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SUPREME COURT  
STATE OF WASHINGTON  
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No. 102323-5

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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KEITH WELCH,

*Appellant,*

v.

CHRIS WALDEN

*Respondent.*

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**RESPONDENT'S ANSWER TO  
APPELLANT'S PETITION FOR REVIEW**

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## **I. INTRODUCTION**

The Court of Appeals properly affirmed the Skagit County Superior Court's ("Superior Court") Order on Summary Judgment in favor of Defendant/Respondent Chris Walden ("Walden"), which held as a matter of law there was no justiciable claim of adverse possession and quieting title to the underlying property in Walden. Walden respectfully requests the Court to either, 1) deny the Appellant's Petition for Review; or, 2) affirm the Court of Appeal's July 31, 2023 opinion.

## **II. ISSUE STATEMENTS**

Whether the Supreme Court should accept the Petition to Review this case.

Whether the Court of Appeal properly affirmed the Superior Court's Order of Summary Judgment denying Plaintiff/Appellant Keith Welch's ("Welch") claim of adverse possession, quieting title in Walden, and ejecting Welch from the Property?

## **III. STATEMENT OF THE CASE**

This matter concerns ownership of the real estate commonly known as 857 Tinas Coma Lane, Burlington, WA 98233, which has the TPN P117052, and is legally described as Lot 17 Plat of Tinas Coma, as

per Plat recorded on August 11, 2000, under AFN 200008110004, records of Skagit County, Washington, Situate in the City of Burlington, County of Skagit, State of Washington (“Property”). Welch took title to the Property via Statutory Warranty Deed executed on November 5, 2003 and recorded on November 17, 2003 under Skagit County AFN 200311170275 (CP 14, Exhibit A). On or around February 14, 2007, Plaintiff executed a Deed of Trust granting to GreenPoint Mortgage Funding, Inc. a security interest in the Property (hereinafter “DOT”). Said DOT was recorded on February 14, 2007 under Skagit County AFN 200702140181 (CP 14, Exhibit B). On or around February 22, 2017, U.S. Bank National Association, as Trustee for GreenPoint Mortgage Funding Trust Mortgage Pass-Through Certificates, Series 2007-AR2 took title to the Property via Trustee’s Deed Upon Sale (“TD”). Said TD was recorded on March 1, 2017 under Skagit County AFN 201703010034 (CP 14, Exhibit D).

On or around November 17<sup>th</sup>, 2020, Walden took title to the Property via Special Warranty Deed (“SWD”) recorded on November 25, 2020 under Skagit Count AFN 202011250107 (CP 14, Exhibit G). On or around December 23<sup>rd</sup>, 2020, Walden served/posted a “Notice of Termination and Affidavit” to Welch in order to begin the process of evicting Welch from the premises. (CP 4, Exhibit C). On or around February 22, 2021, Plaintiff/Appellant Welch initiated this action,

presumably to contest Walden's exercise of his rights to the Property. Walden moved for Summary Judgement, and on November 12, 2021, the Court signed an Order on Summary Judgement holding there was no justiciable claim of adverse possession, quieting title in Walden, ejecting Welch from the Property, and directing the Clerk to issue a Writ of Restitution. (CP 48). On December 1, 2021, the Court signed in order staying the Writ of Restitution.

Welch then appealed this matter to the Court of Appeals, which, in an unpublished opinion dated July 31, 2023, affirmed the lower court's order. Welch now brings his current Petition to this Court.

#### IV. ARGUMENT

##### *1. The Court should deny Appellant's Petition for Review.*

This is not a complicated case, and the undisputed facts lend themselves to a Summary Judgement as we granted by the Superior Court and affirmed by the Court of Appeals. The Courts have continuously found they Appellant cannot, as a matter of law, fulfill his burden of showing he has adversely possessed the Property at issue herein. Appellant petitioned this Court for review based on RAP 13.4, but fails to cite to any case in which the Court of Appeals decision is in conflict with either a decision of the Supreme Court or a published decision of the Court of Appeals. Appellant also fails to point to any significant

constitutional question or an issue of substantial public interest. As such, this Court should deny his Petition for Review.

2. *Welch's possession was not hostile, and thus, he did not adversely possess the Property.*

This case is as straightforward as can be – there is no possible legal avenue Welch can show he fulfilled the requirements to adversely possess the Property. “Adverse possession requires 10 years of possession that is (1) exclusive, (2) actual and uninterrupted, (3) open and notorious, and (4) hostile...Hostility is not personal animosity or adversarial intent, but instead connotes that the claimant's use has been hostile to the title owner's, in that the claimant's use has been akin to that of an owner. Permission to occupy the land, as given by the true title owner to the claimant, will negate the hostility element. This means that use of the land with the true title owner's permission cannot be hostile.” Herrin v. O’Hern, 168 Wn.App. 305, 310-311 (2012) (*Internal citations omitted.*).

In this case, there is no question that Welch was the titled owner of the Property from when he received a Statutory Warranty Deed in November 2003 until the Property was sold at a Trustee’s Sale in February 2017. Given that Welch was the true owner of the Property until February 17, 2021, his use of the Property could not have been hostile to the true owner,

himself, before that date. As the owner, his use was clearly permissive. His possession of the Property could not have become hostile to the true owner until February 17, 2017. Thus, as a matter of law, Welch cannot have fulfilled the requirements of adverse possession for a period of 10 years, and any claim for adverse possession must fail.

3. *Addressing Appellants' Various Arguments:*

a. *Walden properly appeared in this matter.*

In his Petition, Welch asserts he was not properly served with the Defendant's Notice of Appearance, and therefore the Court had no jurisdiction over Welch. Appellant's Petition at 6-7. This argument fails for several reasons. First, Welch filed this action and submitted to the jurisdiction of the Court. Whether or not Walden appeared had no bearing on the Court's jurisdiction over Welch.

Second, a Notice of Appearance is not required to appear in a court matter. RCW 4.28.210 defines what constitutes appearance as, "A defendant appears in an action when he or she answers, demures, makes any application for an order therein, *OR* gives the Plaintiff written notice of his or her appearance." (Emphasis added). As stated by the Court of Appeals, Walden's answer amounts to an appearance under RCW 4.28.210.



b. *There was no “indispensable party” not included in this matter.*

In his Petition, Welch asserts his Vendee (now identified as his son, Brandon Welch) is an indispensable party to this action, and since he was not included, the trial court lacks the ability to render a judgment. This is merely a stall tactic and meant to bring confusion into the situation. If Welch truly believed there was an indispensable party to this case, he could have included that party *when he filed this case*. The mere fact he didn't include his son shows he wasn't necessary.

Further, it is clear from Welch's Petition, his son was aware of this matter and has taken no actions or measures to intervene in any manner, so it appears he also believes they are not indispensable.

c. *Welch's Vendee/Son is irrelevant to this case.*

In his brief, Welch asserts his “predecessor in interest” / “Vendee” entered into a “perpetual contract agreement” in 2009 under which he would grant this person ownership to whatever equity was available in the property at that time. Appellants' Petition for Review at 2-3. Even if Welch had ever provided a copy of this so-called “perpetual contract agreement,” this argument fails for several reasons.

First, Welch's predecessor in interest is Property Investors, LLC – the entity he acquired title from in 2003. (CP 4, Exhibit A). As the previous titular owner, Property Investors does not have any adverse possession claim that can be tacked on.

Second, while Welch's Vendee/son may qualify as a successor in interest, he still does not have a claim for adverse possession. Assuming *in arguendo*, there was a contract transferring some form of ownership from Welch to his son, this was a voluntary transaction, and therefore, cannot be considered "hostile" to the titled owner. As seen above in the *Herrin* case, "Hostility is not personal animosity or adversarial intent, but instead connotes that the claimant's use has been hostile to the title owner's... Permission to occupy the land, as given by the true title owner to the claimant, will negate the hostility element. This means that use of the land with the true title owner's permission cannot be hostile." (168 Wn.App at 311). Welch admits it was a voluntary transfer. See Appellant's Petition for Review, page 2 – "On May 29, 2009, Welch, and his 'Predecessor in Interest' entered into a 'Perpetual Contract Agreement,' by which Welch, and his 'Predecessor in Interest,' agreed to the terms set forth, in the agreement, specifically with regard to the transferring of possessory interest in the Property." Thus, any use Welch's son had was either permissive from Welch (assuming Welch

retained ownership) or permissive from himself (assuming he took ownership). When somebody enters or possesses land with the permission of the titled owner, as a matter of law, it cannot be “hostile.”

Finally, assuming there was a formal agreement as Welch asserts, it has no effect concerning the subsequent Trustee’s Sale or sale to Walden. Under RCW 65.08.070, a conveyance of real property, if not recorded with the recording officer of the county where the property is situated, is “void as against any subsequent purchaser or mortgagee in good faith and for a valuable consideration from the same vendor, his or her heirs or devisees, of the same real property or any portion thereof whose conveyance is first duly recorded.” Thus, even if there had been a conveyance between Welch and his son, it was void as soon as the Trustee Sale took place and the Trustee’s Deed was recorded.

In the end, any contractual agreement or dispute between Welch and his son does not, and cannot as a matter of law, create an adverse possession claim against Walden. Even if Welch’s son had lived on or utilized the Property during any time at issue herein, it is clear he did so with the permission of the titled owner. Welch and his son cannot agree that the use of the Property would be “hostile” as asserted by Welch.

Appellant’s Petition for Review at 3.

## V. ATTORNEY'S FEES

Respondent Walden further requests the Court award reasonable attorney's fees and costs incurred in this appeal under RAP 18.1 and RCW 7.28.083, which states in subsection (3), "The prevailing party in an action asserting title to real property by adverse possession may request the court to award costs and reasonable attorneys' fees. The court may award all or a portion of costs and reasonable attorneys' fees to the prevailing party if, after considering all the facts, the court determines such an award is equitable and just." Welch brought this case alleging he had adversely possessed this property, and therefore, this matter falls squarely within the statute.

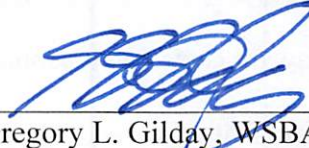
## VI. CONCLUSION

This case is clearly predisposed for a summary judgment motion. Since a person cannot adversely possess land he actually owns, Welch cannot claim hostile possession until February 2017, and without that, he cannot fulfill the requirements of adverse possession as a matter of law. There is no material issue for a fact-finder to determine. For the foregoing reasons, Respondent Walden respectfully requests the Court either Deny the Appellant's Petition for Review or affirm the Court of Appeal's opinion upholding the Superior Court's November 12, 2021

Order Granting Summary Judgment quieting title to the Property in the name of Chris Walden, and ejecting Welch from said Property, and the Order Saying the Writ of Restitution be vacated.

Dated: November 14, 2023.

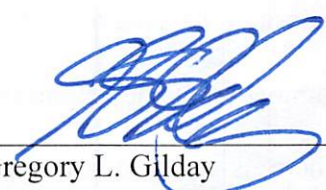
Law Office of Cole & Gilday, P.C.

  
\_\_\_\_\_  
Gregory L. Gilday, WSBA#36608  
Attorney for Respondent  
Chris Walden

#### **CERTIFICATE OF COMPLIANCE**

I, Gregory L. Gilday, hereby certify the number of words contained in the document, exclusive of words contained in the appendices, the title sheet, the table of contents, the table of authorities, the certificate of compliance, the certificate of service, signature blocks, and pictorial images (e.g., photographs, maps, diagrams, and exhibits) is 2128.

Dated: November 14, 2023.

  
\_\_\_\_\_  
Gregory L. Gilday

**DECLARATION OF SERVICE**

I, Gregory L. Gilday, declare under penalty of perjury of the laws of the State of Washington, and on this day, I caused a copy of this Respondent's Answer To Appellant's Petition For Review to be served to this Court electronically via the Appellate Courts Portal, and the parties listed below via electronic mail and regular 1st class mail, postage pre-paid.

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Signed in Stanwood, Washington this 14th day of November 2023.

  
\_\_\_\_\_  
Gregory L. Gilday

**LAW OFFICE OF COLE & GILDAY, PC**

**November 14, 2023 - 2:49 PM**

**Transmittal Information**

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