FILED
Court of Appeals
Division I
State of Washington
1/6/2022 11:55 AM

FILED
SUPREME COURT
STATE OF WASHINGTON
1/6/2022
BY ERIN L. LENNON
CLERK

No. 100546-6

SUPREME COURT
OF THE STATE OF WASHINGTON

No. 82073-7-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

THE CITY OF SEATTLE,
Respondent,

v.

PAUL MICHEL, et. al.,
Petitioners.

PETITION FOR REVIEW

CAIRNCROSS &
HEMPELMANN PS
By: Stephen P. VanDerhoef
WSBA No. 20088
Jonathan D. Tebbs
WSBA No. 53861

FIDELITY NATIONAL
LAW GROUP
By: Matthew R. Cleverley
WSBA No. 32055

Attorneys for Petitioners Michels

LAW OFFICE OF
G. MICHAEL ZENO, JR., P.S.
By: G. Michael Zeno, Jr.
WSBA No. 14589

Attorney for Petitioners Merriam and Walker

SMITH GOODFRIEND, P.S.
By: Howard M. Goodfriend
WSBA No. 14355

Attorneys for Petitioners

TABLE OF CONTENTS

A. Introduction...1

B. Court of Appeals Decision..............................3

C. Issues Presented for Review. 3

D. Statement of the Case. 4

1. The Michels, the Merriams, and their predecessors have occupied a portion of tract 44 as part of their Echo Lake homes since at least 1953. 4

2. City Light never had title by deed to tract 44, which reverted to the original grantors in 1939 when it ceased being used as a railway. City Light sought to establish title to all of tract 44, including that portion occupied by petitioners, by adverse possession..7

3. The Court of Appeals reversed a decree quieting title to petitioners, holding that City Light acquired all of tract 44 by adverse possession in the 1950s and that City Light was thereafter entitled to sovereign immunity from petitioners' adverse possession claims. 10

E. Argument Why Review Should be Granted. 14

1. The Court of Appeals erroneously extended a local government's sovereign immunity from claims of adverse possession far beyond the limits established by the Legislature and this Court's precedent. 16

2. The Court of Appeals erred in holding that City Light, which claimed title by adverse possession, established actual and exclusive possession of the property physically occupied and used by petitioners and their predecessors. 27

F. Conclusion. 32

TABLE OF AUTHORITIES

Page(s)

CASES

Brace & Hergert Mill Co. v. State,
49 Wash. 326, 95 P. 278 (1908) 21

Bryant v. Palmer Coking Coal Co.,
86 Wn. App. 204, 936 P.2d 1163,
rev. denied, 133 Wn.2d 1022 (1997) 28

Cartwright v. Hamilton,
111 Wash. 685, 191 P. 797 (1920) 28

Chaplin v. Sanders,
100 Wn.2d 853, 676 P.2d 431 (1984)..........................28

City of Edmonds v. Williams,
54 Wn. App. 632, 774 P.2d 1241 (1989) 22

Com. Waterway Dist. No. 1 of King Cty. v. Permanente Cement Co.,
61 Wn.2d 509, 379 P.2d 178 (1963) 22-23

Doty v. Town of S. Prairie,
155 Wn.2d 527, 120 P.3d 941 (2005) 17

Garth Parberry Equip. Repairs, Inc. v. James,
101 Wn.2d 220, 676 P.2d 470 (1984)......................... 17

Gorman v. City of Woodinville,
175 Wn. 2d 68, 283 P.3d 1082 (2012).........................22

Gustaveson v. Dwyer,
83 Wash. 303, 145 P. 458 (1915)................................23

ITT Rayonier, Inc. v. Bell,
112 Wn.2d 754, 774 P.2d 6 (1989)....................... 28, 30

Kesinger v. Logan,
51 Wn. App. 914, 756 P.2d 752 (1988),
aff'd, 113 Wn.2d 320, 779 P.2d 263 (1989)................23

Kiely v. Graves,
173 Wn.2d 926, 271 P.3d 226 (2012)..........................24

Okeson v. City of Seattle,
150 Wn.2d 540, 78 P.3d 1279 (2003).........................26

Peeples v. Port of Bellingham,
93 Wn.2d 766, 613 P.2d 1128 (1980)..........................28

Sisson v. Koelle,
10 Wn. App. 746, 520 P.2d 1380 (1974).....................24

Thompson v. Schlittenhart,
47 Wn. App. 209, 734 P.2d 48,
rev. denied, 108 Wn.2d 1019 (1987)...........................28

Washington Pub. Power Supply Sys. v. Gen. Elec. Co.,
113 Wn.2d 288, 778 P.2d 1047 (1989).................. 21, 24

STATUTES

RCW 4.16.020...19-22

RCW 4.16.160..2-3, 20-26, 32

RCW 7.28.070.. 17-19

RCW 7.28.080.. 17-19

RCW 7.28.090..*passim*

RCW 7.28.100... 17

RULES AND REGULATIONS

RAP 13.4 .... 14-16, 24-25, 32

OTHER AUTHORITIES

Hugh D. Spitzer,
Realigning the Governmental/Proprietary Distinction in Municipal Law,
40 Seattle U. L. Rev. 173 (2016)................................ 25

Stoebuck and Weaver, 17 *Wash. Prac., Real Estate* (2nd ed. 2004)............ 18, 20, 25, 27, 30-31

A. Introduction.

Petitioners Paul and Ann Michel, John Merriam and Brenda Kaye Walker, respondents in the Court of Appeals and plaintiffs below, ask this Court to review the Court of Appeals' decision reversing the trial court's decree quieting title against respondent Seattle City Light to portions of their residential properties that the petitioners and their predecessors have for decades exclusively occupied and used as driveways, front yards and lawns.

Ignoring basic rules of statutory construction and misreading this Court's precedents, the Court of Appeals in a published decision held that the Legislature in RCW 7.28.090 granted municipalities sweeping immunity against adverse possession of any "municipal lands actually being used or planned for use to provide any direct or indirect benefit to the public." (Op. ¶ 1) But RCW 7.28.090, which by its terms is limited to adverse possession claims made under color of title, 7.28.070, or

payment of taxes on vacant land, 7.28.080, says no such thing. The Court of Appeals ignored the governing statute, RCW 4.16.160, which, as this Court has repeatedly held, provides a much narrower defense, waiving sovereign immunity unless the municipality holds property in its governmental capacity for public and not proprietary purposes.

While Division One's erroneous expansion of municipal immunity from claims of adverse possession, standing alone, justifies this Court's review, the Court of Appeals never should have reached the issue of sovereign immunity because City Light never owned the property in dispute. City Light failed to challenge on appeal the trial court's order that it never acquired title by deed. It instead claimed title by adverse possession—even while conceding that it had *never* physically possessed the Merriam and Michel front yards, which were actually and exclusively occupied by petitioners and their predecessors. The Court

of Appeals' published decision eliminates the established requirements that adverse possession be both "actual" and "exclusive," mandating this Court's review.

B. Court of Appeals Decision.

Division One issued its decision on November 8, 2021, published at 498 P.3d 522 (App. A), and denied petitioners' timely motion for reconsideration on December 8, 2021. (App. B)

C. Issues Presented for Review.

1. Did the Court of Appeals err in holding that 7.28.090 grants Seattle City Light broad sovereign immunity from a claim of adverse possession of "any land that may provide any direct or indirect benefit to the public," or is municipal immunity limited to property municipal corporations hold in a governmental and not a proprietary capacity under RCW 4.16.160?

2. Did the Court of Appeals err in holding that City Light acquired title by adverse possession to portions

of the Merriam and Michel front yards that were actually and exclusively occupied for many decades, up to the present day, by petitioners and their predecessors, rather than by City Light?

D. Statement of the Case.

1. The Michels, the Merriams, and their predecessors have occupied a portion of tract 44 as part of their Echo Lake homes since at least 1953.

Petitioners Paul and Ann Michel (the Michels), John Merriam and Brenda Kaye Walker (the Merriams), are next door neighbors in Shoreline. Their properties abut the shore of Echo Lake to the west, and a 100-foot-wide former railroad right of way claimed by City Light to the east. The former railroad right of way was created in 1905, designated "tract 44" by the plat of Wenzler's Echo Lake Tracts. (CP 66)

The plat also created a long, thin parcel designated "tract 57," located between the right of way and Echo Lake

(CP 66), which was eventually divided into residential lots. The Michel and Merriam homes are the two northernmost residential properties in tract 57:

(CP 571)

The Merriams bought their house at 19533 Stone Ave. N. in 2003. (CP 55) The Michels purchased their home at 19541 Stone Ave. N., immediately to the north of the Merriams, in 2017. (CP 567)

Both properties have served as private residences since the middle of the last century. (CP 572-74, 1235, 1268) The Merriams' house, with its fence in the same location, dates from 1953 or earlier, as reflected in an

assessor's document from that year (CP 1268-69, 1272-73, 1277), shown below right. On the Michels' property, a carport, asphalt driveway and parking areas are all enclosed by a 6-foot cyclone fence, which dates from at least 1964 (CP 514-15), shown below left:

(CP 515) (CP 1268)

Though both the Merriams' and Michels' yards and driveways are located almost entirely within tract 44, neither home prevented City Light from maintaining its

transmission wires or poles, located east of petitioners' fence lines. (CP 921-22, 1153)

2. City Light never had title by deed to tract 44, which reverted to the original grantors in 1939 when it ceased being used as a railway. City Light sought to establish title to all of tract 44, including that portion occupied by petitioners, by adverse possession.

City Light never obtained title by deed to tract 44. When platting Echo Lake Tracts in 1905, the original grantors executed a "right of way deed" to tract 44 in favor of the Seattle-Everett Interurban Railway Company for operation of a railroad. (CP 536-37) The 1905 right of way deed expressly stated that if tract 44 was not used for a railway for a period of 60 days, the conveyance would be void, and all interest in tract 44 would automatically revert to and re-vest in the grantors:

> [It is distinctly understood and agreed to by [the Railway], its successors and assigns that this land is conveyed to them only as a right of way for a Railway and for highway purposes.

> It is further understood and agreed that if [the Railway], its successors or assigns shall, at any time, fail to operate a Railway on the above granted premises for a period of sixty days (time being declared to be of the very essence of this agreement) then and in that event this conveyance shall be null and void and the property conveyed shall revert to and revest in [the Wenzlers], their heirs or assigns without further notice and free from any liens or encumbrances that may have been incurred by the [Railway], its successors or assigns.

(CP 537)

In 1939, the Interurban made its last run. (CP 86-88, 253-54, 598, 1345-49) In partial summary judgment orders that are unchallenged on appeal, the trial court confirmed that tract 44 reverted back to the Wenzlers and Mehlhorns (the original grantors) and/or their heirs, sixty days after the successor to the Seattle-Everett Interurban Railway Company stopped using tract 44 for railway purposes. (CP 320-21, 367-69)

In March 1951, Puget Sound Power & Light, which had obtained a quitclaim deed to the former railroad right

of way six years earlier (CP 549-52), executed a deed that purported to convey to the City of Seattle "a transmission line right of way, as now located upon the ground and occupied by Puget Sound Power & Light Company, formerly the right of way of the Seattle-Everett Interurban Railway," including tract 44. (CP 555, 557) However, neither this deed nor the 1945 quit claim from the former railroad company to Puget Power conveyed any interest in the right of way because title had reverted in 1939 to the original grantors Wenzler/Mehlhorn.

Seattle City Light maintains an electric line on a single row of wooden poles within tract 44, adjacent to the residential properties occupied by petitioners. In 2001, City Light dedicated a portion of its right of way, including tract 44, but well outside the area in dispute, to the City of Shoreline for use as a pedestrian/bike trail, the Interurban Trail. (CP 598, 921-31) These uses formed the basis of City Light's claim to have adversely possessed the portion of

tract 44 occupied exclusively by the Michels and Merriams and their predecessors for over half a century.

3. The Court of Appeals reversed a decree quieting title to petitioners, holding that City Light acquired all of tract 44 by adverse possession in the 1950s and that City Light was thereafter entitled to sovereign immunity from petitioners' adverse possession claims.

Claiming it had record title to all of tract 44, City Light demanded in 2018 that the Michels and Merriams remove what it deemed encroachments. (CP 58-60, 174-76, 515-16) The dispute escalated when City Light, over the Michels' protests, removed and destroyed 200 feet of the Michels' fence and gate at the top of the slope that had provided security to the Michels' residence:

(CP 513)

(CP 516; *see* CP 362-63)

The Michels sued and obtained an injunction in King County Superior Court that allowed them to install a temporary fence to replace the one destroyed by City Light. (CP 1, 361-65, 518) The Merriams filed their own quiet title action (CP 9), which was consolidated with the Michels' action. (CP 192-93)

In unchallenged summary judgment rulings, the trial court held that the 1951 deed from Puget Sound Power & Light was ineffective to establish City Light's title to the property because all title to tract 44 had reverted to the original grantors under the reversionary clause in the 1905 grant of a railroad right of way. The trial court thus dismissed City Light's counterclaims seeking to quiet title to tract 44, except to the extent City Light could establish title based on adverse possession against the heirs of the original 1905 grantors, the record owners of tract 44. (CP 320-21368-69)

The Michels and Merriams then amended their quiet title complaints to add the heirs of the 1905 grantors. (CP 376, 383) On cross-motions for summary judgment, the trial court held that the Michels and Merriams established title by adverse possession to the portion of tract 44 that their predecessors fenced and occupied by virtue of their exclusive use and possession for ten years against both the heirs of the original grantors, and against City Light. The trial court rejected City Light's claim of immunity, finding that City Light held the property in a proprietary, as opposed to a governmental capacity. (CP 1396)

The trial court also held that City Light established title to all of tract 44 against the heirs of the 1905 grantors, "other than as established by the Michels and Merriams" through adverse possession based on City Light's use of the property for ten years beginning in 1951. (CP 1395)

The City appealed the judgment quieting title in favor of the Michels and Merriams to their front yards.[1] Division One reversed in a November 8, 2021 published decision and directed entry of judgment as a matter of law in favor of City Light and against petitioners. (App. A)

The Court of Appeals held that City Light acquired title to tract 44, including the Michels' and Merriams' front yards, by adverse possession, asserting that "[f]rom 1951 to 1961, the City physically occupied tract 44 and exercised . . . dominion and control over the entirety of tract 44 as a true owner would." (Op. ¶ 20) It then held that City Light was entitled to immunity from the Michels' and Merriams' adverse possession claims under RCW 7.28.090, which it broadly interpreted to shield all municipal property held for current or planned public use, "regardless of whether

[1] The ruling quieting title in favor of the City to the balance of tract 44 was unchallenged by the sole Wenzel/Melhorn heir who appeared, and is not at issue on appeal.

those uses are traditionally classified as 'governmental' or 'proprietary.'" (Op. ¶ 34)

The Court of Appeals denied petitioners' timely motion for reconsideration on December 8, 2021. (App. B)

E. Argument Why Review Should be Granted.

The Court of Appeals violated basic principles of statutory interpretation in holding that RCW 7.28.090 provided immunity to City Light against claims of adverse possession of any "municipal lands actually being used or planned for use to provide any direct or indirect benefit to the public." (Op. ¶ 1) Its expansive grant of sovereign immunity conflicts with this Court's precedent, as well as that of the Court of Appeals, that land held by a municipality in its proprietary, as opposed to governmental, capacity is subject to adverse possession to the same extent as if it were held by a private party. RAP 13.4(b)(1), (2).

Furthermore, while the extent and nature of a municipality's sovereign immunity from adverse possession is undoubtedly a matter of substantial public interest, RAP 13.4(b)(4), the Court of Appeals did not need to reach the issue because City Light never established it owned the portion of tract 44 occupied by petitioners and their predecessors. The Court of Appeals erred in holding that City Light exclusively possessed the petitioners' front yards for the requisite ten years to acquire title by adverse possession when it was in fact occupied by petitioners' predecessors during the same period. The Court of Appeals dispensed with the requirement that possession be both "actual" and "exclusive," in conflict with the fundamental premise of adverse possession law and established precedent. RAP 13.4(b)(1), (2).

1. The Court of Appeals erroneously extended a local government's sovereign immunity from claims of adverse possession far beyond the limits established by the Legislature and this Court's precedent.

The Court of Appeals erred in holding that municipal corporations, such as City Light, are entitled to sovereign immunity from claims of adverse possession as to any and all land "actually being used or planned for use to provide any direct or indirect benefit to the public." (Op. ¶ 1) This Court should accept review because Division One's admittedly "broad" view of immunity in a published opinion (Op. ¶ 28) is unsupported by the plain statutory language upon which it relied, conflicts with precedent, and is a matter of substantial public concern that only this Court may resolve. RAP 13.4(b)(1), (2), (4).

After noting that City Light was not entitled to common law immunity, the Court of Appeals erroneously held that the Legislature granted municipal corporations

broad statutory immunity against all claims of adverse possession of lands held for any current or future public purpose under RCW 7.28.090. (Op. ¶¶ 21-39) Under the guise of following a legislative mandate to "liberally construe" this statute (Op. ¶ 25, citing RCW 7.28.100), the Court of Appeals rewrote it, disregarding its plain language. *See Doty v. Town of S. Prairie,* 155 Wn.2d 527, 532-33, 120 P.3d 941 (2005) (court must give "meaningful effect to the language our legislature enacted," notwithstanding statutory "mandate of liberal construction"); *Garth Parberry Equip. Repairs, Inc. v. James*, 101 Wn.2d 220, 224, 676 P.2d 470 (1984) (court may not use principles of statutory construction "to ignore the literal language of a statute.").

RCW 7.28.090, originally enacted as section 5 of Chapter 11 of the Laws of 1893, states that "RCW 7.28.070 and 7.28.080 shall not extend to lands or tenements owned by the United States or this state, nor to school lands, nor

to lands held for any public purpose." By its plain terms, RCW 7.28.090 applies only to the particular forms of adverse possession described in RCW 7.28.070 and .080, which shorten the adverse possession period from ten to seven years under certain conditions that are indisputably absent here.

Specifically, RCW 7.28.070, allows a claimant to gain title in only seven years if, in addition to establishing the common law elements of adverse possession, the claimant has, "under claim and color of title" paid "all taxes legally assessed on such lands or tenements . . . to the extent and according to the purport of his or her paper title." RCW 7.28.080 authorizes a claimant to gain title to "vacant and unoccupied" land in seven years even without possessing it, if the claimant (1) has color of title, and (2) in good faith, (3) pays all taxes assessed for seven successive years. Stoebuck and Weaver, 17 *Wash. Prac., Real Estate* § 8.2 (2nd ed. 2004).

Because neither the Michels nor the Merriams claimed under RCW 7.28.070 or RCW 7.28.080, RCW 7.28.090 is, by its plain language, inapplicable. Petitioners were not basing their claim on having paid taxes on the property, nor were they claiming under a document that purported to convey title. Moreover, the portion of tract 44 was not vacant and unoccupied, but was developed, occupied, and possessed to the exclusion of all others, including City Light, by petitioners and their predecessors since the 1950s.

As the Court of Appeals recognized, petitioners claimed title based on RCW 4.16.020, which though technically a statute of limitations, requires a claimant seeking to quiet title based on adverse possession to establish that "the plaintiff, his or her ancestor, predecessor or grantor was seized or possessed of the premises in question within ten years before

commencement of the action." RCW 4.16.020; *see* Op.¶ 23, citing 17 *Wash. Prac.* § 8.2.

The Court of Appeals inexplicably failed to discuss or even cite the controlling statute, RCW 4.16.160, which since 1903, broadly waives local government's sovereign immunity for common law adverse possession claims based on RCW 4.16.020's ten-year statute of limitations:

> The limitations prescribed in this chapter shall apply to actions brought in the name or for the benefit of any county or other municipality or quasi-municipality of the state, in the same manner as to actions brought by private parties: Provided, That . . . there shall be no limitation to actions brought in the name or for the benefit of the state . . . nor shall any cause of action against the state be predicated upon such statute.

RCW 4.16.160; *see* Laws 1903, p.26, c.24.

The phrase "limitations described in this chapter" includes the 10-year statute of limitations for quiet title actions set forth in RCW 4.16.020. Because limitations referred to in RCW 4.16.160 do not apply to "actions

brought in the name or for the benefit of the state," the statute affords the State of Washington sovereign immunity from "any cause of action predicated upon" RCW 4.16.020, including adverse possession claims. *Brace & Hergert Mill Co. v. State,* 49 Wash. 326, 334–35, 95 P. 278 (1908).

In contrast to the blanket immunity afforded the State, RW 4.16.160 subjects "municipalities and quasi-municipalities" to suit "in the same manner as . . . private parties." This Court has interpreted RCW 4.16.160 to provide municipalities a limited immunity from suit. *See, e.g., Washington Pub. Power Supply Sys. ("WPPS") v. Gen. Elec. Co.*, 113 Wn.2d 288, 301, 778 P.2d 1047, 1053–54 (1989) (RCW 4.16.160 subjects WPPS to statute of limitations defense; "production of electricity . . . considered either a private business or a proprietary municipal function for the advantage of each community.").

Under RCW 4.16.160, cities are liable for adverse possession based on RCW 4.16.020's ten-year statute of limitations "in the same manner as . . . private parties" unless acting "in the name of or for the benefit of the state." A city or county holds property "for the benefit of the state" under RCW 4.16.160 only if it holds such property "for public purposes in its governmental capacity." *Com. Waterway Dist. No. 1 of King Cty. v. Permanente Cement Co.*, 61 Wn.2d 509, 512–13, 379 P.2d 178 (1963). *See Gorman v. City of Woodinville,* 175 Wn. 2d 68, ¶ 6, 72, 283 P.3d 1082 (2012) ("Under RCW 4.16.160, the statute of limitations for adverse possession will not run against the State or city acting in its governmental capacity"); *City of Edmonds v. Williams,* 54 Wn. App. 632, 634, 774 P.2d 1241 (1989) ("the principle that adverse possession cannot be acquired against property held by a municipality in its governmental capacity . . . derives from the rule that the

adverse possession statute cannot run against the state."), citing RCW 4.16.160.

Thus, "the statute does not apply as against a municipality so as to permit the acquisition of title by adverse possession to a portion of a street within the municipality" because "such property is held by the municipality . . . in a governmental capacity for public purposes." *Gustaveson v. Dwyer,* 83 Wash. 303, 305, 145 P. 458 (1915). But "if land were held by a municipality in its proprietary capacity the land would be subject to being acquired by adverse possession the same as if owned by a private individual." *Com. Waterway Dist.*, 61 Wn.2d at 512. *Accord, Kesinger v. Logan*, 51 Wn. App. 914, 919, 756 P.2d 752 (1988) (adverse possession of portion of irrigation district's claimed right of way, which had never been "devoted to any use by the District" was held "in its proprietary capacity and is subject to adverse possession."), *aff'd*, 113 Wn.2d 320, 779 P.2d 263 (1989);

Sisson v. Koelle, 10 Wn. App. 746, 748–49, 520 P.2d 1380 (1974) (county land "is subject to being acquired by adverse possession the same as if owned by a private individual.").[2]

Even if City Light acquired title to the portion of tract 44 occupied by the Michels and Merriams (it did not, § E.2, *infra*), City Light held that property as any private utility would, and not in a governmental capacity for purposes of RCW 4.16.160. *WPPS,* 113 Wn.2d at 301. The Court of Appeals' sweeping grant of municipal immunity conflicts with established precedent and disregards RCW 4.16.160 as the statutory basis for limiting municipal immunity from adverse possession claims to lands held in a governmental, and not a proprietary capacity. RAP 13.4(b)(1), (2).

---

[2] Division One instead looked to the few cases that have cited RCW 7.28.090 as a basis for municipal or county immunity from claims of adverse possession of public rights of way, which are held in a governmental, not proprietary, capacity. *See, e.g., Kiely v. Graves,* 173 Wn.2d 926, 928, 271 P.3d 226 (2012) (public alley) (Op. ¶¶ 26-27).

This decision presents an issue of substantial public interest justifying this Court's review, RAP 13.4(b)(4), as evidenced by the amicus participation below of the Washington State Municipal Attorneys Association. The Court of Appeals characterized municipal immunity from claims of adverse possession an uncertain "quagmire," based on "repeated dictum," that has been questioned by scholars. (Op. ¶ 30, citing 17 *Wash. Prac.*, § 8.8) If that is the case, this Court, and not the Court of Appeals should definitively resolve this "quagmire" by acknowledging, rather than ignoring, the governing statute, RCW 4.16.160.[3]

Moreover, by conferring immunity from adverse possession for land held by a municipality for a "public

---

[3] "[L]legislatures (not courts) are the best place for making the relevant policy decisions" concerning the extent to which local government enjoys immunity for "governmental activities." Hugh D. Spitzer, *Realigning the Governmental/Proprietary Distinction in Municipal Law,* 40 Seattle U. L. Rev. 173, 208 (2016) (cited in Op. ¶ 30).

purpose," the Court of Appeals merely substituted one quagmire for another. Conceding that furnishing utility services is a proprietary function (Op. ¶ 35, quoting *Okeson v. City of Seattle,* 150 Wn.2d 540, 550, 78 P.3d 1279 (2003)), the published decision grants immunity to a category of proprietary activities based on nothing more than the happenstance that they are performed by government and not by a private party. The decision upsets the long-standing distinction between governmental and proprietary activities, so that "governmental" no longer means sovereign and "proprietary" no longer requires treating a municipal entity as a private party.

This Court should grant review and hold that City Light has no immunity from petitioners' claims of adverse possession, either under RCW 7.28.090, which by its terms is inapplicable, or under RCW 4.16.160, which waives local government's sovereign immunity from adverse possession, because City Light did not possess any portion

of the Michel and Merriam properties for a governmental purpose.

2. The Court of Appeals erred in holding that City Light, which claimed title by adverse possession, established actual and exclusive possession of the property physically occupied and used by petitioners and their predecessors.

The Court of Appeals did not need to adopt its sweeping view of municipal immunity because City Light, which never acquired title by deed, failed to establish title by adverse possession to petitioners' property in the first instance. To quiet title by adverse possession, the claimant must establish, among other elements, actual and exclusive possession of the property, consistent with the actions of a true owner. But the petitioners exclusively possessed the disputed areas; City Light did not possess them at all.

"To be adverse, the possession of another's land must be 'actual': it is not possible to be in adverse possession without physical occupation." 17 *Wash. Prac.*, § 8.9.

Washington courts have consistently required a party claiming title by adverse possession, such as City Light here, "to establish specific acts of use rising to the level of exclusive, legal possession." *ITT Rayonier, Inc. v. Bell,* 112 Wn.2d 754, 759, 774 P.2d 6 (1989); *Peeples v. Port of Bellingham,* 93 Wn.2d 766, 774, 613 P.2d 1128 (1980) ("even if the port used as moorage the one dolphin inside the seaward edge of the property line, such use by itself would not establish the requisite possession."), *overruled on other grounds by Chaplin v. Sanders,* 100 Wn.2d 853, 676 P.2d 431 (1984); *Cartwright v. Hamilton*, 111 Wash. 685, 191 P. 797 (1920) (maintenance of fence on adjoining land insufficient absent use up to fence); *Thompson v. Schlittenhart,* 47 Wn. App. 209, 212, 734 P.2d 48, *rev. denied*, 108 Wn.2d 1019 (1987); *Bryant v. Palmer Coking Coal Co.,* 86 Wn. App. 204, 215-16, 936 P.2d 1163 ("trial court carefully distinguished the locations of . . . activities from the absence of activity farther to the west . . . and drew

the west boundary line of parcel 2A at the point where Bryant had established adverse use."), *rev. denied*, 133 Wn.2d 1022 (1997).

The Court of Appeals erred in conflating City Light's possession of tract 44 generally with possession of the Merriams' and Michels' front yards. (Op. ¶ 20: "the City *physically occupied* tract 44 and exercised *exclusive* control over it . . . ") (emphasis added) City Light admitted that it had never been in the Merriams' front yard (CP 1153), and none of the examples of "physical possession" cited by the Court of Appeals pertained to the area in dispute, or supported its assertion that City Light "exercised dominion and control over . . . the portions [of tract 44] within the homeowners' fence lines." (Op. ¶ 20)

For instance, the court cited City Light's practice of issuing permits authorizing ingress and egress from

"property adjoining the Right of Way." (Op. ¶ 20)[4] But unless City Light actually owned the property it was "permitting," the permits had no more legal significance than if a stranger had issued them. One does not acquire title by adverse possession by asserting ownership and allowing others to use property without ever physically occupying it. As the name of the doctrine reflects, the only owner-like behavior that can create title by adverse possession is actual, exclusive "possession."

While "the ultimate test is the exercise of dominion over the land in a manner consistent with actions a true owner would take" (Op. ¶ 17, quoting *ITT Rayonier,* 112 Wn.2d at 759), "[i]n most cases, the adverse possessor must be in physical possession *of every part of the land* that he claims." 17 *Wash. Prac.*, § 8.9 (emphasis added).

---

[4] In fact, the City issued only one such permit as to the Michel and Merriam properties between 1951 and 1961, the relevant ten-year period for City Light's adverse possession claim. (CP 754)

Some jurisdictions recognize an exception under which one may "constructively possess" a "larger adjoining area that is described in a colorable title document he holds." 17 *Wash. Prac.* § 8.9. But "no Washington authority has been found," for the doctrine of "constructive possession," 17 *Wash. Prac.*, § 8.20, and the Court of Appeals did not mention the doctrine or otherwise explain how City Light could adversely possess property physically and exclusively occupied by petitioners and their predecessors.

Further, City Light's deed from Puget Sound Power (the only relevant "colorable title document") conveyed *use rights*—not fee title—to the right of way. (CP 554-58) The Court of Appeals ignored that City Light's claim to tract 44 could be no greater than the easement rights it purported to obtain as successor to the 1905 railroad right of way.

The Court of Appeals erred in eliminating the requirement that an adverse possessor actually and exclusively possess the claimed land. Its decision conflicts

with established precedent from this Court, the Court of Appeals and presents an issue in which all property owners, private and public, have a substantial interest. RAP 13.4(b)(1), (2), (4).

F. Conclusion.

The Court of Appeals erred in granting municipalities sweeping immunity from adverse possession claims, ignoring both the language of RCW 7.28.090, upon which it erroneously relied, and the governing statute, RCW 4.16.160. In its rush to navigate a so-called "quagmire" of municipal immunity, the court granted City Light fee title to property it never acquired by deed, erroneously holding that City Light had actual and exclusive possession of property that was physically occupied solely by petitioners and their predecessors. This Court should grant review, reverse the Court of Appeals, and reinstate the trial court's judgments on either, or both, of these grounds.

I certify that this petition is in 14-point Georgia font and contains 4,846 words, in compliance with the Rules of Appellate Procedure. RAP 18.17(b).

Dated this 6th day of January, 2022.

CAIRNCROSS & HEMPELMANN PS

By: */s/ Stephen VanDerhoef*
Stephen P. VanDerhoef
WSBA No. 20088
Jonathan D. Tebbs
WSBA No. 53861

FIDELITY NATIONAL LAW GROUP

By: */s/ Matthew Cleverley*
Matthew R. Cleverley
WSBA No. 32055

Attorneys for Petitioners Michels

LAW OFFICE OF G. MICHAEL ZENO, JR., P.S.

By: */s/ G. Michael Zeno, Jr.*
G. Michael Zeno, Jr.
WSBA No. 14589

Attorney for Petitioners Merriam and Walker

SMITH GOODFRIEND, P.S.

By: */s/ Howard Goodfriend*
Howard M. Goodfriend
WSBA No. 14355

Attorneys for Petitioners

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on January 6, 2022, I arranged for service of the foregoing Petition for Review, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division I One Union Square 600 University Street Seattle, WA 98101	____ Facsimile ____ Messenger ____ U.S. Mail _X_ E-File
Matthew R. Cleverley Fidelity National Law Group 701 5th Ave Ste 2710 Seattle, WA 98104-3125 Matthew.Cleverley@fnf.com	____ Facsimile ____ Messenger ____ U.S. Mail _X_ E-Mail
Stephen P. VanDerhoef Jonathan D. Tebbs Cairncross & Hempelmann, P.S. 524 Second Avenue, Suite 500 Seattle, WA 98104-2323 svanderhoef@cairncross.com jtebbs@cairncross.com	____ Facsimile ____ Messenger ____ U.S. Mail _X_ E-Mail

G. Michael Zeno, Jr. Law Office of G. Michael Zeno, Jr., P.S. 135 Lake Street So., Suite 257 Kirkland, WA 98033 mikez@zenolawfirm.com	____ Facsimile ____ Messenger ____ U.S. Mail __X__ E-Mail
Andrew C. Eberle Stephen Karbowski Seattle City Attorney's Office 701 5th Ave., Ste. 2050 Seattle, WA 98104-7097 Andrew.Eberle@seattle.gov Stephen.Karbowski@seattle.gov	____ Facsimile ____ Messenger ____ U.S. Mail __X__ E-Mail
Steven K. Donley 5731 West Marten Glendale, AZ 8530 sdonleyred@yahoo.com	____ Facsimile ____ Messenger ____ U.S. Mail __X__ E-Mail
Megan C. Clark Etter McMahon Lamberson Van Wert & Oresk 618 W Riverside Avenue, Suite 210 Spokane, WA 99201 5048 mclark@ettermcmahon.com	____ Facsimile ____ Messenger ____ U.S. Mail __X__ E-Mail
Bob C. Sterbank City Attorney City of Snoqualmie PO Box 987 Snoqualmie, WA 98065 bsterbank@snoqualmiewa.gov	____ Facsimile ____ Messenger ____ U.S. Mail __X__ E-Mail
Duncan M. Greene Van Ness Feldman LLP 1191 2nd Avenue, Suite 1800 Seattle, WA 98101 2996 dmg@vnf.com	____ Facsimile ____ Messenger ____ U.S. Mail __X__ E-Mail

DATED at Seattle, Washington this 6th day of January, 2022.

/s/ Andrienne E. Pilapil

Andrienne E. Pilapil

498 P.3d 522
Court of Appeals of Washington, Division 1.

Paul MICHEL and Ann Michel, husband and wife; John W. Merriam and Brenda K. Walker, husband and wife, Respondents,
v.
CITY OF SEATTLE, a Washington municipality, d/b/a Seattle City Light, Appellant.

No. 82073-7-I consolidated with No. 82074-5-I
|
FILED 11/8/2021

Synopsis

Background: Homeowners brought amended claims for adverse possession, quiet title, prescriptive easement, trespass, and conversion relating to disputed property previously deeded to railway company and eventually conveyed to city. City brought its own claims for adverse possession. On cross-motions for summary judgment, the Superior Court, King County, Marshall L. Ferguson, J., granted summary judgment in favor of homeowners, allowing homeowners to take disputed property by adverse possession and granting prescriptive easements for access. Following denial of its motion for reconsideration, city appealed.

Holdings: The Court of Appeals, Verellen, J., held that:

[1] city established their actual and exclusive possession of disputed property, acquiring title by adverse possession more than 50 years prior;

[2] land actually used or planned for use in a way that benefits the public as shown by the benefits flowing from governmental ownership is immune from claims of adverse possession; and

[3] homeowners were barred by statute immunizing government-held property from adverse possession from taking possession of property.

Vacated and remanded.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

West Headnotes (18)

[1] **Judgment** Motion or Other Application

When parties file cross motions for summary judgment, questions of law determine the outcome if there are no genuine issues of material fact.

[2] **Appeal and Error** Deference given to lower court in general

Determinations by trial court on cross motions for summary judgment are not entitled to any deference on appeal.

[3] **Adverse Possession** Character and elements of adverse possession in general

City established their actual and exclusive possession of disputed property, acquiring title by adverse possession more than 50 years prior to action by homeowners claiming adverse possession of portions of property; city maintained a continuous presence on property for more than 60 years by using it for electrical distribution with power poles, city did not share possession of property with homeowners and their heirs or ensigns, city consented to the use of the property by third parties by allowing access to roadway, parks, recreation, and trails, city actively managed property, and city granted permits to portions of property to prior homeowners while requiring that it be allowed to access property at all reasonable times to ensure compliance with permitted use.

Wash. Rev. Code Ann. § 4.12.020.

[4] **Adverse Possession** Character and elements of adverse possession in general

A person claiming adverse possession must prove that they possessed the property for at least ten years in manner that is: (1) open and notorious, (2) actual and uninterrupted, (3) exclusive, and (4) hostile.

[5] **Adverse Possession** Possession exclusive of others

Adverse possession must be as exclusive as one would expect of titled property owner under circumstances.

[6] **Statutes** Construction based on multiple factors

To interpret a statute's plain language, the Court of Appeals examines the text of the statute, as well as the context of the statute in which that provision is found, related provisions, and the statutory scheme as whole.

[7] **Statutes** Unintended or unreasonable results; absurdity

The Court of Appeals interprets statutes to avoid unlikely, strained, or absurd consequences.

[8] **Adverse Possession** Public lands in general

A party may not claim adverse possession of property held or controlled by a municipality for public use. Wash. Rev. Code Ann. § 7.28.090.

[9] **Statutes** By inconsistent or repugnant statute

The legislature would not intentionally undermine one enactment with another.

[10] **Adverse Possession** Public lands in general

Because the legislature intended to broadly shield government-held land, the prohibition on adverse possession of public lands can apply to adverse possession claims brought against a government entity under the statute governing adverse possession claims based on payment of taxes, the statute governing adverse possession claims based on the disputed property being vacant or unoccupied, or the statute governing adverse possession claims brought within ten years of possession. Wash. Rev. Code Ann. §§ 4.16.020, 7.28.070, 7.28.080, 7.28.090.

[11] **Adverse Possession** Nature and grounds of prescription

The doctrine of adverse possession ensures the maximum utilization of land, encourages the rejection of stale claims, and promotes quiet titles.

[12] **Adverse Possession** Against whom prescription may be claimed

The doctrine of governmental immunity against adverse possession promotes stable ownership and land use because its absence would encourage encroachments and hinder public use. Wash. Rev. Code Ann. § 7.28.090.

[13] **Adverse Possession** Public lands in general

Municipal governments hold land for the benefit of the public, and immunizing certain municipal property against adverse possession eliminates the risk of permanent injury to the public from the careless civil servant who fails to monitor boundaries. Wash. Rev. Code Ann. § 7.28.090.

[14] **Adverse Possession** Public lands in general

In the context of the statute immunizing certain government-held property from adverse possession, the statutory phrase "lands held for any public purpose" means land actually used or planned for use in a way that benefits the public as shown by the benefits flowing directly or indirectly from governmental ownership of the particular property. Wash. Rev. Code Ann. § 7.28.090.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

[15] **Adverse Possession** Public lands in general

To be shielded by the statute immunizing certain government-held property from adverse possession, a municipality must show some advancement of the public's wellbeing from any part of the property; this is a fact-specific, reality-based inquiry that recognizes a single parcel owned by a government entity can serve multiple uses providing different public benefits, regardless of whether those uses are traditionally classified as governmental or proprietary. Wash. Rev. Code Ann. § 7.28.090.

[16] **Adverse Possession** Public lands in general

In the context of the statute immunizing certain government-held property from adverse possession, abandoned or forgotten lands put to no actual or planned use at all do not provide public benefits. Wash. Rev. Code Ann. § 7.28.090.

[17] **Municipal Corporations** Capacity to sue or be sued in general

When applying the government immunity doctrine, courts should look to the context of the specific case and apply the rules relevant to the area of law under consideration.

[18] **Adverse Possession** Public lands in general

Homeowners were barred by statute immunizing certain government-held property from adverse possession from taking possession of city-owned public property; property was used continuously for recreation from the time of the city's possession for more than 60 years, including for fishing, swimming, and as a public park and an inter-urban trail, and property was further used continuously to supply public utility service since the city's possession, including for electrical distribution and water infrastructure. Wash. Rev. Code Ann. § 7.28.090.

***524** Honorable Marshall L. Ferguson, Judge

Attorneys and Law Firms

Andrew Carl Eberle, Stephen Richard Karbowski, Seattle City Attorney's Office, 701 5th Ave. Ste. 2050, Seattle, WA, 98104-7095, for Appellant.

Matthew Rick Cleverley, Fidelity National Law Group, 701 5th Ave. Ste. 2710, Seattle, WA, 98104-7054, Stephen P. Vanderhoef, Jonathan David Tebbs, Cairncross & Hempelmann PS, 524 2nd Ave. Ste. 500, Seattle, WA, 98104-2323, Howard Mark Goodfriend, Smith Goodfriend PS, 1619 8th Ave. N, Seattle, WA, 98109-3007, G. Michael Zeno Jr., Law Office of G. Michael Zeno, Jr., P.S., 135 Lake St. S Ste. 257, Kirkland, WA, 98033-6435, for Respondents.

Megan Christine Clark, Etter McMahon Lamberson Van Wert & Oresk, 618 W Riverside Ave. Ste. 210, Spokane, WA, 99201-5048, Bob C. Sterbank, Attorney at Law, P.O. Box 987, Snoqualmie, WA, 98065-0987, Duncan Mcgehee Greene, Van Ness Feldman LLP, 1191 2nd Ave. Ste. 1800, Seattle, WA, 98101-2996, for Amicus Curiae Wa State Association of Municipal Attorneys.

Daniel J. Frohlich, Dickson Frohlich PS, 1200 E D St., Tacoma, WA, 98421-1710, for Other Parties.

PUBLISHED OPINION

Verellen, J.

¶ 1 When the legislature enacted RCW 7.28.090, it shielded municipal "lands held for any public purpose" against being taken by adverse possession. The common law rule of nullum tempus occurrit regi (no time runs against the king) shields only those lands used in a governmental capacity and is narrower than this statutory immunity because RCW 7.28.090 prevents the loss of municipal lands actually being used or planned for use to provide any direct or indirect benefit to the public.

¶ 2 The trial court granted summary judgment against the City of Seattle (City) and allowed portions of its land to be taken by adverse possession. It concluded the land could be taken by adverse possession because it was used for a proprietary

purpose and so was not held in a governmental capacity. The trial court should have applied the broader statutory “held for any public purpose” test.

¶ 3 On de novo review, we conclude that the City holds title to the entirety of tract 44 and that RCW 7.28.090 applies and shields the disputed property from adverse possession by the homeowners.

¶ 4 Therefore, we vacate the trial court's order and remand for further proceedings in accordance with this opinion.

***525** FACTS

¶ 5 In the early 1900s, the Wenzlers and the Mehlhorns owned tract 44, a long, 100-foot wide lot adjacent to Echo Lake in Shoreline, as appears below. In 1905, they executed a “right of way deed” in favor of the Seattle-Everett Interurban Railway Company, letting it use tract 44 as a railway. [1] If tract 44 stopped being used as a railway, then ownership would revert to the original owners and their heirs or assigns. Over the next 25 years, ownership of tract 44 changed numerous times. In 1939, it stopped being used as a railway. In 1945, it was conveyed to the Puget Sound Power & Light Company. And in 1951, Puget Sound Power & Light conveyed tract 44 to the City, which managed the tract through Seattle City Light.

¶ 6 By 2018, the lots adjacent to tract 44 had been subdivided and developed. Married couples, the Michels [2] and the Merriams [3] (homeowners), lived on neighboring lots between Echo Lake and tract 44. The homeowners’ fenced front yards, the disputed properties, are located in tract 44. The nearest street runs along tract 44. A map appears below, identifying the homeowners’ properties and tract 44.

¶ 7 In June of 2018, the City sent a letter to the Michels stating their fence and other “encroachments” on tract 44 had to be removed. [4] It sent a similar letter to the Merriams ***526** in October of 2018. The Michels and the City did not negotiate a solution. In November, the City removed most of the Michels’ fence. The homeowners filed separate quiet title actions against the City, alleging they possessed their fenced front yards. The City counterclaimed in each case, seeking to quiet title and eject the homeowners. The cases were consolidated.

¶ 8 During discovery, the homeowners learned of the restrictive 1905 right-of-way deed and moved for partial summary judgment on the City's ability to claim ownership of tract 44 by deed. The court agreed, dismissing the City's counterclaims except to the extent they were based on adverse possession by the City. [5]

¶ 9 Following discovery, the parties filed amended complaints. The Michels brought claims for adverse possession, quiet title, and for a prescriptive easement for access against the City and all putative owners. [6] They also brought claims for trespass and conversion against the City. The Merriams brought claims for adverse possession and for a prescriptive easement for access against the City and all putative owners. The City brought claims for adverse possession against the homeowners and against any heirs or assigns of the original owners of tract 44.

¶ 10 The parties filed cross motions for summary judgment. The City argued that it took the entirety of tract 44 by adverse

WESTLAW © 2022 Thomson Reuters. No claim to original U.S. Government Works.

possession and that RCW 7.28.090 barred the homeowners from adversely possessing the disputed property because it was using the land for a public purpose. The homeowners contended that the City did not take their fenced yards by adverse possession because it "has never occupied or even used [them]" [7] and that the City's land was not shielded from adverse possession because, as a matter of law, a municipality providing utility services is not acting in a governmental capacity.

¶ 11 The court concluded that the City adversely possessed tract 44 as of 1961, except for the disputed properties. [8] It concluded the City had not held tract 44 in a governmental capacity, so RCW 7.28.090 did not shield it from being adversely possessed. The court held the Merriams took title to their disputed property in 1963, and the Michels took title to their disputed property in 1974. It also granted both homeowners prescriptive easements for access. [9] The City filed a motion for reconsideration, which the court denied.

¶ 12 The City appeals.

ANALYSIS

[1] **[2]** ¶ 13 When parties file cross motions for summary judgment, questions of law determine the outcome if there are no genuine issues of material fact. [10] We engage in de novo review of the trial court's rulings. [11] Determinations by the trial court are not entitled to any deference. [12]

¶ 14 The core question raised on appeal is whether the City is shielded by RCW 7.28.090 from the homeowners' claims of adverse possession to their fenced yards, the disputed portions of tract 44. [13] The homeowners argue the statute is inapplicable because ***527** of its narrow scope or because the City did not use tract 44 for a public purpose. But, as a preliminary matter, we address the homeowners' contention that the City never acquired ownership of the disputed properties.

[3] ¶ 15 The homeowners challenge the City's claim that it acquired title to the disputed properties by adverse possession as of 1961. Specifically, they argue an adverse possessor has actual and exclusive possession of a disputed property only when they have actual, physical possession, [14] and the City "never established exclusive possession of the portions of [tract] 44 occupied by the Michels and the Merriams and their predecessors" because it "never possessed the area inside the [homeowners'] fence line." [15] The homeowners do not dispute that the City took title to the rest of tract 44 by adverse possession.

[4] ¶ 16 A person claiming adverse possession under RCW 4.12.020 must prove they "possess[ed] the property for at least 10 years in a manner that is '(1) open and notorious, (2) actual and uninterrupted, (3) exclusive, and (4) hostile.' " [16] The homeowners' narrow arguments challenge only the elements of actual and exclusive possession. [17]

[5] ¶ 17 The homeowners misconstrue the meanings of "possession" and "exclusive," and they cite no authority requiring physical occupation of the entirety of a disputed property to prove "actual" and "exclusive" use. While "it is not possible to be in adverse possession without physical occupation," [18] "[t]he ultimate test is the exercise of dominion over the land in a manner consistent with actions a true owner would take." [19] "Adverse possession must be as exclusive as one would expect of a titled property owner under the circumstances." [20] "[T]he exclusivity element means that an adverse possessor may not share possession of the area claimed with the true owner and, though less critical, not too much with third persons who are there without the adverse possessor's consent." [21]

¶ 18 The City has maintained a continuous physical presence on tract 44 since 1951, using it for electrical distribution with power poles. Nothing shows the City shared possession of tract 44 with the "true owners," the Wenzlers, the Mehlhorns, and their heirs or assigns. The City consented to third persons' uses of tract 44 for road access, recreation, parks, and trails. Although possession of tract 44 was not literally exclusive, as the homeowners would require, the record shows the City managed the land as a true owner would under the circumstances.

¶ 19 Tract 44 is a 100-foot wide parcel that cuts off the Michels' and Merriams' properties from the road. In 1951, the City took possession of and actively managed the uses of tract 44. It granted permits, charging only a nominal fee, to the homeowners' predecessors for use of tract 44 to garden and access the road. The temporary permits issued in the 1950s and 1960s did not prohibit the construction of fences, driveways, or temporary structures, such as a shed. The

City required that it be allowed to access the homeowners' property within tract 44 "at all reasonable times" to ensure compliance with the permitted uses.[22] And, as discussed in more detail below, the City managed other third parties' access to and uses of tract 44, including lake access, fishing, and other recreation.

***528** ¶ 20 From 1951 to 1961, the City physically occupied tract 44 and exercised exclusive control over it, managing third parties' uses. The City exercised dominion and control over the entirety of tract 44 as a true owner would. Because the City took the entirety of tract 44, including the portions within the homeowners' fence lines, the trial court erred by concluding the City did not take title to the disputed properties.

¶ 21 Next, we turn to the core question: Whether the City was shielded from the homeowners' claims that they adversely possessed the disputed areas after the City took title to all of tract 44.

[6] [7] ¶ 22 We review issues of statutory interpretation de novo.[23] Statutes are interpreted to " 'ascertain and carry out the [l]egislature's intent.' "[24] If a statute's meaning is plain and unambiguous, "then the court must give effect to that plain meaning as an expression of legislative intent."[25] "To interpret a statute's plain language, we examine the text of the statute, 'as well as the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.' "[26] We interpret statutes to avoid unlikely, strained, or absurd consequences.[27]

¶ 23 In Washington, adverse possession primarily applies through statutes of limitation, and courts have worked out the elements of the doctrine as "a kind of judicial gloss on the statutes of limitation."[28] Most claims of adverse possession are based upon RCW 4.16.020, which creates a 10-year limitations period.[29] There are also two statutes that authorize adverse possession claims with a seven-year limitation period: RCW 7.28.070[30] and RCW 7.28.080.[31] Another statute, RCW 7.28.090, immunizes certain government lands against a claim of adverse possession. RCW 7.28.090 provides, "RCW 7.28.070 and 7.28.080 shall not extend to lands or tenements owned by the United States or this state, nor to school lands, nor to lands held for any public purpose."[32]

¶ 24 The homeowners argue that because they claim to have adversely possessed tract 44 under the 10-year limitations period set by RCW 4.16.020, RCW 7.28.090 is inapplicable.[33] The homeowners' interpretation is not persuasive.

¶ 25 The legislature expressly directed that RCW 7.28.090 "be liberally construed for the purposes set forth" in it.[34] Courts have applied this liberal construction directive ***529** by concluding RCW 7.28.090 applies even when a plaintiff does not rely on either RCW 7.28.070 or .080. In Skinner v. McCrackan, the Supreme Court concluded RCW 7.28.090 limited the plaintiff's claim for betterment damages under RCW 7.28.160 because the United States held title to the land when many of the improvements were made, and a claim for betterment damages requires the ability to claim adverse possession of the improved land.[35] Similarly, in Pioneer National Title Insurance Company v. State, this court relied on RCW 7.28.090 to conclude a claim for betterment damages could not be made against the state.[36] Neither case implicated RCW 7.28.070 or .080. Courts have also concluded RCW 7.28.090 prohibits prescriptive easements from lying against government-held land, even though easements are not mentioned in RCW 7.28.070 or .080.[37]

¶ 26 Kiely v. Graves also supports a broad reading of RCW 7.28.090.[38] In Kiely, the Supreme Court concluded "RCW 7.28.090 precluded adverse possession of" a public alley in Port Orchard "while it was held for a public purpose."[39] Two neighboring families, the Kielys and the Graveses, lived adjacent to a public alley.[40] The Kielys' house encroached on a portion of the alley.[41] In 2008, the Graveses made an agreement with Port Orchard to take possession of the entire alley. In 2009, Port Orchard vacated the alley and conveyed it to the Graveses.[42] The Kielys filed a complaint against the Graves family alleging adverse possession of the alley.[43]

[8] ¶ 27 The Kielys argued that they possessed the entire alley and that RCW 7.28.090 did not apply because Port Orchard possessed an easement only.[44] The Graveses argued that "RCW 7.28.090 precludes adverse possession of land owned by the government."[45] The court agreed with the Kielys that the municipality had held an easement and not fee

simple title.[46] But it broadly interpreted the phrase "lands held for any public purpose" as covering public easements dedicated for a public thoroughfare, thereby "barring adverse possession claims against the property."[47] Because "[a] party may not claim adverse possession of property held or controlled by a municipality for public use"[48] and the Kielys' use of the alley "interfered with the public's potential or actual use of the easement[,] RCW 7.28.090 prohibited the Kielys from obtaining title to the alley through adverse possession."[49] Neither RCW 7.28.070 nor .080 were the basis for adverse possession claims at issue in Kiely.

[9] **[10]** ¶ 28 The liberal construction required of RCW 7.28.090 reveals the legislature's intent to broadly shield qualifying land from any form of adverse possession. Other than their narrow interpretation of the statute, the homeowners cite no contrary authority. And adopting the homeowners' interpretation would undermine the purpose of RCW 7.28.090. If a plaintiff met the requirements ***530** in RCW 7.28.070, the "payment of taxes" statute, to adversely possess land held for a public purpose but waited until the 10-year limitations period ran, then they could avoid RCW 7.28.090 by bringing their claim under RCW 4.16.020. The legislature would not intentionally undermine one enactment with another.[50] Recognizing the broad scope of RCW 7.28.090 harmonizes it with RCW 4.16.020. Because the legislature intended to broadly shield government-held land, RCW 7.28.090 can apply to adverse possession claims brought against a government entity under RCW 7.28.070, .080, or RCW 4.16.020.

¶ 29 Because RCW 7.28.090 can apply, the question is whether it applies here. The statute prohibits any claim of adverse possession against "lands held for any public purpose." The issue is how to identify land "held for any public purpose."

¶ 30 RCW 7.28.090 was enacted in 1893 and has remained substantively unchanged since then.[51] At the time, the common law rule nullum tempus occurrit regi was held to apply to certain government-owned land in the United States, preventing adverse possession by ensuring the limitations period never ran.[52] States were divided over whether this rule shielded municipalities.[53] In 1905, our Supreme Court relied upon the common law to state "[t]he general rule that a party cannot acquire title by adverse possession to property held by a municipality in its governmental capacity for public purposes," concluding a street held by a municipality could not be adversely possessed.[54] Over time, this generated discussion of a "rule" allowing adverse possession of government property held in a "proprietary capacity."[55] But scholars question the extent to which this "rule" is actually established:

> In repeated dictum, the Washington State Supreme Court has said that it is possible to obtain title to lands owned by cities, counties, and other governmental entities below the state level in a "proprietary capacity."[56] While the supreme court has not identified what is a proprietary capacity [for purposes of adverse possession], a decision of the Washington State Court of Appeals has. It held that land owned by an irrigation district but not actually used for its ditches or works was "proprietary" and subject to adverse possession.[57]

We seek to avoid sinking into the governmental versus proprietary " 'quagmire that has long plagued the law of municipal corporations' " created by the "willy-nilly labeling ***531** of municipal activities" through the "[m]indless [a]pplication of [l]abels."[58]

¶ 31 We do not need to label land uses as "proprietary" or "governmental" to decide whether RCW 7.28.090 shields municipal lands from claims of adverse possession. When the legislature enacted RCW 7.28.090, it chose to shield sovereign government entities—the United States and Washington state—as well as "lands held for any public purpose." And it mandated that RCW 7.28.090 "be liberally construed."[59] Unlike the common law rule of nullum tempus, this statutory immunity is not based upon sovereignty alone and does not merely stop the limitations period from running. The legislature went beyond the common law, barring the taking of "lands held for any public purpose" by adverse possession. It did not fashion the statute in terms of the troublesome "governmental" versus "proprietary" dividing line.

¶ 32 With this background in mind, we determine the plain meaning of "lands held for any public purpose" by looking to the statute's context, related provisions, and overall scheme. [60]

[11] **[12]** **[13]** ¶ 33 RCW 7.28.090 immunizes certain government-held property from adverse possession. The doctrine of adverse possession ensures the maximum utilization of land, encourages the rejection of stale claims, and promotes quiet titles. [61] The doctrine of governmental immunity against adverse possession also promotes stable ownership and land use because its absence "would encourage encroachments ... and hinder public use." [62] Municipal governments hold land for the benefit of the public, [63] and immunizing certain municipal property against adverse possession eliminates the risk of permanent injury to the public from the careless civil servant who fails to monitor boundaries. [64]

[14] **[15]** **[16]** ¶ 34 In accordance with these goals, the statutory phrase "lands held for any public purpose" means land actually used or planned for use in a way that benefits the public as shown by the benefits flowing directly or indirectly from governmental ownership of the particular property. To be shielded by the statute, the municipality must show some advancement of the public's wellbeing from any part of the property. This is a fact-specific, reality-based inquiry that recognizes a single parcel owned by a government entity can serve multiple uses providing different public benefits, regardless of whether those uses are traditionally classified as "governmental" or "proprietary." [65] We do not decide the outer bounds of what actual or planned uses could provide public benefits, but we note that abandoned or forgotten lands put to no actual or planned use ***532** at all do not provide public benefits. [66]

¶ 35 The homeowners argue land used for electrical distribution lines cannot, as a matter of law, be held for a public purpose. [67] They rely upon a case about municipal taxing authority, Okeson v. City of Seattle, [68] for support. In Okeson, the Supreme Court stated, "A city's electric utility serves a proprietary function of the government." [69] The City contends land used for electrical distribution lines is, as a matter of law, held for a public purpose. It relies upon a condemnation case, Central Puget Sound Regional Transit Authority v. WR-SRI 120th North LLC, for support. [70] There, the Supreme Court stated, " 'The generation and distribution of electric power has long been recognized as a public use by this court.' " [71]

[17] ¶ 36 Neither standard is apt here. The power to tax is distinct from the power to condemn, and neither addresses government immunity from adverse possession. Indeed, our Supreme Court recently explained that when applying the government immunity doctrine, courts should look to the context of the specific case and apply the rules relevant to the area of law under consideration. [72] Thus, we apply the standards set by the legislature in RCW 7.28.090 to determine whether tract 44 was held for a public purpose and shielded from adverse possession.

[18] ¶ 37 The undisputed record shows tract 44 has long been used for recreation. When the City took possession in 1951, it allowed temporary permits for adjacent property owners —including the Merriams' predecessors—to use tract 44 for gardening and additional yard space. [73] By 1954, a fish screen had been installed on tract 44 by the Washington Department of Game to maintain the trout stocked in Echo Lake for fishing. [74] At least as early as 1963, the City let sportsmen and "hundreds of children and teenagers" use tract 44 like a park to access Echo Lake for fishing and swimming. [75] A 1972 letter from the City to the Department of Game states its support for a "continuing program of maintaining a fishery in Echo Lake." [76] In 1973, the City and King County entered into a "permit agreement" providing for the creation of a public park along tract 44. [77] The agreement authorized "recreational purposes," including "picnicking, swimming, bicycling, and such outdoor recreational activities as are appropriate for a neighborhood park." [78] And in 2001, the City signed a memorandum of understanding with King County and the city of Shoreline to dedicate a continuous area of tract 44 for use as part of the Interurban Trail. [79]

¶ 38 Tract 44 has also been used by the City to supply utility services to the public. Since it took possession in 1951, the City has used the property for electrical distribution lines. [80] In 1976, the City designated part of ***533** tract 44 to "construct, reconstruct and maintain" a water main. [81]

¶ 39 Lands are "held for any public purpose" under RCW 7.28.090 when their actual or planned uses directly or

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

indirectly benefit or advance the public's wellbeing. The public has been benefitting from the City's uses of tract 44 since it took possession in 1951. The City has used its land to provide the public electricity and water. The City has used its property for public parkland and recreation, including swimming, fishing, picnicking, and bicycling. Because these uses have provided direct and indirect benefits to the public's wellbeing, the City held tract 44 for a "public purpose" under RCW 7.28.090. [82] RCW 7.28.090 applies.

¶ 40 Therefore, we conclude the City is the owner of tract 44 in its entirety and that RCW 7.28.090 barred the homeowners from taking any of it by adverse possession. [83] We vacate the trial court's order and remand for further proceedings in accordance with this opinion.

WE CONCUR:

Chun, J.

Bowman, J.

All Citations

498 P.3d 522

Footnotes

1 Clerk's Papers (CP) at 445.

2 Paul and Ann Michel.

3 We refer to John Merriam and Kaye Walker as "the Merriams," which the trial court did as well.

4 CP at 174.

5 The City does not seek review of this decision.

6 Because the 1951 conveyance was ineffective, the heirs and assigns of the Wenzlers and Mehlhorns were joined as defendants. Most did not appear. The sole heir/assign who actively litigated is not a party to this appeal.

7 CP at 1220.

8 CP at 1395.

9 CP at 1395-96.

10 Tiger Oil Corp. v. Dep't of Licensing, State of Wash., 88 Wsah. App. 925, 929-30, 946 P.2d 1235 (1997).

11 Lakehaven Water & Sewer Dist. v. City of Fed. Way, 195 Wash.2d 742, 752, 466 P.3d 213 (citing Watson v. City of Seattle, 189 Wsah.2d 149, 158, 401 P.3d 1 (2017); Okeson v. City of Seattle, 150 Wash.2d 540, 78 P.3d 1279 (2003)), affirmed, 195 Wsah.2d 742, 466 P.3d 213 (2020).

12 Brinkerhoff v. Campbell, 99 Wash. App. 692, 699, 994 P.2d 911 (2000).

13 The homeowners do not dispute that the City adversely possessed the rest of tract 44. Michel Resp't's Br. at 25.

14 Merriam Resp't's Br. at 24.

15 Michel Resp't's Br. at 25.

16 Gorman v. City of Woodinville, 175 Wash.2d 68, 71-72, 283 P.3d 1082 (2012) (quoting ITT Rayonier, Inc. v. Bell, 112 Wash.2d 754, 757, 774 P.2d 6 (1989)).

17 The homeowners' arguments are expressly limited to whether the City lacked physical possession and control over the entirety of tract 44. Michel Resp't's Br. at 23; Merriam Resp't's Br. at 28-30.

18 17 WILLIAM B. STOEBUCK AND JOHN W. WEAVER, WASHINGTON PRACTICE: REAL ESTATE: PROPERTY LAW § 8.9, at 517 (2d ed. 2004).

19 ITT Rayonier, 112 Wash.2d at 759, 774 P.2d 6.

20 Harris v. Urell, 133 Wash. App. 130, 138, 135 P.3d 530 (2006) (citing Crites v. Koch, 49 Wash. App. 171, 174, 741 P.2d 1005 (1987)).

21 17 STOEBUCK AND WEAVER, supra, § 8.19, at 541 (emphasis added).

22 CP at 754.

23 Kiely v. Graves, 173 Wash.2d 926, 932, 271 P.3d 226 (2012) (citing Lake v. Woodcreek Homeowners Ass'n, 169 Wash.2d 516, 526, 243 P.3d 1283 (2010); Sunnyside Valley Irrigation Dist. v. Dickie, 149 Wash.2d 873, 880, 73 P.3d 369 (2003)).

24 Cent. Puget Sound Reg'l Transit Auth. v. WR-SRI 120th N. LLC, 191 Wash.2d 223, 233, 422 P.3d 891 (2018) (quoting Dep't of Ecology v. Campbell & Gwinn, L.L.C., 146 Wash.2d 1, 9-10, 43 P.3d 4 (2002)).

25 Campbell & Gwinn, 146 Wash.2d at 9-10, 43 P.3d 4 (citing State v. J.M., 144 Wash.2d 472, 480, 28 P.3d 720 (2001)).

26 Cent. Puget Sound Reg'l Transit Auth., 191 Wash.2d at 234, 422 P.3d 891 (internal quotation marks omitted) (quoting State v. Larson, 184 Wash.2d 843, 848, 365 P.3d 740 (2015)).

27 In re Wieber, 182 Wash.2d 919, 927, 347 P.3d 41 (2015) (citing Kilian v. Atkinson, 147 Wash.2d 16, 21, 50 P.3d 638 (2002)).

28 17 STOEBUCK AND WEAVER, supra, §§ 8.1-8.2, at 505-07; see Gorman, 175 Wash.2d at 76, 283 P.3d 1082 ("[A]s it has developed in our state, the doctrine [of adverse possession] is not entirely a creature of the common law.") (Madsen, J., concurring).

29 17 STOEBUCK AND WEAVER, supra, § 8.2, at 506-07.

30 The "payment of taxes" statute allows adverse possession if, for seven years in addition to meeting the common law elements, the possessor "(1) has 'color of title,' (2) has paid all taxes levied on the land for seven successive years, and (3) believes in 'good faith' that he has title". Id. at 507.

31 The "vacant land statute" is unusual in that it is not an adverse possession statute, and the statute is unavailable if the person possesses the land. Id. at 508. "To prevail under this section, the claimant must (1) have color of title, (2) be in good faith, and (3) pay all taxes assessed for seven successive years; and of course (4) the land must be 'vacant and unoccupied.' " Id.

32 (Emphasis added.)

33 Michel Resp't's Br. at 33-37; Merriam Resp't's Br. at 12-15.

34 RCW 7.28.100.

35 93 Wash. 43, 45-46, 159 P. 977 (1916). Technically, the court held Rem. Rev. Stat. § 790 limited the claim for betterment damages brought under Rem. Rev. Stat. § 797. Id. at 45, 159 P. 977. But because those laws are substantively identical to their current counterparts, we refer to the current statutes.

36 39 Wn. App. 758, 695 P.2d 996 (1985).

37 E.g., Williams Place, LLC v. State ex rel. Dep't of Transp., 187 Wash. App. 67, 98, 348 P.3d 797 (2015) (" '[P]rescriptive easements do not lie against the state.' ") (alteration in original) (quoting Northlake Marine Works, Inc. v. State, Dep't of Nat. Res., 134 Wash. App. 272, 291 n.12, 138 P.3d 626 (2006) (citing RCW 7.28.090)).

38 173 Wash.2d 926, 271 P.3d 226 (2012).

39 Id. at 927-28, 271 P.3d 226.

40 Id. at 928, 271 P.3d 226.

41 Id.

42 Id. at 929, 271 P.3d 226.

43 Id.

WESTLAW © 2022 Thomson Reuters. No claim to original U.S. Government Works.

44 Id. at 930, 271 P.3d 226.

45 Id.

46 Id. at 935, 271 P.3d 226.

47 Id. at 936, 271 P.3d 226.

48 Id. at 935-36, 271 P.3d 226 (citing Gustaveson v. Dwyer, 83 Wash. 303, 304-05, 145 P. 458 (1915)).

49 Id. at 940, 271 P.3d 226.

50 See Wieber, 182 Wn.2d at 927, 347 P.3d 41 (statutes are interpreted to avoid unlikely or absurd consequences) (citing Kilian, 147 Wn.2d at 21, 50 P.3d 638).

51 See Kiely, 173 Wash.2d at 935, 271 P.3d 226 ("RCW 7.28.090 has remained unchanged during all times relevant to this case" from 1908 through 2012.) (citing Brace & Hergert Mill Co. v. State, 49 Wash. 326, 95 P. 278 (1908)); see also LAWS OF 1893, ch. 11 § 5 ("The [equivalents to RCW 7.28.070 and .080] shall not extend to lands or tenements owned by the United States or this state, nor to school lands, nor to lands held for any public purpose.").

52 See, e.g., United States v. Thompson, 98 U.S. 486, 25 L. Ed. 194 (1878) (explaining the common law rule meant state statutes of limitation could not run against the United States without its consent); Almy v. Church, 18 R.I. 182, 26 A. 58 (1893) (relying on the common law rule to conclude a public road held by a town could not be taken by adverse possession); City of Ft. Smith v. McKibbin, 41 Ark. 45 (1883) (concluding the common law rule shielded the state only and not municipalities); Leet v. Rider, 48 Cal. 623 (1874) (applying common law rule to conclude a street in Sacramento could not be taken by adverse possession).

53 See Almy, 26 A. at 59-60 (listing cases and noting the division between states).

54 Town of W. Seattle v. W. Seattle Land & Improvement Co., 38 Wash. 359, 363-64, 80 P. 549 (1905) (citing BYRON K. ELLIOTT & WILLIAM F. ELLIOTT, THE LAW OF ROADS AND STREETS § 883, at 968-69 (2nd ed. 1900); JOHN F. DILLON, COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS § 675, at 803-04 (4th ed. 1890); Ralston v. Town of Weston, 46 W. Va. 544, 33 S.E. 326 (1899)).

55 See, e.g. Gustaveson, 83 Wash. at 305-06, 145 P. 458 (considering an issue of adverse possession by posing "the vital question here to be: Does the county hold land, acquired by purchase at tax sale for want of another purchaser, in a governmental capacity, as distinguished from a proprietary capacity?").

56 (Citations omitted.)

57 17 STOEBUCK AND WEAVER, supra, § 8.8, at 516 (citing Kesinger v. Logan, 51 Wash. App. 914, 756 P.2d 752 (1988)).

58 Hugh D. Spitzer, Realigning the Governmental/Proprietary Distinction in Municipal Law, 40 SEATTLE U.L. REV. 173, 202 (2016) (quoting Indian Towing Co. v. United States, 350 U.S. 61, 65, 76 S. Ct. 122, 100 L. Ed. 48 (1955)).

59 RCW 7.28.100.

60 Cent. Puget Sound Reg'l Transit Auth., 191 Wash.2d at 234, 422 P.3d 891.

61 Chaplin v. Sanders, 100 Wash.2d 853, 859-60, 676 P.2d 431 (1984).

62 Kiely, 173 Wash.2d at 940, 271 P.3d 226.

63 Id. at 937, 271 P.3d 226 (citing State ex rel. York v. Bd. of Comm'rs, 28 Wash.2d 891, 898, 184 P.2d 577 (1947)).

64 Gorman, 175 Wash.2d at 73, 283 P.3d 1082 (citing LAWS OF 1986, ch. 305, § 100; Bellevue Sch. Dist. No. 405 v. Brazier Constr. Co., 103 Wash.2d 111, 114, 691 P.2d 178 (1984)); see Thompson, 98

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

U.S. at 489 ("In a representative government, where the people do not and cannot act in a body, where their power is delegated to others, and must of necessity be exercised by them, if exercised at all, the reason for applying these [governmental immunity] principles is equally cogent.' "). This risk is more than hypothetical here because, as amicus Washington State Association of Municipal Attorneys explains, public utility districts, which are municipal corporations, manage approximately 35,000 miles of electric distribution and transmission corridors in Washington.

65 Indeed, counsel for the homeowners agree proprietary functions of government can provide public benefits. Wash. Court of Appeals oral argument, Michel v. City of Seattle, No. 82073-7-I (Sept. 30, 2021), at 21 min., 10 sec. through 21 min., 20 sec., https://www.tvw.org/watch/?clientID=9375922947 & eventID=2021091164 & startStreamAt=1260 & stopStreamAt=1285 & autoStartStream=true.

66 See Sisson v. Koelle, 10 Wash. App. 746, 751, 520 P.2d 1380 (1974) (holding that land held by a county but "abandoned and forgotten" and "never devoted to any use, public or otherwise," could be adversely possessed).

67 Merriam Resp't's Br. at 18-20; Michel Resp't's Br. at 37-41.

68 150 Wash.2d 540, 78 P.3d 1279 (2003).

69 Id. at 550, 78 P.3d 1279 (citing Tacoma v. Taxpayers of Tacoma, 108 Wash.2d 679, 694, 693, 743 P.2d 793 (1987)).

70 191 Wash.2d 223, 422 P.3d 891 (2018).

71 Id. at 247, 422 P.3d 891 (quoting Carstens v. Pub. Util. Dist. No. 1 of Lincoln County, 8 Wash.2d 136, 143, 111 P.2d 583 (1941)).

72 Lakehaven, 195 Wash.2d at 764-65, 466 P.3d 213.

73 CP at 847.

74 CP at 643.

75 CP at 626-28.

76 CP at 642.

77 CP at 116.

78 CP at 116.

79 CP at 921.

80 See CP at 123-29 (deed purporting to convey tract 44 to the City, which included a transmission line right of way for an existing power line); CP at 921 (memorandum of understanding between Shoreline, King County, and the City to create the Interurban Trail, noting the "primary purpose of [tract 44] is for the transmission and distribution of electricity).

81 CP at 706-08.

82 Because this standard is more protective of government property than the common law rule, property shielded by the common law would be shielded by RCW 7.28.090 as well.

83 The homeowners request attorney fees from this appeal under RAP 18.1 and RCW 7.28.083(3). Because they do not prevail, we deny their request.

End of Document

© 2022 Thomson Reuters. No claim to original U.S. Government Works.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

FILED
12/8/2021
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

PAUL MICHEL and ANN MICHEL, husband and wife; JOHN W. MERRIAM and BRENDA K. WALKER, husband and wife, Respondents, v. CITY OF SEATLE, a Washington municipality, d/b/a SEATTLE CITY LIGHT, Appellant.	No. 82073-7-I consolidated with No. 82074-5-I ORDER DENYING MOTION FOR RECONSIDERATION

Respondents filed a motion for reconsideration of the court's November 8, 2021 opinion. The panel has determined the motion should be denied. Now, therefore, it is hereby

ORDERED that the respondents' motion for reconsideration is denied.

FOR THE PANEL:

[signature]

SMITH GOODFRIEND, PS

January 06, 2022 - 11:55 AM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	82073-7
Appellate Court Case Title:	Paul Michel, et ano, Respondents v. City of Seattle, Appellant

The following documents have been uploaded:

- 820737_Petition_for_Review_20220106115416D1031984_8509.pdf
  This File Contains:
  Petition for Review
  The Original File Name was 2022 01 06 Petition for Review.pdf

A copy of the uploaded files will be sent to:

- Matthew.Cleverley@fnf.com
- Sasannah.Dolan-Williams@fnf.com
- ack@vnf.com
- amusick@ettermcmahon.com
- andrew.eberle@seattle.gov
- bsterbank@snoqualmiewa.gov
- carolyn@ettermcmahon.com
- dfrohlich@dicksonlegal.com
- dmg@vnf.com
- jtebbs@cairncross.com
- kcoselman@cairncross.com
- klampman@dicksonlegal.com
- mclark@ettermcmahon.com
- mica@zenolawfirm.com
- mikez@zenolawfirm.com
- sdonleyred@yahoo.com
- stephen.karbowski@seattle.gov
- svanderhoef@cairncross.com

Comments:

Sender Name: Andrienne Pilapil - Email: andrienne@washingtonappeals.com
Filing on Behalf of: Howard Mark Goodfriend - Email: howard@washingtonappeals.com (Alternate Email: andrienne@washingtonappeals.com)

Address:
1619 8th Avenue N
Seattle, WA, 98109
Phone: (206) 624-0974

Note: The Filing Id is 20220106115416D1031984