FILED
SUPREME COURT
STATE OF WASHINGTON
11/13/2017 10:17 AM
BY SUSAN L. CARLSON
CLERK

SUPREME COURT NO. 95098-9

COURT OF APPEALS NO. 75449-1-I

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

---

TAMMY S. BLAKEY, an unmarried person,
and FLYING T. RANCH, INC., a Washington corporation,
Appellants,
v.

REGINALD K. WREN and
BRENDA M. WREN, husband and wife, Respondents.

---

# RESPONSE TO PETITION FOR REVIEW

---

WILLIAM B. FOSTER, INC., P.S.
By: William B. Foster
WSBA #8270
1907 Everett Avenue
Everett, Washington 98201
(425) 776-2147
Attorney for Respondents

## TABLE OF CONTENTS


INTRODUCTION ..... 1

ARGUMENT AND AUTHORITIES ..... 5

1. Standard of Review. ..... 5

2. The Imposition of Sanctions is at the Discretion of the Trial Court. ..... 8

3. Blakey is not Entitled to a New Trial.. ..... 10

4. Blakey was able to Prepare and Present her Case without the Photographs. ..... 14

5. The Existence of the Historic Fence fails to Establish Blakey's Claim. ..... 15

6. The Trial Court Was Correct in Imposing the Pre-filing Restriction. ..... 18

7. Wrens are Entitled to an Award of Reasonable Attorney's Fees. ..... 19

CONCLUSION ..... 20

## TABLE OF AUTHORITIES

CASES

*Acord v. Pettit*, 174 Wn. App. 95, 107-09, 302 P.3d 1265 (2013)..17

*Baxter v. Greyhound Corp.* 65 Wn.2d 421, 440, 397 P.2d 857 (1964).....9

*Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 494, 933 P.2d 1036 (1997).....9

*Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 403, 110 L. Ed. 2d 359, 110 S. Ct. 2447 (1990).....8

*Dalton v. State*, 130 Wn. App. 653, 668, 124 P.3d 305 (2005).....10

*Davis v. Dep't of Labor & Indus.*, 94 Wn.2d 119, 123, 615 P.2d 1279 (1980).....7

*Eagle Pac. Ins. Co. v. Christensen Motor Yacht Corp.*, 85 Wn. App. 695, 934 P.2d 715 (1997).....6

*Jones v. City of Seattle*, 179 Wn.2d 322, 360, 314 P.3d 380 (2013).....6

*Karak v. Bursaw Oil Corp.*, 288 F.3d 15 (1st Cir., 2002).....6

*Lepore v. Vidockler*, 792 F.2d 272, 274 (1st Cir.1986.).....6

*Lindgren v. Kimzey*, 58 Wn. App. 588, 595, 794 P.2d 526 (1990), review denied, 116 Wn.2d 1009, 805 P.2d 813 (1991).....6

*Lindgren v. Lindgren, 58 Wn. App. 588, 595-596, 794 P.2d 526 (1990)*.....6

*Lundgren v. Upper Skagit Indian Tribe*, 187 Wn.2d 857, 389 P.3d 569 (2017).....16

*Miller v. Fenton*, 474 U.S. 104, 114, 88 L. Ed. 2d 405, 106 S. Ct. 445 (1985).....8

*Ofuasia v. Smurr*, 198 Wn. App. 133, 392 P.3d 1148 (2017).....16

*Olpinski v. Clement*, 73 Wn.2d 944, 951, 442 P.2d 260 (1968).....9

*Peoples State Bank v. Hickey*, 55 Wn. App. 367, 777 P.2d 1056 (1989).....10, 13

*Rivers v. Wash. State Conference of Mason Contractors*, 145 Wn.2d 674, 684-85, 41 P.3d 1175 (2002).....9

*Roberson v. Perez*, 123 Wn. App. 320, 339, 96 P.3d 420 (2004)...8, 12

Skoog v. Seymour, 29 Wn. (2d) 355, 187 P. (2d) 304 (1947) .....17

*Teamsters, Chauffeurs, Warehousemen & Helpers Union, Local No. 59 v. Superline Transp. Co.*, 953 F.2d 17, 19-20 (1st Cir.1992).....6

*Taylor v. Cessna Aircraft Co.*, 39 Wn. App. 828, 696 P.2d 28 (1985).....12

*Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993) .....9

*Wood v. Nelson*, 57 Wn.2d 539, 540, 358 P.2d 312 (1961) .....16

STATUTES

RCW 2.28.010(3) .....18

RCW 4.24.630.....19

RCW 4.84.185.....2

RULES

CR 26 (g).....8

CR 60(b)(4) .....10

## INTRODUCTION

Forget about the fence. Blakey doggedly persists with her claim that the location of a historic fence is material to her adverse possession claim although the trial court rejected this contention since it issued its original decision. Evidence regarding the location of the historic fence does not establish Blakey's adverse possession claim. The photographs would not have led to a different result at trial.

Since the entry of the trial court decision Blakey has challenged the decision in three (3) separate post-trial motions, each of which have been denied. Each were based upon the same evidence and argument.

Between the second and third post-trial motion to vacate the decision of the trial court Blakey commenced an entirely new lawsuit against Wren.[1] This suit was dismissed on Wrens' motion for summary judgment, with the court reasoning the claims were identical to the claims raised in the original action and were barred by res judicata. The court hearing the summary judgment motion also found the claims brought in this second lawsuit were frivolous, and

1 Snohomish County Superior Court Cause No. 15-2-02098-4 (Blakey II).

sanctioned Blakey under RCW 4.84.185.

The third post-trial motion is the subject of Blakey's Petition for Review. Blakey argues that six photographs (6) not provided to her during discovery warrant granting her motion to vacate the decision of the trial court, and entitle her to a new trial. But the fatal flaw in Blakey's argument is these photos do not support Blakey's argument, but instead support the trial court's decision.

In response to this last post-trial motion Wrens sought as a sanction the imposition of a "pre-filing" restriction upon Blakey, which Blakey now contends is error. The court did not abuse its discretion in imposing this restriction.

## STATEMENT OF THE CASE

Wren and Blakey are the owners of adjacent parcels of real property in rural Snohomish County. (CP 372 - 385; CP 373; CP 7; CP 379). The two parcels share a common boundary. Wren's easterly boundary is the easterly line of Section 21, and Blakey's westerly boundary is the westerly line of Section 20.

Prior to the incidents that led to this action, and for decades before, the Section Lines that served as a common boundary were engulfed by a large hedgerow comprising brush, blackberry bushes and trees. This hedgerow was approximately twelve (12) feet high,

and as wide as seventy (70) feet. (CP 380). Each owner of the respective parcels farmed their respective parcels to the edge of the hedgerow. (CP 379).

An old dilapidated wire fence existed in the midst of the hedgerow, although it was totally obscured by the hedgerow.[2] (CP 380). At trial Blakey offered no evidence as to the precise location of the historic fence, nor was the location of the historic fence ever established by the trial court.

The hedgerow was visible in aerial photographs, and these photographs demonstrate that any use of the property on either side of the hedgerow was up to the edge of the hedgerow, and no further. (CP 379). The use of the property by Blakey never extended to the Section Line, or to the historic fence. (CP 379).

The hedgerow provided a natural barrier between the two parcels which barrier was more effective than a fence. (CP 381) Because Blakey had destroyed the hedgerow and put in its place a barbed wire fence, Wrens could not pasture their horses on their property because barbed wire fences are dangerous to horses. (CP 382)

---

2 Throughout these proceedings the fence that was hidden within the hedgerow was referred to as the "historic fence".

Blakey argued she had performed repairs to the historical fence in 1990, and in 2009, the intrusion that led to this lawsuit, she merely was replacing the fence in the same location. (CP 382). However, this testimony was directly contrary to five other persons who were prior owners of either parcel. Each testified that when they were owners of either parcel the fence was a straight line, not curved as was the fence built by Blakey in 2009. Based upon this evidence the trial court rejected Blakey's contention she had placed the 2009 fence in the same location as the historic fence. (CP 380 – 381).

The only evidence presented on the Defendants' claim of possession prior to 2009 was the 1990 fence repair, after which the area returned to the overgrown state that existed prior to this incursion. (CP 380 – 381) The trial court held that Blakey's activities during the 1990 incursion and thereafter did not constitute possession of the property up to the historic fence that was actual, open and notorious, hostile and uninterrupted for a ten (10) year period of time prior to the commencement of this action. (CP 380 – 381).

The only difference between the evidence in Blakey's second motion to vacate and the third motion to vacate is the consideration

of six (6) photographs.[3] None provide any evidence of Blakey's possession of any portion of the Wren property west of the Section Line. These photographs fail to establish her possession of any property west of the easterly edge of the hedgerow which was east of the Section line, hence east of the westerly boundary of Blakey's property.

This case is not about the location of the historic fence. The issue is about Blakey's claim she had adversely possessed any property west of the Section Line. The trial court held she failed to establish the facts necessary to support her claim of adverse possession.

Blakey argues that six photographs conclusively establish her claim of adverse possession. Nothing could be further from the truth. Instead, these photographs actually support the decision of the trial court.

## ARGUMENT AND AUTHORITIES

### 1. Standard *of Review*.

To prevail on her appeal of the trial court's denial of her CR 60 motion, Blakey must establish that the trial court abused its

3 In each of the two previous post-trial motions Blakey argued both discovery issues as well as the erroneous location of the "historic fence".

discretion.[4] An appellate court will not disturb a trial court's disposition of a motion to vacate unless that court abused its discretion.[5] A trial court abuses its discretion when it is exercised on untenable grounds or for untenable reasons, or when the discretionary act was manifestly unreasonable.[6] An abuse of discretion occurs only where it can be said no reasonable person would take the view adopted by the trial court.[7] Relief under Rule 60(b) is extraordinary and motions invoking that rule should be granted sparingly.[8]

Here the trial judge denied Blakey's CR 60 motion not just once, but three (3) times. (CP 577 – 578; CP 570 – 571; CP 1 – 9) The first two denials were based upon the same evidence. The only difference in the third CR 60 motion are the (6) photographs Blakey contends were not provided during discovery.

In denying Blakey's third CR 60 motion the Court entered Findings of Fact. (CP 1-9). These Findings included:

---

4 *Jones v. City of Seattle*, 179 Wn.2d 322, 360, 314 P.3d 380 (2013).
5 *Lindgren v. Kimzey*, 58 Wn. App. 588, 595, 794 P.2d 526 (1990), review denied, 116 Wn.2d 1009, 805 P.2d 813 (1991).
6 *Lindgren v. Lindgren, 58 Wn. App. 588, 595-596, 794 P.2d 526 (1990).*
7 *Eagle Pac. Ins. Co. v. Christensen Motor Yacht Corp.*, 85 Wn. App. 695, 934 P.2d 715 (1997)
8 *Karak v. Bursaw Oil Corp.*, 288 F.3d 15 (1st Cir., 2002); *See Teamsters, Chauffeurs, Warehousemen & Helpers Union, Local No. 59 v. Superline Transp. Co.*, 953 F.2d 17, 19-20 (1st Cir.1992); *Lepore v. Vidockler*, 792 F.2d 272, 274 (1st Cir.1986.)

> "The instant motion is nothing more than an attempt to relitigate the issues decided by the trial court and affirmed by the Court of Appeals, and affirmed in three (3) separate post-trial motions. The decision of the trial court also formed the basis of the dismissal of the Defendants' second lawsuit.
>
> The Defendants' claims have now been rejected six separate times, four (4) times by this Court, and twice by the Court of Appeals."[9]
>
> "This Court, and the Court of Appeals, have considered and rejected the Defendants' claims numerous times, and the instant motion is an attempt to revisit the decision of the trial court issued in 2013."[10]

None of the Findings of Fact in this Order denying Blakey's CR 60 motion were challenged in her appeal, and therefore are verities on appeal.[11]

The trial court considered a substantial amount of evidence during the four (4) day trial, and even more in consideration of the three (3) post-trial motions. Unlike the cases relied upon by Blakeey the decision at the trial court level was a jury verdict, the trial court in denying Blakey's motion did not need to speculate on the effect this additional evidence would have on the decision it rendered. No one was in a better position than the trial court to determine if the evidence in the additional photographs would affect its decision. The

---

9 CP 5
10 CP 5
11 *Davis v. Dep't of Labor & Indus.*, 94 Wn.2d 119, 123, 615 P.2d 1279 (1980).

abuse of discretion standard recognizes that deference is owed to the judicial actor who is better positioned than another to decide this issue.[12] The trial court did not abuse its discretion in denying Blakey's third post trial motion to vacate.

2. **The Imposition of Sanctions is at the Discretion of the Trial Court**.

Blakey argues that sanctions are a mandatory result for a discovery violation. This contention ignores the plain reading of CR 26 (g) which provides:

> "If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney fee."[13]

The question then is whether the trial court abused its discretion in refusing to grant Blakey's CR 60 motion as the appropriate sanction. The trial court is afforded wide latitude fashioning an appropriate sanction for discovery abuse.[14] The

---

12 *Roberson v. Perez*, 123 Wn. App. 320, 339, 96 P.3d 420 (2004); *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 403, 110 L. Ed. 2d 359, 110 S. Ct. 2447 (1990) (quoting *Miller v. Fenton*, 474 U.S. 104, 114, 88 L. Ed. 2d 405, 106 S. Ct. 445 (1985)).
13 CR 26 (g) (*emphasis added*).
14 *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993).

decision of the trial court should be accorded the greatest deference, particularly when it involves the assessment of occurrences during the trial which cannot be made a part of the record.[15] The decision of the trial court will not be disturbed except upon a clear showing that the determination was manifestly unreasonable, or was based upon untenable grounds or made for untenable reasons.[16] What the sanctions should be and against whom they should be imposed is the trial court's function.[17]

Here the trial court determined that the extreme sanction of a new trial was not warranted. The trial court denied Blakey's CR 60 motion because it found the motion was nothing other than an attempt to relitigate the issues decided in the court's original decision. Blakey did not prevail on her claim of adverse possession because she failed to establish the essential element of adverse possession – possession. (CP 381). The photographs Blakey relies upon do nothing to establish possession for the time required. Similarly, the photographs show that the hedgerow was removed

---

15 *Olpinski v. Clement*, 73 Wn.2d 944, 951, 442 P.2d 260 (1968) (quoting *Baxter v. Greyhound Corp.* 65 Wn.2d 421, 440, 397 P.2d 857 (1964)).
16 *Rivers v. Wash. State Conference of Mason Contractors*, 145 Wn.2d 674, 684-85, 41 P.3d 1175 (2002) (quoting *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 494, 933 P.2d 1036 (1997)).
17 *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 858 P.2d 1054 (1993)

over significant portions over the 692 feet of the entire fenceline. The hedgerow's removal in even one portion of the fenceline would expose the Wren's horses to the barbed wire.

Viewed differently, would the consideration of these photographs have changed the decision of the trial court? The answer to this question is unequivocally negative. The photographs alone add nothing to Blakey's claim of possession.

3. ***Blakey is not Entitled to a New Trial.***.

To obtain a new trial under CR 60(b)(4) there must be sufficient evidence to show that it was highly probable that the misconduct prevented Blakey from fully and fairly presenting her case.[18]

Blakey argues the withheld photographs show the location of the historic fence, but establishing the location of the historic fence does not prove her claim. The fact remains that Blakey offered no evidence she had possessed any of the property up to the historic fence located in the middle of the hedgerow. (CP 379) The Findings of Fact entered by the trial court stated:

> "In 1990 the Defendant used a backhoe to crush the blackberries that had grown upon along the fence line, and made some repairs to the fence in its historic

18 *Peoples State Bank v. Hickey*, 55 Wn. App. 367, 777 P.2d 1056 (1989); *Dalton v. State*, 130 Wn. App. 653, 668, 124 P.3d 305 (2005).

> location. Afterwards, the blackberries and brush grew back. This action was the only incursion into the area near the historical fence by anyone in the last fifty years. Except for this sole incident in 1990 the area on each side of the fence line was left to the blackberries. After the 1990 fence repair, grazing, haying and crop raising on each side of the fence line took place at a considerable distance from the fence line as dictated by the width of the hedgerow at any given time, which width fluctuated."[19]

Regardless of where the fence was located in 1990, at the time of Blakey's repair, she could have supplied the trial court with evidence that she "possessed" the property east of the Section line. But she did not. Blakey provided no such evidence. To the contrary the trial court found that after the 1990 fence repair the possession on both sides of the historic fence was the same as it was before the 1990 incursion, to the edge of the hedgerow, which fluctuated depending upon the growth of the hedgerow. Even if the photographs established the location of the historic fence, the photographs do nothing to establish Blakey's actual possession up to the historic fence.

Similarly, the photographs show that large portions of the hedgerow were removed, and as a result the Wren's horses would be exposed to the barbed wire placed in 2009 by Blakey. But Blakey

---

19 Finding of Fact No. 14; CP 379 (*emphasis added*)

could have provided some evidence that the Wrens' horses were not in danger by the presence of the barbed wire. She provided no evidence of this either.

Blakey argues that the only proper sanction is granting a new trial. She bases this argument on *Roberson v. Perez* and *Taylor v. Cessna Aircraft Co.* [20]. These cases are clearly distinguishable from this case.

Both of these cases involve a CR 60 motion made after an adverse jury verdict. In either case the court refused to speculate on the effect that the evidence would have had upon the jury. But here the court ruling did not have to speculate on the effect this evidence would have on its own decision. As the trial court noted in its oral decision on Blakey's last CR 60 motion "I remember this case well" even though this last motion was heard three years after the court rendered its original decision. The trial court is best suited to evaluate whether this additional evidence prevented Blakey from fully and fairly presenting her case.

In *Taylor* the court stated that the withheld evidence prevented *Taylor* from arguing a different theory of liability. Here

---

20 *Roberson v. Perez*, 123 Wn. App. 320, 96 P.3d 420 (2004); *Taylor v. Cessna Aircraft Co.*, 39 Wn. App. 828, 696 P.2d 28 (1985).

Blakey's theory was unaffected by the lack of the photographs. Blakey always contended that she had adversely possessed the property, but the trial court found Blakey's evidence totally lacking. Unlike *Taylor*, Blakey is not arguing a different theory. Blakey lost because she failed to establish possession to any property east of the Section line. With or without the photographs Blakey could have provided the trial court with evidence of her possession, but she did not. Blakey could have provided the trial court with evidence she did not destroy the hedgerow, but she did not.

Similarly, *Roberson* is not helpful to Blakey. In Roberson the court did not consider the requirement under CR 60(b)(4) that there be sufficient evidence to show it was highly probable that the misconduct prevented the moving party from fully and fairly presenting his or her case.[21]

A moving party under CR 60(b)(4) must show some connection between the alleged misconduct and entry of the judgment.[22] A person seeking relief under CR 60(b)(4) must establish by clear and convincing evidence it was prevented from fully and fairly presenting its case.[23]

---

21 *Dalton*, 130 Wn. App. at 668
22 *See Peoples State Bank v. Hickey*, 55 Wn. App. 367, 777 P.2d 1056 (1989)
23 Id. At 572.

The crux of Blakey's argument is that any discovery violation, regardless of how insignificant, warrants the grant of a new trial. This contention is unsupported by any authorities. Neither Roberson or Taylor hold that the only appropriate sanction when the missing evidence is discovered after judgment is a new trial.

#### *4. Blakey was able to Prepare and Present her Case without the Photographs.*

Blakey argues that with the photographs she could have challenged the testimony of the Terry Curtis, Wren's aerial photography expert.[24] Blakey argues:

> "If Blakey had been provided this evidence before the first trial, it not just could have, but would have enabled her to correct and/or impeach Terry Curtis' opinions and his Ex. 28 --- the whole basis of the court's ruling."

But this contention misunderstands the reasoning behind the trial court's ruling. The court's ruling on Blakey's adverse possession claim was not based upon the location of the historic fence, as the trial court stated:

> "The Court concludes that this is not a case about a historical fence that either is or is not on a boundary line. It is about a 2009 fence that was placed west of the true boundary line, and a disputed area to the east of the fence and to the west of the boundary line. The issue is a matter of whether the plaintiff adversely

24 Blakey's Petition for Review, pp. 12-13.

> possessed the disputed area or did not. And the Court concludes she did not.
>
> It would make no difference if the issue were framed as the defense now frames it. Even if the 2009 fence had been placed on the same line as the historic fence, and each fence stood several feet to the west of the true boundary, the defendant would still have to show she adversely possessed the area between her fence and the true boundary. She did not show this, either. Either way, the defendant's claim of adverse possession fails."(Court's Memorandum Decision; CP 615)

The location of the historic fence was immaterial to the decision of the trial court. Accordingly, evidence that would establish the location of the historic fence does not help Blakey.

### 5. *The Existence of the Historic Fence fails to Establish Blakey's Claim.*

Blakey then argues that the historic fence conclusively establishes her adverse possession claim.[25] This argument is nothing more than an attempt to relitigate the entire case.

This contention is based upon the erroneous legal conclusion that any fence will establish an adverse possession claim. Blakey argues that the photographs establish that the 2009 fence was installed in the same location as the historic fence.[26] This contention

---

25 Blakey's Petition for Review, pp. 14-17.
26 *Id.* at 14.

is directly contrary to the Findings entered by the trial court. Finding of Fact No. 19 states:

> "According to the testimony of other witnesses who lived on, or farmed, property on either side of the historical fence shows that the 2009 fence is considerably west of what they considered to be the historic boundary, and also considerably west of the location of the historic fence line. Also, according to these same witnesses the historic fence line was a straight line north and south, as compared to the fence installed in 2009 by the Defendants which veered significantly to the west. Trees that were located west of the historic fence were now east of the fence installed by the Defendants in 2009. The historic fence that was located between the properties of the parties was a straight line located on the actual boundary line between the properties."[27]

Blakey's argument that the 2009 fence was placed in the same location as the historic fence is simply contrary to the decision of the trial court, and misstates decision of the trial court. The Court of Appeals in the first appeal held the decision of the trial court to be supported by substantial evidence.

The cases cited by Blakey involve fences that were "line fences", fences that the property owners recognized as the common boundary line for the statutory period of ten years.[28] In each of these

---

27 CP 380-81.
28 *Wood v. Nelson*, 57 Wn.2d 539, 540, 358 P.2d 312 (1961); *Lundgren v. Upper Skagit Indian Tribe*, 187 Wn.2d 857, 389 P.3d 569 (2017); *Ofuasia v. Smurr*, 198 Wn. App. 133, 392 P.3d 1148 (2017).

cases the trial court found that the parties all considered the fence to be the boundary between the properties. As stated in *Acord v. Pettit*, 174 Wn. App. 95, 107-09, 302 P.3d 1265 (2013):

> "The existence of a fence may be dispositive evidence of hostile possession "'[w]here a fence purports to be a line fence, rather than a random one, and when it is effective in excluding an abutting owner from the unused part of a tract otherwise generally in use, it constitutes prima facie evidence of hostile possession up to the fence." [29]

The existence of the fence may sometimes be an indicator of possession, but unless there is evidence that the parties considered the fence to be the boundary the existence of the fence is not conclusory. The reverse is also true, the existence of a fence is not a prerequisite to establishing adverse possession.[30]

The trial court did not find that the parties recognized the historic fence as the common boundary line, so the location of the historic fence is immaterial to the decision of the trial court. The trial court found just the opposite. The trial court found the possession of both parties was dictated by the hedgerow, not any fence. Blakey did not assert at trial that the historic fence was the agreed boundary. This argument was first made in Blakey II, and it was not only

---

29 *Emphsis added.*
30 Skoog v. Seymour, 29 Wn. (2d) 355, 187 P. (2d) 304 (1947)

rejected, it was held to be a frivolous claim. At trial Blakey specifically stated to the trial court her claim was not based upon mutual recognition and acquiescence. During closing arguments the trial court asked Blakey's counsel

> "Is this an adverse possession case, or has this morphed into a mutual acquiescence case, or what is it you are telling me?" (VRP p 526, lines 6-8)

Although Blakey's counsel did not immediately and directly answer the court's question, he later affirmed Blakey's position her claims were based on adverse possession, and nothing more. (VRP p 527, lines 15-19)

6. ***The Trial Court Was Correct in Imposing the Pre-filing Restriction.***

A trial court's order limiting a party's access to the court for an abuse of discretion. Under RCW 2.28.010(3), a trial court has the authority to "provide for the orderly conduct of proceedings before it." A court may place reasonable restrictions on any litigant who abuses the judicial process. Trial courts have the authority to enjoin a party from engaging in litigation upon a specific and detailed showing of a pattern of abusive and frivolous litigation.

According to the unchallenged Findings of Fact the trial court did not abuse its discretion in imposing the pre-filing restriction. The

motion that is the subject of this appeal was "nothing more than an attempt to relitigate the issues decided by the trial court and affirmed by the Court of Appeals, and affirmed in three (3) separate post-trial motions. The decision of the trial court also formed the basis of the dismissal of the Defendants' second lawsuit." CP 5. The trial court in an unchallenged Finding of Fact held:

> "This Court, and the Court of Appeals, have considered and rejected the Defendants' claims numerous times, and the instant motion is an attempt to revisit the decision of the trial court issued in 2013. Despite the continued rejection of these claims the Defendant continues to pursue these same claims, either in the same forum or in a "new" action. The Defendants dogged pursuit of claims that have been rejected on numerous occasions is an abuse of the judicial system with frivolous and repetitive claims." CP 6 (emphasis added).

After considering the entire history of this long, drawn out saga, the trial court properly exercised its authority to restrict Blakey's recourse to the court system. To decline Wrens' request would only result in further abuse of the court system. The trial court did not abuse its discretion in imposing the restriction.

### *7. Wrens are Entitled to an Award of Reasonable Attorney's Fees.*

RCW 4.24.630 authorizes the trial court to award "the injured party for the party's reasonable costs, including but not limited to

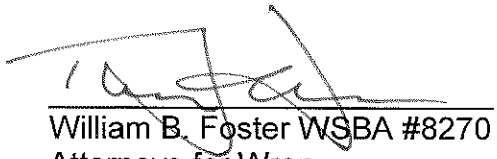
investigative costs and reasonable attorneys' fees and other litigation related costs." Because the attorney fee award is authorized by statute, RAP 18.1 authorizes the award of attorney's fees on appeal. Accordingly, Wrens are entitled to an award of reasonable attorney's fees on appeal. Wrens have complied with RAP 18.1 and submitted to the Court of Appeals a fee Declaration. Wren's are entitled to an additional award of fees for the time expended in responding to Blakey's Petition for Review.

## CONCLUSION

There is no conflict between the decision of the Court of Appeals, and decisions of other courts. Instead, this is merely an attempt to relitigate the issues considered by the trial court. Issues considered previously on numerous occasions. Nor does this case present issues of interest to the public. This Court should put a stop to the continued harassment of the Wrens, decline review, and put this matter to rest.

Respectfully submitted,

**WILLIAM B. FOSTER, INC., P.S.**



William B. Foster WSBA #8270
Attorneys for Wren

## CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date I caused true and correct copies of the Respondents' Response to Petition for Review; and Certificate of Service to be delivered to the counsel of record listed below in the manner described: to be served to the following in the manner noted below:

| | |
|---|---|
| Mr. C. Nelson Berry III<br>Berry & Beckett PLLP<br>1708 Bellevue Ave<br>Seattle, WA 98122-2017 | ■ Via first-class U.S. Mail<br>□ Via Certified Mail<br>□ Via Overnight Courier<br>■ Via Email<br>cnberryiii@seanet.com |
| Mr. Guy Beckett<br>Berry & Beckett PLLP<br>1708 Bellevue Ave<br>Seattle, WA 98122-2017 | ■ Via first-class U.S. Mail<br>□ Via Certified Mail<br>□ Via Overnight Courier<br>■ Via Email<br>Gbeckett@beckettlaw.com |

DATED this 13th day of November, 2017, at Everett, Washington.

Elaine M. Wilkinson
Legal Assistant

**WILLIAM B. FOSTER, INC., P.S.**

**November 13, 2017 - 10:17 AM**

**Transmittal Information**

| | |
|---|---|
| **Filed with Court:** | Supreme Court |
| **Appellate Court Case Number:** | 95098-9 |
| **Appellate Court Case Title:** | Reginald K. Wren, et ux. v. Tammy S. Blakey, et al. |
| **Superior Court Case Number:** | 10-2-03262-1 |

**The following documents have been uploaded:**

- 950989_Answer_Reply_20171113101140SC439178_6235.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  *The Original File Name was Response for Petition for Review.pdf*

**A copy of the uploaded files will be sent to:**

- cnberryiii@seanet.com
- gbeckett@beckettlaw.com

**Comments:**

---

Sender Name: Elaine Wilkinson - Email: Elaine.wbflaw@frontier.com
**Filing on Behalf of:** William Boyd FosterIII - Email: bfosteresq@comcast.net (Alternate Email: Elaine.wbflaw@frontier.com)

Address:
1907 Everett Avenue
Everett, WA, 98201
Phone: (425) 776-2147 EXT 103

**Note: The Filing Id is 20171113101140SC439178**