

FILED
SUPREME COURT
STATE OF WASHINGTON
2/15/2022 8:12 AM
BY ERIN L. LENNON
CLERK

No. 100468-1

SUPREME COURT
OF THE STATE OF WASHINGTON

JINRU BIAN, a married man

Petitioner,

v.

OLGA SMIRNOVA, a married woman

Respondent.

Bian's Motion for Requesting Material Evidence

Jinru Bian
pro se Petitioner
818 Hilliary Lane
Aurora, OH 44202
Phone: 360-318-4470
Email: jbian98@gmail.com

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I. IDENTIFY OF MOVING PARTY

The petitioner, Jinru Bian, moves the relief as in part II.

II. Request Material Evidence from the Respondent.

Pursuant to RAP 18.8(a), the petitioner, Jinru Bian, requests the Supreme Court ask the Respondent, Olga Smirnova, to provide material evidences supporting her declaration that there exist “robust concrete footings of the original posts” [CP46] (from Fence I) **on the NORTH of the new fence (Fence III).**

III FACTS RELEVANT TO MOTION AND GROUNDS FOR RELIEF

A. Significance and Benefits

The key to this case is whether there exist “robust concrete footings of the original posts” [CP46] of **Fence I**, indicating whether Fence I existed or not. Their existence is a simple, checkable and current fact. If they do, the claim for adverse possession fails and Bian should withdraw this petition immediately. If they do not exist, the Fence I is a fabricated story, and the Supreme Court does not need to spend time on

reviewing issue A in Bian's PETITION FOR REVIEW for reversing the Appellate Court's Decision.

Therefore, in either case, **it will save the valuable time of the Supreme Court and also serves justice for this case.**

B. Background and Facts.

Smirnova's makes up Fence I to preclude the fact that Fence II lasted from 1992 to 2017, to defeat the adverse possession claim.

This is a case of summary judgment on a disputed strip. Olga Smirnova did a survey showing the agreed fence (Fence II) boundary was on south of survey property line. Smirnova then removed Fence II and installed a new fence (Fence III) on the north of Fence II in 2017, without notifying Jinru Bian, the north neighbor of Smirnova. Since Fence II was the agreed boundary between the two neighbors before the survey, Bian filed a complaint claiming adverse possession of the strip based on that his predecessor, Margaret Erhardt, had owned the property (1992-2007), and adversely possessed the strip. Because there

was no disputed issue of material fact before March 2020, Bian moved for summary judgment. After Bian’s motion, Smirnova filed a cross-motion for summary judgment and created a story that she demolished a fence (Fence I) from Erhardt time in 2007 that was on the north of the Fence II, and built Fence II in 2009. Bian presented many material evidences showing Fence II lasted from 1992 and Fence I never existed. No **material** evidence in the record supports the existence of Fence I, but Smirnova’s declaration. Smirnova declared:

“The contractor ... could not install the New Fence (III) along the ...line due to the **robust concrete footings** of the original posts (Fence I). ...The contractor installed new posts ... **four (4) inches inside** the Smirnova Property (...installed **directly** adjacent to the original posts).” (Add emphasis) [CP46]

Thus, whether there exist the “concrete footings” on the **north** of Fence III will evidence whether Fence I ever existed. Do the “robust concrete footings of the original posts” exist? The record shows:

Yes, by Smirnova declaration [CP46].

No, by Bian declarations (“have never seen any”)
[CP100]

No, by Ex 1 from Smirnova.

No, by Ex 2 from Bian.

No, by the “(4) inches inside” from Smirnova
[CP46, line 18]

(Against common sense, see drawing in page 7
of Petition for Review)

The genuine issue of material fact that whether the
“robust concrete footings” exist has been disputed for years
from the trial court to the appellate Court and to this Court.
There is no **material** evidence in the record showing their
existence currently.

C. Grounds for the Motion

1. Whether there exist the concrete footings in Bian’s
backyard is a **simple, checkable** and **current** fact. This genuine
issue of material fact can be easily resolved by showing material
evidence, rather than by declarations, briefing and inferencing
for years.

2. Smirnova declared: “I showed him the property line
marker, ... [t]his was in addition to showing him the remnants of

the cement footings from the Original Fence (Fence I) in the backyard” [CP131], as “visual representation of the property line” [CP81], while Bian declared: that the “showing” him “never took place” and “I have never seen any” of the footings [CP100, ¶3, ¶4], including gardening in the area for 4 years, and with repetitive checking. The contradictive declarations indicate one of the two, Bian or Smirnova, has been dishonest to the Washington Courts. Able (or unable) to provide material evidences for the existence of the “concrete footings” will show who is dishonest.

3. Bian requested material evidence to support Smirnova’s own declaration that there exist the concrete footings of Fence I [CP 138, line 19, CP130 line 1, CP 100 line 5, VP 12, line 5]. But Bian has never seen any of the material evidence. This motion does not request to add new evidence from Bian, but requests material evidence to support Smirnova’s own declaration of the existence of the “robust concrete footings” which is the indicator that Fence I exist, to have the opportunity

to show that Smirnova “honestly” declared to Washington Courts, and to serve justice. Smirnova has no reason to refuse it.

4. Although for summary judgement cases, the appellate court will consider only evidence and issues called to the attention of the trial court, RAP18.8 authorizes “The appellate court may, on its own initiative or on motion of a party,...alter the provisions of any of these rules ... in a particular case in order to serve the ends of justice”. Actually, Bian did call the trial court’s attention that there is **zero material** evidence to show the “concrete footings” (see above section). Requesting material evidence means that Bian will waive his right to object Smirnova’s real material evidence for the purpose of justice and the dignity of the law. Therefore, Smirnova has no reason to refuse to provide the material evidence to support Smirnova’s own declaration, unless the “concrete footings” do not exist and the declaration of Fence I was fabricated.

D. Feasibility

Taking photos of the “robust concrete footings” in the backyard is a simple job, and needs only minutes, since Smirnova declared “showing him the remnants of the cement footings”, as “visual representation of the property line” [CP81]. For this reason, Bian authorizes Smirnova to enter his backyard for the purpose of taking the photos, if the “concrete footings” would exist, although Bian’s backyard is open.

One requirement is that the material evidence must show the “concrete footings” exist **on the North** of the Fence III (new fence), **not on the south** of Fence III because there must be concrete footings from Fence II (on the south of the Fence III). This is easy to do because there are several photos in the record that show the locations north to the Fence III, and the photos may be referred to.

V. CONCLUSION

In order to clarify the genuine dispute of material fact, to save the Supreme Court’s valuable time, and to maintain the

integrity of the law, Bian respectfully requests this Court grant
Bian's motion to ask Smirnova to provide material evidence for
the existence of the "robust concrete footings", pursuant to RAP
18.8(a).

Respectfully moved, this 15th day of February, 2022.

I, Jinru Bian, certify that the total number of the words
above is 1188, excluding the Table of Contents (allowed 5000).



Jinru Bian, pro se Petitioner
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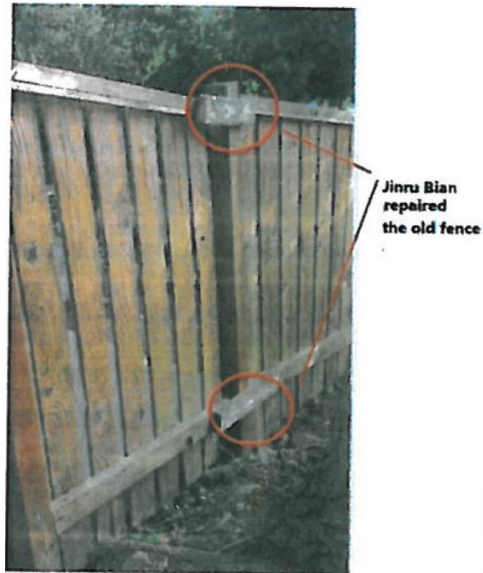
Appendix A: Exhibits

(Some are added yellow word / lines for easy to read)

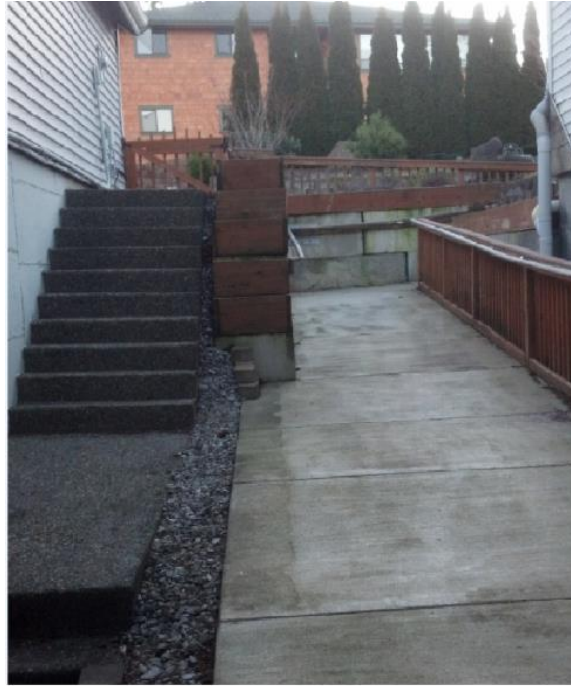
(The same set in Brief of Appellant, for convenience)



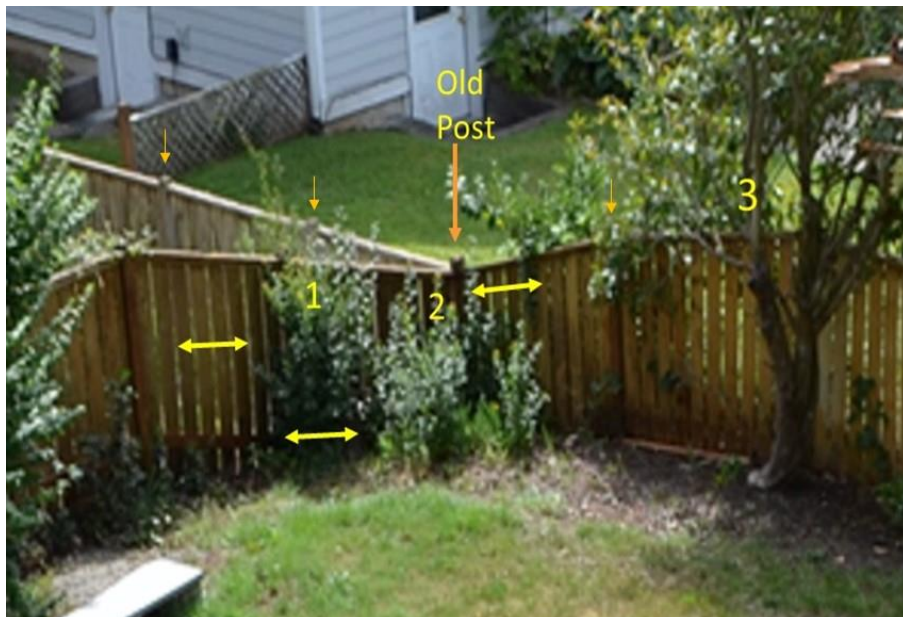
Ex 1: CP 129 (Add yellow arrows as a ruler)



Ex 2: CP 15



Ex 3: CP 173



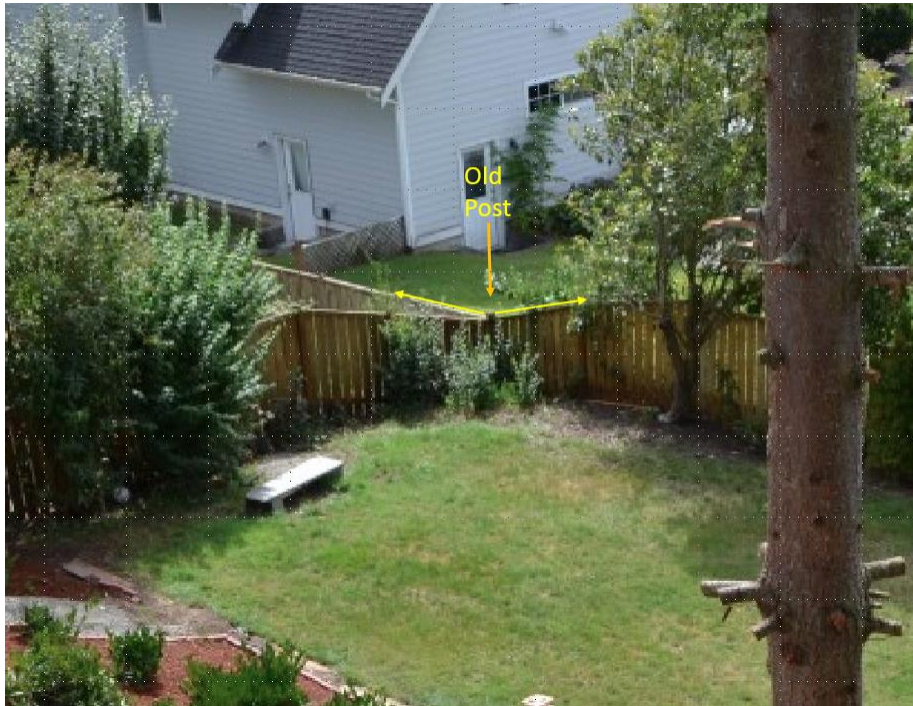
Ex 4: taken from CP 172 (add yellow words and lines)



Ex 5: CP 180 (add yellow words and lines)



Ex 6: CP 86, CP 148 (add yellow words and lines)



Ex 7: CP 172 (add yellow word and lines)



Ex 8: CP 15 (add red word and circle)

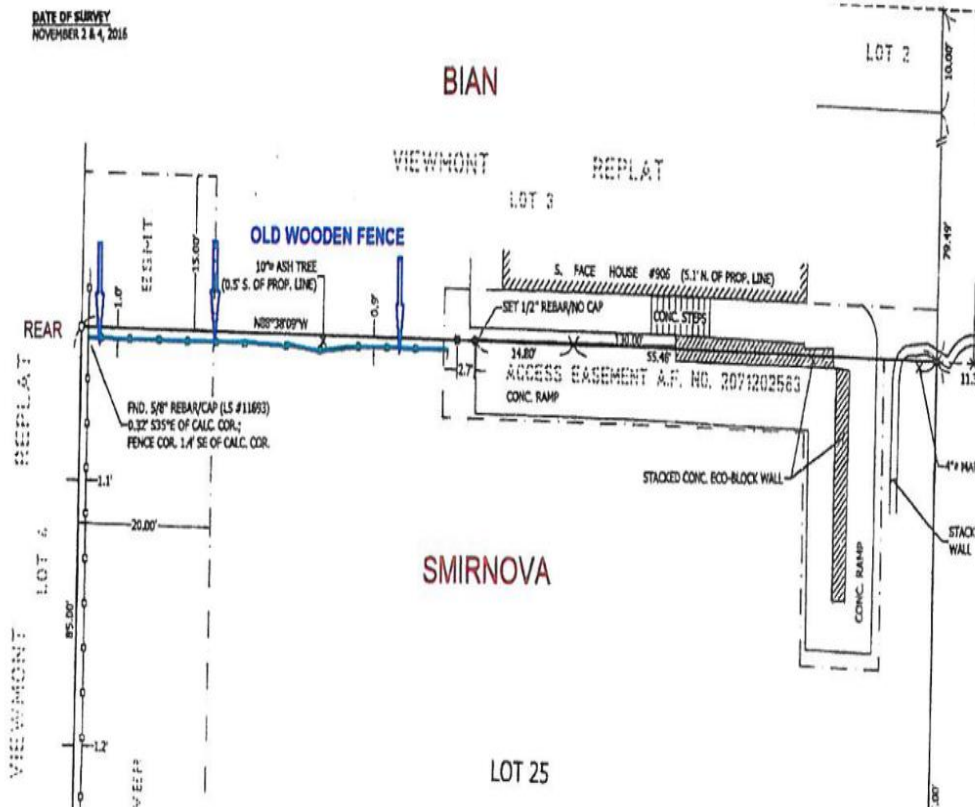


Ex 9: CP 174 (add yellow word / line)



Ex 10: CP 157

marked the boundary of the Erhardt-Wazny/Bian property.



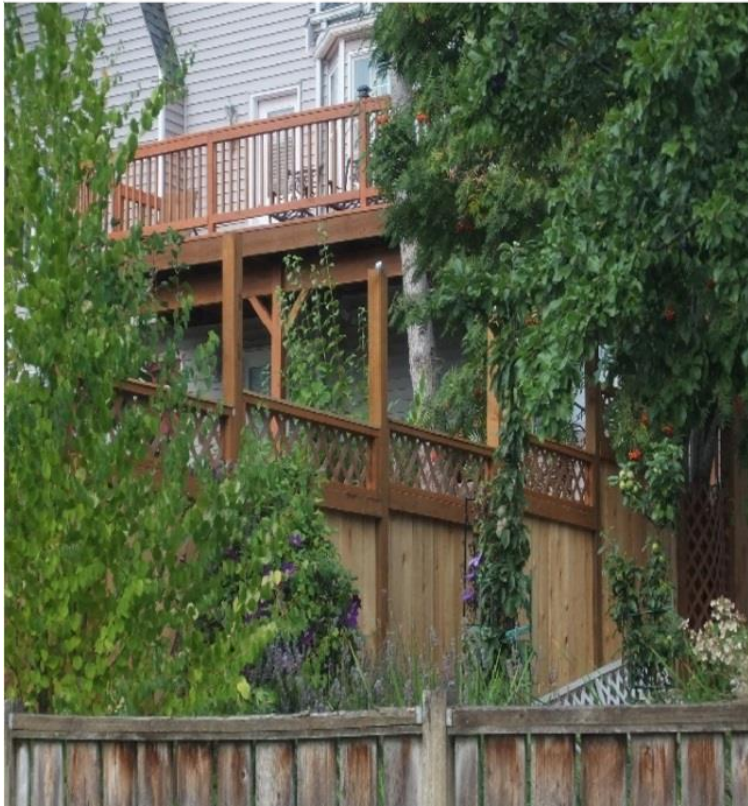
Ex 11: Related Part of Survey (CP 14)

3/15/2019	- TTE	RESEARCH LAW REGARDING MERGER OF TITLE AND ADVERSE POSSESSION; ANALYZE CASES PROVIDED BY OPPOSING COUNSEL	2.10 280.00/hr	588.00 2.10
6/19/2019	- TTE	DRAFT CORRESPONDENCE TO O. SMIRNOVA REGARDING STATUS UPDATE	0.20 280.00/hr	NO CHARGE 0.20
10/8/2019	- TTE	REVIEW NOTICE OF CLERK'S DISMISSAL SET FOR NOVEMBER 3; CONFERENCE WITH SAW REGARDING SAME	0.20 280.00/hr	56.00 0.20
10/22/2019	- TTE	REVIEW NOTE FOR TRIAL SETTING FILED BY COUNSEL FOR J. BIAN; CONFERENCE WITH SAW REGARDING SAME	0.40 280.00/hr	112.00 0.40
10/28/2019	- TTE	TELEPHONE CONFERENCE WITH J. KOLER REGARDING SETTING OF TRIAL DATE; DISCUSS LAW IN SUPPORT OF POTENTIAL SUMMARY JUDGMENT MOTIONS; RESEARCH LAW REGARDING SAME	1.30 280.00/hr	364.00 1.30
10/31/2019	- JAB	RESEARCH AND COMPILE DEED HISTORY AND RELATED DOCUMENTS ON PARCELS	0.70 150.00/hr	105.00 0.70
	- TTE	RESEARCH ADDITIONAL LAW REGARDING MERGER OF TITLE DOCTRINE; REVIEW CASES PROVIDED BY OPPOSING COUNSEL IN SUPPORT OF BIAN'S POSITION; REVIEW CHAIN OF TITLE FOR 906 AND 910 38TH STREET	2.10 280.00/hr	588.00 2.10
11/1/2019	- TTE	ATTEND TRIAL SETTING CONFERENCE; RESEARCH LAW REGARDING COMPELLING ENTRY OF DISMISSAL	1.20 280.00/hr	336.00 1.20
	- JAB	RESEARCH S. JORGENSEN STATUS; E-MAIL TTE	0.10 150.00/hr	15.00 0.10
11/20/2019	- TTE	REVIEW AND RESPOND TO CORRESPONDENCE FROM O. SMIRNOVA REGARDING UPDATE	0.20 280.00/hr	56.00 0.20

Ex 12: CP 264



Ex 13: CP 313 (left)



Ex 14: CP 313 (right)

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CERTIFICATE OF SERVICE

I, JINRU BIAN, certify that under penalty of perjury under the laws of the State of Washington that on the 15th day of February, 2022, I caused to be served a true and correct copy of the preceding document,

Bian's Motion for Requesting Material Evidence,

on the parties listed below at their email addresses of record via Email:

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JINRU BIAN

February 15, 2022 - 8:12 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 100,468-1
Appellate Court Case Title: Jinru Bian v. Olga Smirnova
Superior Court Case Number: 20-2-00253-1

The following documents have been uploaded:

- 1004681_Cert_of_Service_20220215080537SC393969_0772.pdf
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Certificate of Service
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Motion 1 - Other
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A copy of the uploaded files will be sent to:

- jbian98@gmail.com;jinrub@yahoo.com
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- tegland@chmelik.com

Comments:

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Sender Name: Jinru Bian - Email: jbian98@gmail.com
Address:
818 Hilliary Lane
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Phone: (360) 318-4470

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JINRU BIAN

February 15, 2022 - 8:12 AM

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