

ORIGINAL

DA 18-0076

FILED

06/14/2018

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: DA 18-0076

coniferous trees stating they didn't have the requisite foundation for such expert testimony. This standard should have been applied to the Wilcoxes as well.

The Special Master's award of damages to the Wilcoxes was not supported by substantial evidence. To the contrary, substantial evidence was provided by a professional land surveyor that the Wilcoxes lost only 22.8 acres of coniferous timber. The Special Master ultimately relying on the Wilcoxes themselves, a lay witness, a speculative tax assessment, and speculative unsurveyed deed did not overcome Mr. Hallin's survey of the Wilcoxes' total coniferous timber acreage being 50 acres, and that the Wilcoxes lost 22.8 acres of coniferous timber. Mr. Hallin had previously worked on property where there had been fire damage to coniferous trees. Mr. Hallin testified her can determine if a coniferous tree is dead or alive.

The District Court then erred by adopting the Special Master's findings that were clearly erroneous. Furthermore, the Special Master's award of damages was so grossly out of proportion to the injury as to shock the conscience. Consequently, the Wilcoxes' claim for restoration timber damages should be completely denied, due to the gross overstatement of damages, or at least remanded to the District Court for their claim to be adjusted to the acreage of timber burned determined by Mr. Hallin.

FILED

DATED this 8 day of June, 2018.

JUN 14 2018

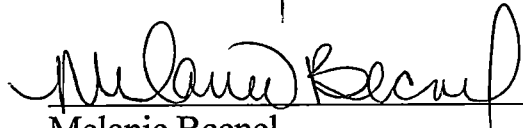
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CERTIFICATE OF SERVICE

I hereby certify that I served a full, true and accurate copy of page 38 of the Opening Brief with signature on the 12 day of June, 2018 to the following named person(s):

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