG 46'14" EAST 304 90 FEET, THENCE NORTH 89 DEG 35'06" EAST ALONG THE SECTION LINE 1045 29 FEET TO THE POINT OF BEGINNING

ALSO LESS AND EXCEPTING

BEGINNING AT A POINT ON A FENCE CORNER, AT A POINT ON THE BOUNDARY LINE AGREEMENT AS RECORDED IN BOOK 2275-OF-848, SAID POINT BEING SOUTH 89 DEG 35'07" WEST 1949 10 FEET ALONG SECTION LINE AND SOUTH 729 23 FEET FROM THE NORTHEAST CORNER OF SECTION 27, TOWNSHIP 5 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, THENCE SOUTH 8 DEG. 06'12" WEST 148.31 FEET ALONG A FENCE LINE THENCE SOUTH 89 DEG 59'43" WEST 71 61 FEET ALONG A FENCE LINE. THENCE NORTH 0 DEG 05'19" EAST 146 13 FEET ALONG A FENCE LINE, THENCE NORTH 89 DEG 33'35" EAST 92 30 FEET ALONG A FENCE LINE TO THE POINT OF BEGINNING

ALSO LESS AND EXCEPTING

BEGINNING AT A FENCE CORNER ON THE SOUTH SIDE OF 200 SOUTH STREET (BATTLE CREEK DRIVE), PLEASANT GROVE, UTAH, WHICH POINT IS SOUTH 89°35'14" WEST ALONG THE SECTION LINE 2041 40 FEET AND SOUTH 729.35 FEET (BASED ON THE UTAH STATE COORDINATE SYSTEM, CENTRAL ZONE AND DATA PUBLISHED BY THE UTAH COUNTY SURVEYOR AS OF JANUARY 1986) FROM THE NORTHEAST CORNER OF SECTION 27, TOWNSHIP 5 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN. THENCE SOUTH 00°05'19" WEST 137 87 FEET ALONG A FENCE LINE AS DESCRIBED IN A FENCE LINE BOUNDARY AGREEMENT ENTRY NO 35388-92, BOOK 2966, PAGE 465, THENCE SOUTH 89°22'00" WEST 82 56 FEET TO A POINT ON A BOUNDARY LINE AGREEMENT ENTRY NO 1746-86, BOOK 2275 PAGE 848, THENCE NORTH 00°12'46" WEST ALONG SAID BOUNDARY LINE AGREEMENT 8.63 FEET, THENCE SOUTH 88°32'53" WEST CONTINUING ALONG SAID BOUNDARY LINE AGREEMENT 0 50 FEET TO A FENCE LINE, THENCE NORTH 00°36'30" WEST 129 53 FEET TO THE SOUTH SIDE OF SAID 200 SOUTH STREET, THENCE NORTH 89°33'35" EAST ALONG SAID STREET 84 68 FEET TO THE POINT OF BEGINNING

ALSO LESS AND EXCEPTING

BEGINNING AT A POINT ON A BOUNDARY LINE AGREEMENT ENTRY NO 1746-86 BOOK 2275, PAGE 848, WHICH POINT IS SOUTH 89°35'14" WEST ALONG THE SECTION LINE 1970 01 FEET AND SOUTH 875 99 FEET (BASED ON THE UTAH STATE COORDINATE SYSTEM, CENTRAL ZONE AND DATA PUBLISHED BY THE UTAH COUNTY SURVEYOR AS OF JANUARY 1986) FROM THE NORTHEAST CORNER OF SECTION 27, TOWNSHIP 5 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, THENCE SOUTH 15°09'46" EAST ALONG SAID BOUNDARY LINE AGREEMENT 119 29 FEET THENCE SOUTH 89°29'14" WEST CONTINUING ALONG SAID BOUNDARY LINE AGREEMENT 184 91 FEET, THENCE NORTH 00°12'46" WEST CONTINUING ALONG SAID BOUNDARY LINE AGREEMENT 124 12 FEET. THENCE NORTH 89°22'00" EAST 82.56 FEET TO A FENCE LINE AS DESCRIBED IN A FENCE LINE BOUNDARY AGREEMENT ENTRY NO 35388-92, BOOK 2966, PAGE 465 THENCE SOUTH 00°05'19" WEST 8 25 FEET ALONG A FENCE LINE AS DESCRIBED IN SAID BOUNDARY AGREEMENT TO A FENCE LINE. THENCE NORTH 89°59'43" EAST 71 61 FEET ALONG SAID FENCE LINE AS DESCRIBED IN SAID BOUNDARY AGREEMENT, TO THE POINT OF BEGINNING

Grantee

File No.

ENT 112443 M 5248 M 654
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
1999 Oct 19 3:58 pm FEE 19.00 BY 88
RECORDED FOR EQUITY TITLE AGENCY INC

QUI I AIM LFFH

Grantors

Grantees

the following described tract of land in Utah County, State
Utah

SEL ATTACHED EXHIBIT "A"

WITNESS, the hand of said ~~Grantor~~, this 0 day of October 1999

~~MIGUEL DAVID GED~~
~~Grantor~~

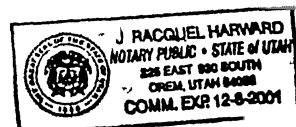
COUNTY OF UTAH)
STATE OF UTAH)

SUBSCRIBED AND SWORN to before me

October, 1999, by MIGUEL DAVID GEH

instrument, who duly acknowledges

same.

[illegible]

ENT 112443 N 5248 P 655

EXHIBIT "A"

PARCEL 1.

BEGINNING AT A POINT ON A BOUNDARY LINE AGREEMENT ENTRY NO. 1746-86, BOOK 2275, PAGE 848, WHICH POINT IS SOUTH 89°35'14" WEST ALONG THE SECTION LINE 1970.01 FEET AND SOUTH 875.99 FEET (BASED ON THE UTAH STATE COORDINATE SYSTEM, CENTRAL ZONE AND DATA PUBLISHED BY THE UTAH COUNTY SURVEYOR AS OF JANUARY 1986) FROM THE NORTHEAST CORNER OF SECTION 27, TOWNSHIP 5 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 15°09'46" EAST ALONG SAID BOUNDARY LINE AGREEMENT 119.29 FEET; THENCE SOUTH 89°29'14" WEST CONTINUING ALONG SAID BOUNDARY LINE AGREEMENT 184.91 FEET; THENCE NORTH 00°12'46" WEST CONTINUING ALONG SAID BOUNDARY LINE AGREEMENT 124.12 FEET; THENCE NORTH 89°22'00" EAST 82.56 FEET TO A FENCE LINE AS DESCRIBED IN A FENCE LINE BOUNDARY AGREEMENT ENTRY NO. 35388-92, BOOK 2966, PAGE 465; THENCE SOUTH 00°05'19" WEST 8.25 FEET ALONG A FENCE LINE AS DESCRIBED IN SAID BOUNDARY AGREEMENT, TO A FENCE LINE; THENCE NORTH 89°59'43" EAST 71.61 FEET ALONG SAID FENCE LINE AS DESCRIBED IN SAID BOUNDARY AGREEMENT, TO THE POINT OF BEGINNING.

14-044-0058

Exhibit “11”
Summons

**IN THE FOURTH JUDICIAL DISTRICT COURT
COUNTY OF UTAH, STATE OF UTAH
125 North 100 West, Provo, UT 84601**

Case No.

SERVE DEFENDANT I

BRETT C. ANDERSON, Bar No. 8134
GORDON W. DUVAL, Bar No. 6532
DUVAL HANSEN WITT & MORLEY, P.C.
 110 South Main Street
 Pleasant Grove, Utah 84062
 Telephone: (801) 785-5350
 Facsimile: (801) 785-0853
 Attorney for Plaintiffs

**IN THE FOURTH JUDICIAL DISTRICT COURT
COUNTY OF UTAH, STATE OF UTAH
125 North 100 West, Provo, UT 84601**

**JOHN R. SUDWEEKS and
DEANNA SUDWEEKS,**

Plaintiffs,

VS.

**MARIA ANGELICA SANCHEZ,
MIGUEL DAVID GEDO, JAMES GEDO,
JOHNNY RAY O'CONNOR, and
MARTHA O' CONNOR**

Defendant.

SUMMONS

Case No.

THE STATE OF UTAH TO: JAMES GEDO

YOU ARE HEREBY summoned and required, within 20 days of service of this summons upon you, to file with the Fourth District Court clerk at 125 North 100 West, Provo, Utah 84601, a written answer to the attached complaint and to mail a copy to the plaintiff's attorney. If you fail to do so, judgment by default will be taken against you for the relief demanded in said complaint which is on file with the court.

DATED this 17th day of May, 2001.

DUVAL HANSEN, WITT & MORLEY, P.C.

Bill Coss

BRETT C. ANDERSON
Attorney for Plaintiffs

SERVE DEFENDANT:

**IN THE FOURTH JUDICIAL DISTRICT COURT
COUNTY OF UTAH, STATE OF UTAH
125 North 100 West, Provo, UT 84601**

Case No.

SERVE DEFENDANT:

Exhibit “I”

Temporary Restraining Order and Order to Show Cause

RECEIVED

JUL 25 2001

BRETT C. ANDERSON (8134)
DUVAL HANSEN WITT & MORLEY, P.C.
Attorney for Plaintiffs
306 West Main
American Fork, Utah 84003
TELEPHONE: (801) 756-7658

IN THE FOURTH JUDICIAL DISTRICT COURT
OF UTAH COUNTY, PROVO DEPARTMENT, STATE OF UTAH

JOHN R. SUDWEEKS, and
DEANNA SUDWEEKS,

Plaintiffs,

vs.

MARIA ANGELICA SANCHEZ,
MIGUEL DAVID GEDO, JAMES GEDO,)
JOHNNY RAY O'CONNOR,

Defendants.

TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE

Civil No. 01-0402488

Judge: District #7

This matter is before the Court on Plaintiff John R. Sudweeks' Motion for Temporary Restraining Order and Preliminary Injunction. The Court has reviewed the motion, and the affidavit in support thereof, and from the matters submitted, the Court hereby finds:

1. This dispute appears to be a dispute involving threats made by Defendants Miguel David Gedo and James Gedo against Plaintiff John R. Sudweeks, his wife and

family, and that the threats appear to be threats of imminent physical violence and death against Mr. Sudweeks, his wife and family.

2. This dispute also appears to be a dispute involving the blocking of a large wrecking truck in front of the Plaintiffs' motor home for a period of many days, which prohibited the Plaintiffs' from the use of their motor home.
3. That from the parties' pleadings filed in this case, this Court has jurisdiction over the subject matter as well as personal jurisdiction over the parties.
4. It appears that on or about 7/2/01, Plaintiff John R. Sudweeks was working in his back yard at 1610 East 200 South, Pleasant Grove, Utah when he was approached by Defendants Miguel David Gedo and James Gedo (Gedos), and his health and life were imminently threatened by the Gedos, as well as the health and life of Mr. Sudweeks' wife and family, and that these threats may be related to the pending quiet title action which the Plaintiffs have filed against the Gedos and their mother.
5. It appears that the Gedos have recently parked a large wrecking truck in front of the Plaintiffs' motor home which was a few feet away from the Plaintiffs' home, and that this prohibited the Plaintiffs from the use of their motor home for many days.

6. It appears, based on the alleged threats and actions of the Gedos which are described in the Affidavit of John R. Sudweeks in Support of Motion for Temporary Restraining Order, that immediate and irreparable injury, loss, or damage will result to John R. Sudweeks, his wife, Deanna Sudweeks, and their immediate family members before the Defendants, Miguel David Gedo and James Gedo, are heard on this matter.
7. That it appears that the Defendants, Miguel David Gedo and James Gedo, will not suffer cost, attorney fees or damage as the result of this injunction, and the Court therefore dispenses with the requirement of security.

Based upon the above, and good cause appearing, now therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

8. Defendants Miguel David Gedo and James Gedo are temporarily restrained and enjoined from entering Plaintiffs' real property located at: 1610 East 200 South, Pleasant Grove, Utah, including the thirty three foot wide parcel which is described in paragraphs 6 and 7 of Plaintiffs' Complaint in this case, and from blocking or otherwise interfering with Plaintiffs' quiet use and enjoyment of said real property, unless and until further order of this Court.

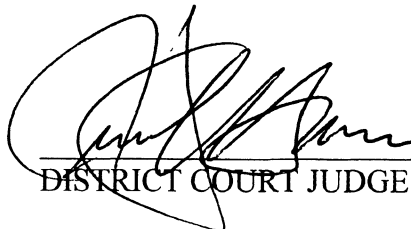
9. Defendants Miguel David Gedo and James Gedo are further restrained and enjoined from contacting, annoying, harassing, harming, or otherwise communicating directly or indirectly with the Plaintiffs and their immediate family members, unless and until further order of this Court.

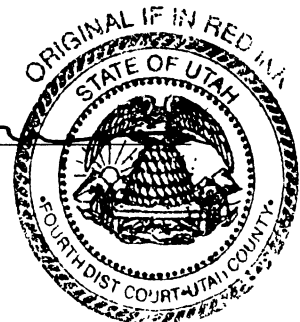
DEFENDANTS MIGUEL DAVID GEDO AND JAMES GEDO ARE FURTHER ORDERED, ADJUDGED AND DECREED to appear and show cause, if any they have, why this Temporary Restraining Order should not be converted to a preliminary injunction and continued during the pendency of this action, on Aug 8, 2001, at the hour of 10 15 am, at the Fourth District Courthouse, Provo Department, 125 North 100 West, Provo, Utah, Room 104.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that no security is required for the issuance of this Temporary Restraining Order. The Court will, however, reconsider the issue of security at the time of the preliminary injunction hearing set forth above.

DATED this 23 day of July, 2001. 11:00 A.M.

BY THE COURT:


DISTRICT COURT JUDGE



CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of July, 2001, a true and correct copy of the within and foregoing TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE was mailed, via United States Postal Service, first class postage prepaid, to the following:

Miguel David Gedo
361 West 800 North
Provo, Utah 84061

James Gedo
361 West 800 North
Provo, Utah 84061

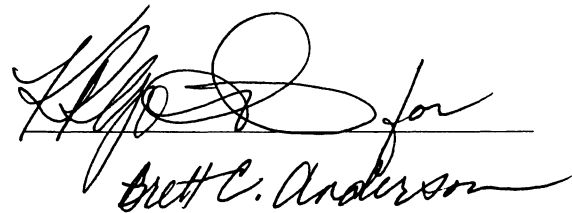
 for
Brett C. Anderson

Exhibit “J”
Order and Preliminary Injunction

RECEIVED
SEP 12 2001

Brett C. Anderson, (8134)
DUVAL HANSEN WITT & MORLEY, P.C.
Attorney for Plaintiffs
306 West Main Street
American Fork, Utah 84003
TELEPHONE: (801) 756-7658

IN THE FOURTH JUDICIAL DISTRICT COURT
OF UTAH COUNTY, STATE OF UTAH, PROVO DEPARTMENT

125 North 100 West, Provo, Utah 84601

JOHN R. SUDWEEKS, and)	
DEANNA SUDWEEKS,)	ORDER AND PRELIMINARY
)	INJUNCTION AGAINST
Plaintiffs,)	DEFENDANTS MIGUEL DAVID
)	GEDO AND JAMES GEDO
vs.)	
MARIA ANGELICA SANCHEZ,)	
MIGUEL DAVID GEDO, JAMES GEDO,)	Civil No. 01-0402488
JOHNNY RAY O'CONNOR, and)	Judge: Steven L. Hansen
MARTHA O'CONNOR.)	
Defendants.)	

The above-entitled matter came on for hearing on August 8, 2001, at 10:15 a.m., before the Honorable Steven L. Hansen. The Plaintiffs appeared in person and were represented by Brett C. Anderson of the law firm of DUVAL HANSEN WITT & MORLEY, P.C. Defendants Miguel David Gedo and James Gedo appeared in person and were not represented by counsel.

The Court, having heard arguments of Plaintiffs' counsel and the Defendants, having heard evidence in support of their pleadings, and having reviewed the file in this matter, and being otherwise fully advised, enters its:

FINDINGS OF FACT

1. Plaintiffs, John R. Sudweeks and Deanna Sudweeks will suffer irreparable harm unless this Order and Injunction issues.
2. The threatened injury to the Plaintiffs outweighs whatever damage this Order and Injunction may cause Defendants Miguel David Gedo and James Gedo.
3. This Order and Injunction will not be adverse to the public interest.
4. Although the Court, with the limited information before it, is unable, at this point, to find that there is a substantial likelihood that the Plaintiffs will prevail on the merits of their underlying claim, the case does present serious issues on the merits which should be the subject of further litigation.

From the foregoing Findings of Fact, and the Court, being otherwise fully advised, it is hereby,

ORDERED, ADJUDGED AND DECREED:

1. That Defendants Miguel David Gedo and James Gedo are restrained and enjoined from entering Plaintiffs' real property located at: 1610 East 200 South, Pleasant Grove, Utah, including the thirty-three foot wide parcel which is described in Paragraphs 6 and 7 of Plaintiffs' Complaint which has been filed in this matter, and which real property is the basis of this law suit, and is referred to by the

Records of the Utah County Recorder as:

COMMENCING South 735.14 Feet and West 2069.64 Feet From the Northeast Corner of Section 27, Township 5 South, Range 2 East, Salt Lake Base and Meridian; South 0° 3' 13" West .06 feet; South 0° 3' 14", West .07 Feet; South 89° 33' 35", West 56.38 Feet; South 0° 36' 30 " , East 129.3 Feet; North 88° 32' 53", East .5 Feet; South 0° 12' 47", East .18 Feet; South 88° 32' 52", West 29.43 T; North 0° 12' 47", West 138.01 Feet; North 88° 39' 13", East 84.45 Feet to the Point of Beginning. Total area is approximately .101 acres.

2. Defendants Miguel David Gedo and James Gedo are restrained and enjoined from blocking or otherwise interfering with Plaintiffs' quiet use and enjoyment of the parcels of real property described in Paragraph 1 above.
3. Defendants Miguel David Gedo and James Gedo are restrained and enjoined from contacting, annoying, harassing, harming, or otherwise communicating directly or indirectly with the Plaintiffs and their family members.

4. That Defendants' Motion for Temporary Restraining Order is hereby denied.

DATED this 6 day of ~~August~~^{September}, 2001.

BY THE COURT

s/Steven L. Hansen

Steven L. Hansen
DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

On this 21st day of August, 2001, I deposited in the United States Mail, postage prepaid, a true and correct copy of the foregoing Order and Preliminary Injunction Against Defendants Miguel David Gedo and James Gedo, to:

Miguel David Gedo
361 West 800 North
Provo, Utah 84061

James Gedo
361 West 800 North
Provo, Utah 84601

D. Ellison

768 E 300 N.
Provo, UT

Exhibit “K”

Memorandum Decision-Judge Hansen

RECEIVED
MAR 22 2002

**IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH**

JOHN R. SUDWEEKS, and DEANNA
SUDWEEKS,

Plaintiffs,

vs.

MARIA ANGELICA SANCHEZ, MIGUEL
DAVID GEDO, JAMES GEDO, JOHNNY
RAY O'CONNOR, and MARTHA
O'CONNOR.

Defendants.

MEMORANDUM DECISION

Case No. 010402488

Date: March 20, 2002

Judge Steven L. Hansen

Before the Court is Plaintiffs' Motion to Strike Defendants' Demand to Quash Complaint, Terminate Injunction, Litigation Fees, and Motion to Strike Defendants' Request for Dismissal Quiet Title and Request for Defense Fees. The Court having reviewed all relevant memoranda, now grants Plaintiffs' Motions.

Defendants Miguel David Gedo and James Gedo have submitted to the Court a Demand to Quash Complaint, Terminate Injunction, and Award Litigation Fees. In addition, Defendants have submitted a Request for Dismissal Quiet Title and Request for Defense Fees. Both pleadings are hand-written and neither of the pleadings includes a Certificate of Mailing indicating that the pleadings were properly served on Plaintiffs.


Rule 10(d) of the Utah Rules of Civil Procedure provides that all pleadings shall be typewritten or printed and "all typing or printing shall be clearly legible." Rule 10(f) provides that parties may be required to substitute properly prepared pleadings for nonconforming pleadings. Additionally, Rule 5(d) provides that papers filed with the court "shall be accompanied by a certificate of service showing the date and manner of service completed by the person effecting

service.” The Court concludes that Defendants’ pleadings are illegible. As a result, understanding the basis of Defendants’ arguments is virtually impossible. In addition, no mailing certificate has been filed with the Defendants’ pleadings. Therefore, Defendants’ Demand to Quash Complaint, Terminate Injunction, Litigation Fees, and Defendants’ Request for Dismissal Quiet Title and Request for Defense Fees are stricken. Defendants’ shall submit properly prepared pleadings.

Plaintiffs’ counsel is to prepare an order consistent with this ruling and submit it for the Court’s signature.

DATED this 20 day of March, 2002

BY THE COURT


STEVEN L. HANSEN, JUDGE



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 010402488 by the method and on the date specified.

METHOD	NAME
Mail	JAMES GEDO DEFENDANT 361 WEST 800 NORTH PROVO, UT 84601
Mail	MIGUEL DAVID GEDO DEFENDANT 371 East 155 South Orem UT
Mail	JOHNNY RAY O'CONNOR DEFENDANT 1640 E Battlecreek Dr Pleasant Grove UT 84062
Mail	MARTHA O'CONNOR DEFENDANT 1640 E Battlecreek Dr Pleasant Grove UT 84062
Mail	MARIE ANGELICA SANCHEZ DEFENDANT 371 East 155 South Orem UT 84061
Mail	BRETT C ANDERSON ATTORNEY PLA 306 West Main Street American Fork UT 84003

Dated this 20 day of March, 20 02.



Deputy Court Clerk

Exhibit “L”

Judge Taylor order, Judge Stott order

FILED
Fourth Judicial District Court
of Utah County, State of Utah
923-03 Deputy

**IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH**

SEP 25 2003

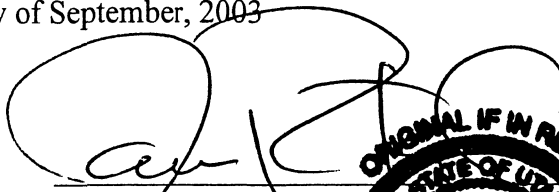
John R. Sudweeks, et al.,	:	
Plaintiffs	:	ORDER
vs.	:	Date: September 23, 2003
Maria Angelica Sanchez, et. al,	:	Case Number: 010402488
Defendants	:	Division VII: Judge James R. Taylor

This matter comes before the Court upon the receipt of a pleading titled "Request for Change of Judge, URCP 63b," filed by the Defendants. The Plaintiff has moved to strike the request pursuant to Rules 12(f) and 10 of the Utah Rules of Civil Procedure on the ground that the pleading is not in appropriate form and is difficult, if not impossible to read and understand. The Court agrees that the text of the pleading is difficult to understand. Nevertheless, Rule 63(b) of the Rules of Civil Procedure is clear and specific. Rule 63(b)(C)(2) states that "The judge against whom the motion and affidavit are directed shall, without further hearing, enter an order granting the motion or certifying the motion and affidavit to a reviewing judge." Under subsection (3)(A) the reviewing judge then determines the timeliness and sufficiency of the pleading. It is, therefore, ORDERED:

- 1) the Plaintiff's motion to strike the Defendant's Request for change of Judge is denied.
- 2) This matter is referred to the Honorable Gary Stott, presiding judge of the Fourth District Court, to determine the sufficiency of the motion and to act as may be appropriate

pursuant to Rule 63, Utah Rules of Civil Procedure.

Dated this 23rd day of September, 2003


Judge James R. Taylor
Fourth Judicial District Court



Copies of this Order mailed to:

Counsel for the Plaintiff:

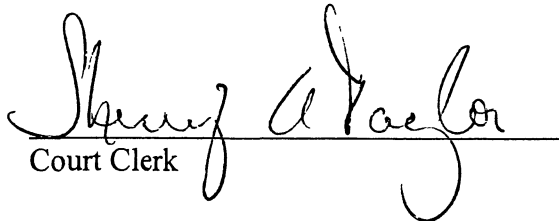
Brett C. Anderson
110 South Main Street
Pleasant Grove, Utah 84062

Counsel for the Defendant:

James Gedo (self represented)
Maria Angelica Sanchez (self represented)
Miguel David Gedo (self represented)

768 East 300 North
Pleasant Grove, UT 84062

Mailed this 23 day of Sept, 2003, postage pre-paid as noted above.


Court Clerk

Fourth Judicial District
of Utah County, State of Utah
10-30215 Deputy

IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

OCT 14 2003

JOHN R SUDWEEKS and DEANNA SUDWEEKS, Plaintiffs, vs. MARIA SANCHEZ, MIGUEL DAVID GEDO, JAMES GEDO, JOHNNY RAY O'CONNOR, and MARTHA O'CONNOR, Defendants.	RULING CASE NO. 010402488 JUDGE: GARY D STOTT
---	--

RULING

This Court has received the court file for the above referenced case, in which the matter has been referred to address the sufficiency of a motion filed by Miguel D. Gedo.


On September 18, 2003, Mr. Gedo filed a document entitled Request for Change of Judge, URCP 63b. Mr. Gedo is pro se, which shall require this Court to be less inclined to require Mr. Gedo to fully comply with the rules of procedure than would be expected of counsel. However, Mr. Gedo, who has chosen to represent himself, must make a reasonable effort to meet the demands of rules affecting the workings of the courts and the service of judges assigned to cases therein.

Mr. Gedo's motion or request does not refer to the correct rule to change or disqualify a judge. Rule 63A URCP does not apply to the Request for Change of Judge. "All parties . . . " have not joined in the motion as required by that particular provision.

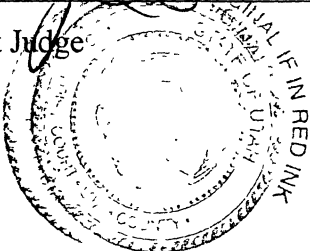
Even if this Court were to assume that the request is intended to rely on Rule 63 URCP, this defendant has still failed to comply with the requirements of that provision. Based upon the language contained in the Request, this Court is unable to understand what it is that Mr. Gedo is complaining of as to Judge Taylor's participation in the case, and in fact, this Court is not able to understand what is actually being said or asked for in the document.

Therefore, the Court finds that the Request of Motion is deficient as to any information or which this Court can conclude any impropriety has occurred by Judge Taylor, or anyone else for that matter. Motion or Request is denied and the case is referred back to Judge Taylor for further proceedings.

DATED this 3 day of Oct, 2003.



District Court Judge



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 010402488 by the method and on the date specified.

METHOD	NAME
Mail	JAMES GEDO DEFENDANT Miguel David Gedo/Maria Sanche 768 East 300 North PROVO, UT 84604
Mail	MIGUEL DAVID GEDO DEFENDANT P O BOX 970002 OREM UT 84097
Mail	MARIE ANGELICA SANCHEZ DEFENDANT 371 East 155 South Orem UT
Mail	BRETT C ANDERSON ATTORNEY PLA 110 S MAIN PLEASANT GROVE UT 84062

Dated this 3 day of Oct, 2013.


Deputy Court Clerk

Exhibit “M”

Proof of proper service upon Miguel David Gedo

BRETT C. ANDERSON, Bar No. 8134
GORDON W. DUVAL, Bar No. 6532
DUVAL HANSEN WITT & MORLEY, P.C.
 110 South Main Street
 Pleasant Grove, Utah 84062
 Telephone: (801) 785-5350
 Facsimile: (801) 785-0853
 Attorney for Plaintiffs

**IN THE FOURTH JUDICIAL DISTRICT COURT
COUNTY OF UTAH, STATE OF UTAH
125 North 100 West, Provo, UT 84601**

**JOHN R. SUDWEEKS and
DEANNA SUDWEEKS,**

Plaintiffs,

VS.

**MARIA ANGELICA SANCHEZ,
MIGUEL DAVID GEDO, JAMES GEDO,
JOHNNY RAY O'CONNOR, and
MARTHA O' CONNOR**

Defendant.

SUMMONS

Case No.

THE STATE OF UTAH TO: MIGUEL DAVID GEDO

YOU ARE HEREBY summoned and required, within 20 days of service of this summons upon you, to file with the Fourth District Court clerk at 125 North 100 West, Provo, Utah 84601, a written answer to the attached complaint and to mail a copy to the plaintiff's attorney. If you fail to do so, judgment by default will be taken against upon for the relief demanded in said complaint which is on file with the court.

DATED this 17 day of May, 2001.

DUVAL HANSEN WITT & MORLEY, P.C.

BRETT C. ANDERSON
Attorney for Plaintiffs

SERVE DEFENDANT:

RETURN OF SERVICE

State of Utah)
) ss.
County of Utah)

I hereby make return of service and certify:

1. I am a person over the age of 21 years; and
2. I served this subpoena upon the following witness listed herein at the address described herein by showing the original subpoena to the witness personally, informing the witness of its contents and delivering to the witness a copy of this subpoena.

Subpoena served on: Miguel Gede

Date of service: 5-18-01

Time of Service: 09:30

[Signature]
Officer's Signature

INSTRUCTIONS TO WITNESS

To receive payment of your witness fee (1) bring this subpoena with you to court, (2) present the subpoena to the clerk of the court, (3) sign the witness fee book and payment will be issued upon proof of identification.

Date/Time subpoena was unable to be served: _____

Reason officer was unable to serve subpoena: _____

**IN THE FOURTH JUDICIAL DISTRICT COURT
COUNTY OF UTAH, STATE OF UTAH
125 North 100 West, Provo, UT 84601**

Case No.

SERVE DEFENDANT:

RETURN OF SERVICE

State of Utah)
) ss.
County of Utah)

I hereby make return of service and certify:

1. I am a person over the age of 21 years; and
2. I served this subpoena upon the following witness listed herein at the address described herein by showing the original subpoena to the witness personally, informing the witness of its contents and delivering to the witness a copy of this subpoena.

Subpoena served on: James Gedo (Miguel brother.)

Date of service: 5-18-01

Time of Service: 09:30

[Signature] JJ/6
Officer's Signature

INSTRUCTIONS TO WITNESS

To receive payment of your witness fee (1) bring this subpoena with you to court, (2) present the subpoena to the clerk of the court, (3) sign the witness fee book and payment will be issued upon proof of identification.

Date/Time subpoena was unable to be served: _____

Reason officer was unable to serve subpoena: _____

**IN THE FOURTH JUDICIAL DISTRICT COURT
COUNTY OF UTAH, STATE OF UTAH
125 North 100 West, Provo, UT 84601**

Case No.

SERVE DEFENDANT:

RETURN OF SERVICE

State of Utah)
) ss.
County of Utah)

I hereby make return of service and certify:

1. I am a person over the age of 21 years; and
2. I served this subpoena upon the following witness listed herein at the address described herein by showing the original subpoena to the witness personally, informing the witness of its contents and delivering to the witness a copy of this subpoena.

Subpoena served on: Marla Sanchez (Miguel son)

Date of service: 5-18-01

Time of Service: 09:30

[Signature] 7516
Officer's Signature

INSTRUCTIONS TO WITNESS

To receive payment of your witness fee (1) bring this subpoena with you to court, (2) present the subpoena to the clerk of the court, (3) sign the witness fee book and payment will be issued upon proof of identification.

Date/Time subpoena was unable to be served: _____

Reason officer was unable to serve subpoena: _____

Exhibit “N”
Notice of ex parte Communication

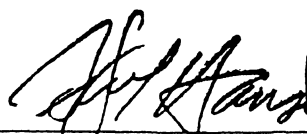
4-10-2011

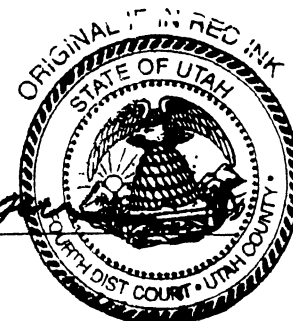
IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

JOHN R SUDWEEKS and DEANNA SUDWEEKS, Petitioner/Plaintiff(s), vs. MARIA ANGELICA SANCHEZ, MIGUEL DAVID GEDO, JAMES GEDO, JOHNNY RAY O'CONNOR, and MARTHA O'CONNOR, Respondent/Defendant(s).	NOTICE RE: EX PARTE COMMUNICATION Case #010402488 Judge Steven L. Hansen Division 7
---	---

THE COURT notes to the litigants in the above-entitled matter that it has received the attached letter from the defendants, Miguel and James Gedo. The documents are an ex parte communication with the Court and may not be considered by the Court unless resubmitted in compliance with the Utah Rules of Civil Procedure. Further, the Court is prohibited under the law from giving legal advice to the defendants. The subject documents have been unread and filed in the court file.

Dated this November 21, 2001


STEVEN L. HANSEN
District Court Judge



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 010402488 by the method and on the date specified.

METHOD	NAME
Mail	JAMES GEDO DEFENDANT 361 WEST 800 NORTH PROVO, UT 84601
Mail	MIGUEL DAVID GEDO DEFENDANT 371 East 155 South Orem UT
Mail	JOHNNY RAY O'CONNOR DEFENDANT 1640 E Battlecreek Dr Pleasant Grove UT
Mail	MARTHA O'CONNOR DEFENDANT 1640 E Battlecreek Dr Pleasant Grove UT
Mail	MARIE ANGELICA SANCHEZ DEFENDANT 371 East 155 South Orem UT
Mail	BRETT C ANDERSON ATTORNEY PLA 306 West Main Street American Fork UT 84003
Mail	GORDON DUVAL ATTORNEY PLA 110 SOUTH MAIN STREET PLEASANT GROVE UT 84062

Dated this 21ST day of Nov, 2001.

ABrown
Deputy Court Clerk

November 16, 2001

01-040248

David & Janet Gode
361 W 800 N
Provo, UT 84601

IN THE FOURTH JUDICIAL DISTRICT COURT, IN AND FOR

UTAH COUNTY, STATE OF UTAH

W R. Schaefer &
Mrs. S. Valerik
Plaintiff,

v.

David D Gode
Mrs Gode
Defendant (Def., et.)

:
:
:
:
:
:
:
:
:
:
:
:
:

Affidavit and
Request for
Disqualification
of Judge ~~and~~ Municipal
Certificate of Counsel

Civil No. 01-040248

Judge HANSEN

Defendant states;

Whereas, Judge Hansen has been Disqualified by
Def. in a prior case ~~and~~, this year; and
Whereas, Def. did not realize that Judge was the
judge that Def. previously disqualified until after
Def. received Mail from the Court after the hearing in which
said Judge granted Plaintiff everything Plaintiff wanted, which
is possession of Def. parcel of Real Property and the Temporary
Restraining Order and subsequent injunction that excluded Def.
from Def. Real Estate, and,

Whereas, said Judge would not allow introduction of evidence from the State of Utah Recorder which conclusively proved Def. Ownership of Def. Real Property in controversy, and

Whereas, said Judge then and there used Def. legal description to specify exactly which property Def. would be excluded from, first with a Temporary Restraining Order, then with a permanent injunction, which is Def. property, ~~and~~

~~wherefore, Def. Requests that the Judge in this case be Disqualified Nunc Pro Tunc and all rulings made by said Judge in this case ~~related~~ be Quashed pending another meaningful hearing by a Qualified Judge.~~

~~Wherefore, further Affiant says not.~~

Whereas, said Stated, informed, specious and contemptible actions by the Court in this case is strongly corroborative evidence that Judge Hansen is prejudiced and biased against Def.

wherefore, Def. Requests that Judge Hansen be Disqualified, Nunc Pro Tunc, and all ruling made by said Judge

be Quashed pending a meaningful hearing by another and impartial Judge; and

Wherefore, further Def. ^{Affiant} says naught.

Def. certifies that this Disqualification is made in good faith



[Signature]

Exhibit “O”
Deeds to Sudweeks

5972-2-24
Rick Brown
Quality Co.
Carm, Utah

RECORDED, MAIL TO:

9195
JUN 22 AM 9:51
NNA B. REC'D
REPUTY DO NOT
FEE 9195
IND

9195
CORDED AT THE REQUEST
OF THE
REPUTY DO NOT
FEE 9195
IND

9195

Space Above for Recorder's Use

80r no
0525-2-E

INSTRUMENT TITLE & ABSTRACT OF
IN East Center - Provo, Utah
Index No. 24148

WARRANTY DEED

JOSEPH BEST AND ELAINE P. BEST, his wife, grantor s
of Provo, County of Utah, State of Utah,
hereby CONVEY and WARRANT to JOHN SUDWEEKS AND DEANNA SUDWEEKS, his wife
as joint tenants and not as tenants in common with full rights of survivorship.

, grantee s
of Provo, County of Utah, State of Utah
for the sum of Ten dollars and other good and valuable considerations DOLLARS,

the following described tract of land in Utah County, State of Utah, to-wit:

Commencing at a point on a fence line on the South side of Battle Creek Drive. Pleasant Grove, Utah, which point is North 89°59' West along the section line 2252.53 feet and South 722.91 feet and North 89°05' East 7.00 feet from the Northeast corner of Section 27, Township 5 South. Range 2 East. Salt Lake Base and Meridian; thence South 0°13' West 132.90 feet; thence South 89°05' West 85.38 feet; thence North 0°16' East 132.90 feet; thence North 89°05' East 85.26 feet to the place of beginning.

Subject to easements and restrictions of record.

WITNESS the hand of said grantor, this 21st day of June, 1972.

Signed in the presence of



ss.

21st day of June, 1972
person appeared before me Joseph Best and Elaine P. Best, his wife

the signers of the above instrument, who duly acknowledged to me that they executed the same.

Rick Brown
Notary Public.

My commission expires 9-24-73 Residing in Provo, Utah

BOOK 1279 PAGE 224

WHEN RECORDED, MAIL TO:

SECURITY TITLE & ABSTRACT CO.

UTAH COUNTY
PR
ABS
721 S 227 E S 1 R 2 E
1972 AUG 31 AM 8:59

SECURITY TITLE & ABSTRACT CO.

13361

Space Above for Recorder's Use

13361

SECURITY TITLE & ABSTRACT CO.
65 East Center Street, Salt Lake City, Utah
Order No. 23537

WARRANTY DEED

ROYD M. COLLINGS AND GERALDINE L. COLLINGS, his wife

of _____, County of _____, State of Utah,

hereby CONVEY and WARRANT to JOHN R. SUDWEEKS AND DEANNA L. SUDWEEKS, his wife, as joint tenants with full rights of survivorship in each and in undivided halves as tenants in common.

, grantee s

of _____, County of _____, State of Utah

for the sum of Ten Dollars and other good and valuable considerations. DOLLARS,

the following described tract of land in _____ Utah _____ County, State of Utah, to-wit:

Beginning at a point on a fence line on the South side of Battle Creek Drive, Pleasant Grove, Utah, which point is North 89°59' West along the Section line 2252.53 feet and South 722.91 feet and North 89°05' East 7.00 feet from the Northeast corner of Section 27, Township 5 South, Range 2 East, Salt Lake Base and Meridian; thence North 89°05' East along a fence on the South side of said drive 86.00 feet; thence South 89°13' West 132.90 feet; thence South 89°05' West 86.00 feet; thence North 89°13' East 132.90 feet to the point of beginning.

Subject to easements and restrictions of record.

WITNESS the hand of said grantor, this 25th day of August, 1972

Signed in the presence of

Royd M. Collings
Geraldine L. Collings

STATE OF UTAH,

County of UTAH

ss.

On the 25th day of August, 1972, personally appeared before me ROYD M. COLLINGS AND GERALDINE L. COLLINGS, his wife

the signers of the above instrument, who duly acknowledged to me that they executed the same.

NOTARY PUBLIC
UTAH

W. Wm Brown
Notary Public.

My commission expires 9-26-73 Residing in _____, Utah

APPROVED FORM — UTAH SECURITIES COMMISSION

FORM 101 — WARRANTY DEED — KELLY CO., 85 W NINTH SO., S.L.C. 84103

BOOK 1230 PAGE 108

Exhibit “P”
O’Conner deed

O'CONNOR ORIGINAL DLED



OLD REPUBLIC
Title Company of Utah, Inc.

94080042 E

ENT 64516 BK 3507 PG 855
NINA B REID UTAH CO RECORDER BY ME
1994 AUG 12 3:30 PM FEE 12.00
RECORDED FOR OLD REPUBLIC TITLE OF UTAH

WARRANTY DEED

Return To: _____
Grantee: 1640 East 200 South
Pleasant Grove, Utah 84062

SUSAN S. HARDINGER
of Pleasant Grove
CONVEY AND WARRANT to

County of Utah

grantor
State of Utah hereby

JOHNNY RAY O'CONNOR AND MARTHA J. O'CONNOR, HUSBAND AND WIFE
AS JOINT TENANTS

of _____ grantee
for the sum of ~~XXXXXX~~
TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION-----
the following described tract of land in Utah County,
State of Utah:

See Exhibit "A"

WITNESS, the hand of said grantor, this
August

10th
A.D. 19 94

day of

Signed in the Presence of

Susan S. Hardinger
Susan S. Hardinger

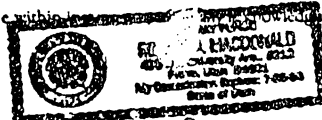
STATE OF UTAH.

County of Utah

On the 10th day of August
personally appeared before me Susan S. Hardinger

A.D. 19 94

the signer of the within and acknowledged to me that she executed the same.



My commission expires 7-25-98

Susan S. Hardinger
Notary Public

Residing in Provo, Utah

OUR PROPERTY

ENT 64616 BK 3507 PG 356

Exhibit "A"

BEGINNING at a fence corner on the South side of 200 South Street (Battle Creek Drive), Pleasant Grove, Utah, which point is South 89 degrees 35'14" West along the section line 2041.40 feet and South 729.35 feet (based on the Utah State Coordinate System, Central Zone and Data published by the Utah County Surveyor as of January 1986) from the Northeast Corner of Section 27, Township 5 South, Range 2 East, Salt Lake Base and Meridian; thence South 00 degrees 05'19" East 137.87 feet along a fence line as described in a Fence Line Boundary Agreement Entry No. 35388-92, Book 2966, Page 465; thence South 89 degrees 22'00" West 82.56 feet to a point on a Boundary Line Agreement Entry No. 1746-96, Book 2275, Page 848; thence North 00 degrees 12'46" West along said Boundary Line Agreement 8.53 feet; thence South 88 degrees 32'53" West continuing along said Boundary Line Agreement 0.50 feet to a fence line; thence North 00 degrees 36'30" West 129.53 feet to the South side of said 200 South Street; thence North 89 degrees 33'35" East along said street 84.68 feet to the point of beginning.

BLA BETWEEN
OLSON AND
STRASBURG

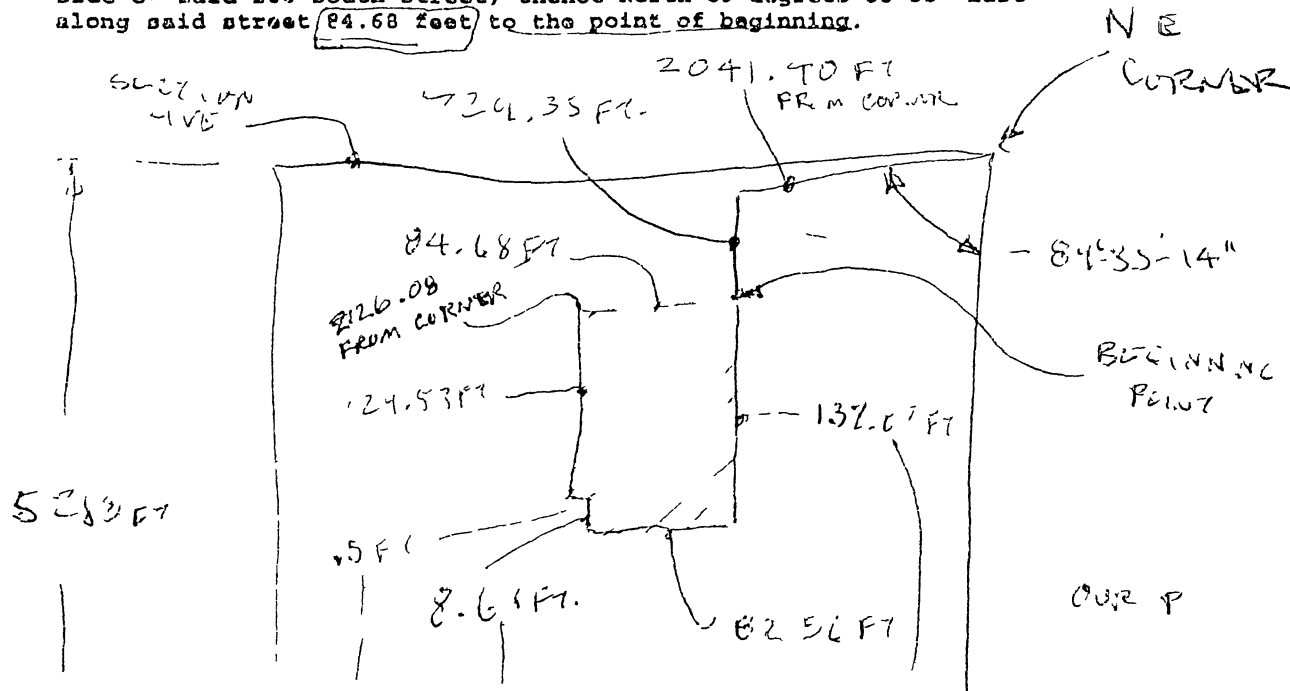


Exhibit “Q”
Other county plat maps—“ghost parcel”

1994

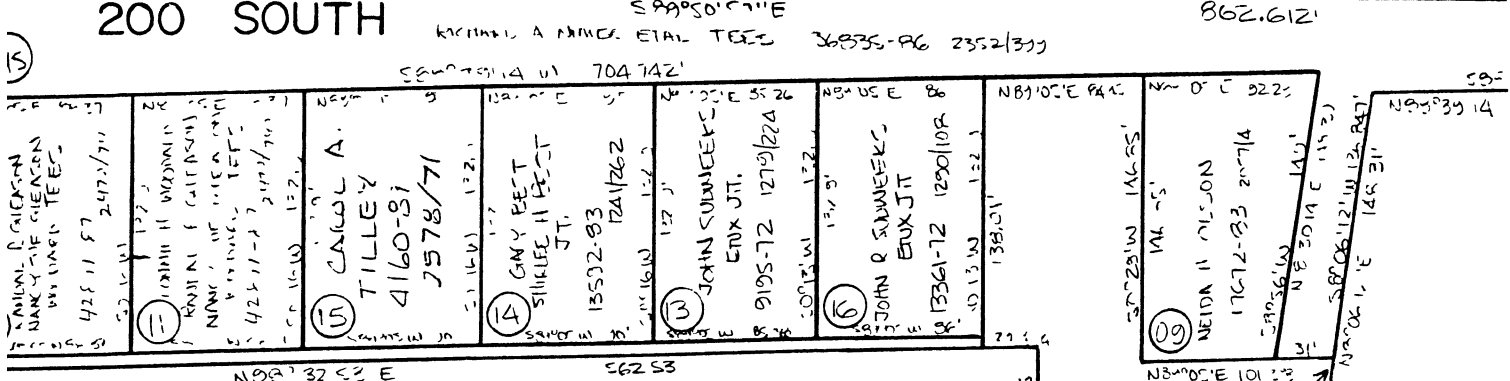
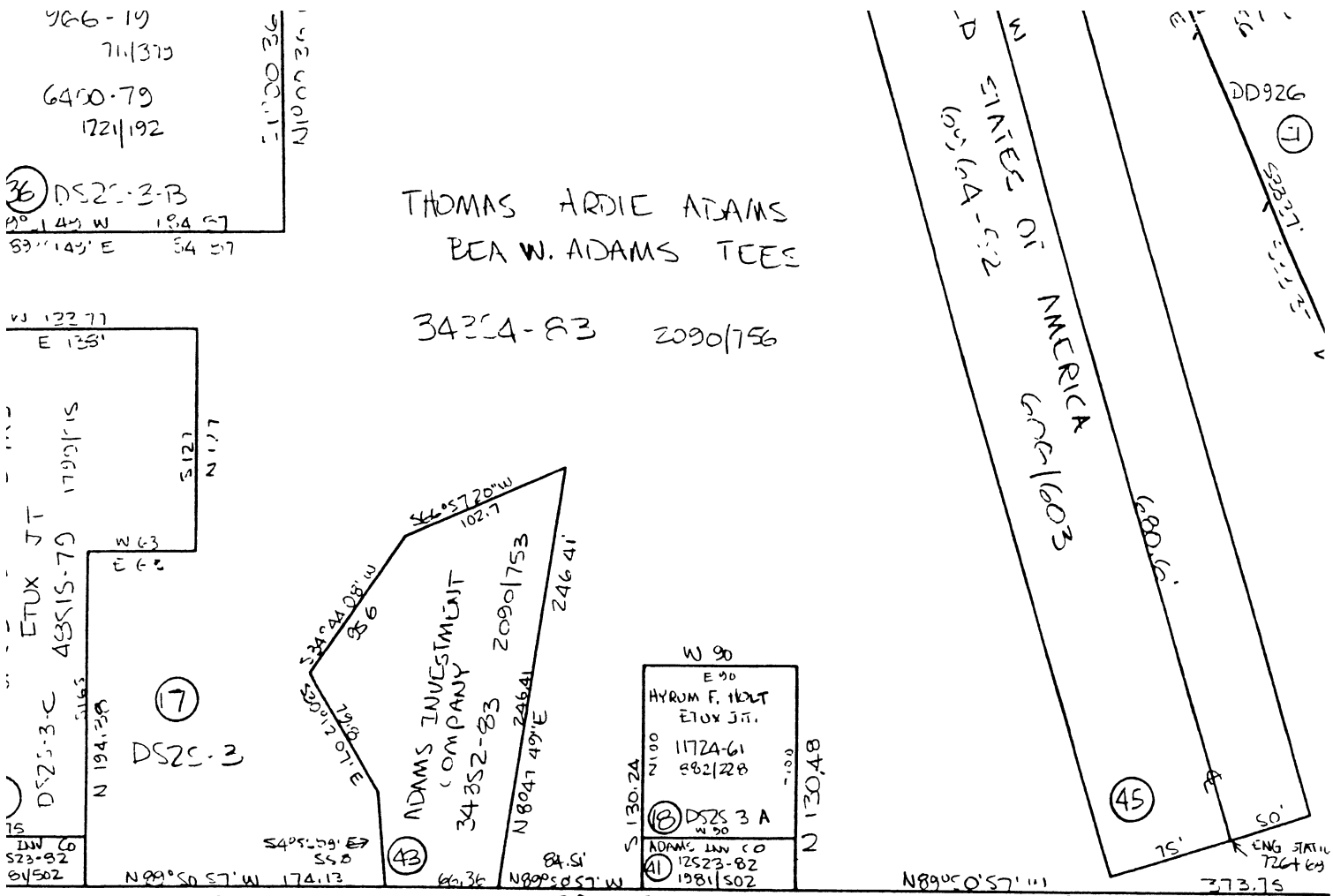
5

67

7

ORDER MAP

PLEASANT GROVE CITY



PLAT MAP SHOWS ORIGINAL INTENT FOR SUDWEEKS PROPERTY TO ADJOIN STRASBURG ON THE EAST

THIS PLAT MAP PRECEDES THE LAYOUT ON THE PLAT MAP GIVEN TO US IN AUGUST OF 1994 - IT SHOWS NELDA OLSON'S PROPERTY IN ITS ORIGINAL POSITION WITH FAULTY LOCATING DIMENSIONS -

IT SHOWS HOW THE GHOST OF HER PARCEL APPEARS AS PARCEL 53 ON THE PLAT MAP

RICHARD A. NIMEK
VIRGIL J PARKER
JOSEPH S. BERGICION
WYNN H. HENIMERT
MORRIS O GARDNER
KIRK R ANDERSON

TEES

10077-72 1281/479
QCD (FENCE LINE DEC.
ALONG 1500E SIEFECT)