Case No. 102323-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Court of Appeals Division I, Case No. 83427-4

KEITH WELCH

Plaintiff/Appellant,

v.

CHRIS WALDEN

Defendant/Respondent.

PETITION FOR REVIEW

Keith Welch, Plaintiff/Appellant
PO Box 1548
Mukilteo, WA 98275
Telephone: (425) 439-8135
Email: kpwjr@worldnet.att.net

TABLE OF CONTENTS

Page

I. IDENTITY OF PETITIONER..... 1

II. CITATION TO COURT OF APPEALS DECISION..... 1

III. ISSUES PRESENTED FOR REVIEW..... 1

IV. STATEMENT OF THE CASE..... 2

V. ARGUMENT..... 4

A. The Court of Appeals Opinion is Not Supported by Washington Law..... 5

B. The Court of Appeals, Erred in Asserting that No Evidence Supports Welch's Claim that the Trial Court Lacked Personal Jurisdiction Over Brandon Welch..... 6

C. The Court of Appeals, Erred in Finding that Brandon Welch, was Not a Dispensable Party Pursuant to CR 19..... 8

D. The Court of Appeals Opinion Cite Only *One* (1) Adverse Possession Case, *Herrin v. O'Hern,* 275 P. 3d 1231 (2012), in Opposition to Welch and Vendee's Agreement..... 12

E. The Court of Appeals Never Argues in Opposition to Well Settled Washington Law, that Title Acquired by Adverse Possession is Implicitly Conveyed to a Successor Occupant Who is in *Privity.*..... 13

F. The "Privity" or "Nexus" Required to Permit Tacking of the *Adverse* Use..... 15

G. It is in the Case of *Chaplin v. Sanders,* 100 Wn.2d 853, 857-858, 676 P.2d 431 (l984), Which in Actuality, is in the Context of Welch's *Hostility* Argument..... 17

TABLE OF CONTENTS

H. The Court of Appeals Erred with Regard to it Assertion that Welch did *Not* Raise Issues Pertaining to His Adverse Possession Claim Against Walden..... 18

I. The Trial Court Erred in Ruling in Favor of a Writ, Knowing That Not all Parties to the Action We're Served..... 20

VI. CONCLUSION..... 21

VII. CERTIFICATE OF COMPLIANCE..... 22

TABLE OF AUTHORITIES

WASHINGTON STATE CASES **Page(s)**

Alverado v. Wash. Pub. Power Supply Sys., 111 Wn.2d 424, 429, 759 P.2d 427 (1988)..... 10
Bainbridge Citizens United v. Dep't of Natural Res., 147 Wn. App. 365, 198 P.3d 1033 (2008)..... 12
Bennett v. Hardy, 113 Wn.2d 912, 918, 784 P.2d 1258 (1990)..... 19
Buchanan v. Cassell, 53 Wn.2d 611,614,335 P.2d 600 (1959)..... 14
Cano-Garcia v. King County, 168 Wn.App. 223, 277 P.3d 34 (Div. II 2012)..... 6
Chaplin v. Sanders, 100 Wn.2d 853, 857- 858, 676 P.2d 431 (1984)..... 14, 17, 18
Coastal Bldg. Corp. v. City of Seattle, 65 Wn. App. 1, 5, 828 P.2d 7, 119 Wn.2d 1024 (1992)..... 10
DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962)..... 4, 20
El Cerrito, Inc. v. Ryndak, 60 Wn.2d 847, 855, 376 P.2d 528 (1962)..... 13
Faubion v. Elder, 49 Wn.2d 300, 307, 301 P.2d 153 (1956)..... 13
Greengo v. Pub. Employees Mut. Ins. Co., 135 Wn.2d 799, 813, 959 P.2d 657 (1998)..... 10
Gross v. City of Lynnwood, 90 Wn.2d 395, 400, 583 P.2d 1197 (1978)..... 19
Herrin v. O'Hern, 275 P. 3d 1231 (2012)..... 12
Hill v. Cox, 110 Wn.App. 394, 41 P.3d 495 (Div. III 2002)..... 5
Howard v. Kunto, 3 Wn. App. 393,400, 477 P.2d 210 (1970)..... 14
Jones v. Stebbins, 122 Wn.2d 471, 479, 860 P.2d 1009 (1993)..... 19
McNabb v. Dep't. of Corrs., 163 Wn.2d 393, 397, 180 P.3d 1257 (2008)..... 5
Maynard Inv. Co. v. McCann, 77 Wn.2d 616, 621, 465 P.2d 657 (1970)..... 19
Naher v. Farmer, 60 Wash. 600, 111 P. 768 (1910)..... 14
Obert v. Envtl. Research & Dev. Corp., 112 Wn.2d 323, 333, 771 P.2d 340 (1989)..... 10
Ranger Ins. Co. v. Pierce County, 164 Wn.2d 545, 552, 192 P.3d 886 (2008)..... 5

TABLE OF AUTHORITIES

Shelton v. Strickland, 106 Wn. App. 45, 52-53, 21 P.3d 1179 (2001)..... 14
State v. Aho, 137 Wn.2d 736, 740-41, 975 P.2d 512 (1999)..... 10
State v. Hickman, 135 Wn.2d 97, 103 n.3, 954 P.2d 900 (1998)..... 18

STATUTES

RCW 59.12..... 8
RCW 61.24.060(1)..... 8

RULES AND REGULATIONS

CR 19..... 8, 9,10
CR 19(a)..... 10
CR 19(b)..... 10, 11
CR 56..... 5

RULES OF APPELLATE COURT PROCEDURE

RAP 2.5..... 19
RAP 2.5(a)..... 18, 19
RAP 2.5(a)(2)..... 19
RAP 12.1(b)..... 10
RAP 13.4(b)..... 1, 2, 12, 21
RAP 13.4(b)(2)..... 5, 13, 16, 20

OTHER AUTHORITIES

The Fourteenth Amendment of the United States Constitution..... 20
Washington State Constitution Art. 1, Sec. 3,..... 20
1 WASH. COURT RULES ANN. RAP 2.5 cmt. (a) at 640
(2d ed. 2004)..... 19
(11-12-2021) Verbatim Report of Proceedings, pp. 4:2-7;
pp. 4:10-14; pp. 4: 24-25; pp. 5:1..... 11
Professor "William B. Stoebuck," (1960)..... 15

UNPUBLISHED OPINION OF THE COURT OF APPEALS

APPENDIX A..... 24

I. IDENTITY OF PETITIONER

Petitioner, Keith Welch, *pro se*, a Plaintiff in the trial court, and an Appellant at the Court of Appeals, Division I, asks this Court to accept review of the Unpublished Opinion designated in Part II below.

II. CITATION TO COURT OF APPEALS DECISION

Appellant Keith Welch, hereinafter ("Welch"), petitions this Court to review the Unpublished Opinion of the Court of Appeals, Division I, in the matter of *Keith Welch v. Chris Walden, et al.*, No. 83427-4-I, filed on July 31, 2023, which affirmed the Skagit County Superior Court's Order. A copy of the Unpublished Opinion of the Court of Appeals, Division I, is attached as Appendix A.

III. ISSUES PRESENTED FOR REVIEW

Whether this Court should accept review pursuant to RAP 13.4(b) where the Court of Appeals, Division I, is in conflict with a decision of the Supreme Court?

Whether this Court should accept review pursuant to RAP 13.4(b) where the Opinion of the Court of Appeals, Division I, is predicated upon a version of the facts that is its own creation based upon its assumptions and/or unsupported conclusions, that are in conflict with a published decision of the Court of Appeals?

Whether this Court should accept review pursuant to RAP 13.4(b) where the Opinion of the Court of Appeals, Division I, is entirely

unsupported by Washington statutes and case law, and includes citation to a statute that does not apply to this case?

Whether this Court should accept review pursuant to RAP 13.4(b) where the Opinion of the Court of Appeals, Division I, is in conflict with a decision of this Court and involves an issue of substantial public interest?

IV. STATEMENT OF THE CASE

The Court of Appeals, erred in its Opinion, asserting that Welch offered no cognizable argument about how the purported sale of his property bolstered his adverse possession claim against Chris Walden, hereinafter ("Walden"). And that no evidence in the record supports Welch's claim.

On May 29, 2009, Welch, and his "Predecessor in Interest," entered into a "Perpetual Contract Agreement," by which Welch, and his "Predecessor in Interest," agreed to the terms set forth, in the agreement, specifically with regard to the transferring of possessory interest in the Property.

On February 22, 2021, Welch filed and served upon Walden a complaint to "Quiet Title by Adverse Possession.

Welch declared in his complaint that he and his "Predecessor in Interest," hereinafter ("Vendee"), have had by the preponderance of the evidence, complete *open, notorious, actual, exclusive,* and *hostile,* possession of the Property adverse to Walden for more than ten (10) years.

In accordance with the agreement, there was no expiration or execution date, or settlement options set forth in the agreement, nor was there a mechanism in the agreement (*i.e.,* outside breach or repudiation) for terminating the agreement; just that the parties expressly and unequivocally intend to be bound in perpetuity by the agreement.

Vendee took possession, maintained possession, and exercised open dominion of the Property, which ordinarily marks the conduct or acts of an owner in general, in holding, managing, and caring for property of like nature and condition.

Furthermore, the agreement, gave Vendee clear and actual notice to all potential interest holders, *(or all rightful owners),* of his established *hostile* possession. The mere fact that Vendee may have thought the Property he was claiming title to, still belonged to another, during the statutory period of time was irrelevant, as long as Vendee's claim to title was maintained *adverse* to all other titles or against the world.

Lastly, Vendee's actions in maintaining the Property during the statutory 10-year period, established *hostile* possession; that is, he proved his intention to hold title exclusive as owner.

Therefore, it was Vendee's possessive use of the Property during the statutory 10-year period, which ultimately led to the *hostility* element being met before Walden's purported acquisition on November 25, 2020.

The Court of Appeals Opinion, never disputes the existence, nor cite a single case, that is in opposition to the question of fact, that Welch's transferring of his possessory interest, to his Vendee, during the statutory 10-year period, was an element of *hostility*.

Additionally, The Court of Appeals, never disputes the existence of Welch's "perpetual contract agreement," or Vendee's *possessive* use of the Property during the statutory 10-year period, creating a genuine issue of material fact.

Finally, because the Court of Appeals, cite no case law or precedents and authority set by previous judicial decisions on this particular issue, that would require the submission of a written contract to confirm *hostile* possession of the Property, or why tacking from said possessors' possession can't be applied to person's time occupying the Property. See *DeHeer v. Seattle Post-Intelligencer,* 60 Wn.2d 122, 126, 372 P.2d 193 (1962).

The Court of Appeals, reach all of its conclusions to deny Welch relief, in direct contravention of Washington law. This in, and of itself, creates a question of fact, sufficient for review.

The Court Appeals Opinion, erred in granting summary judgment to Walden. Because the circumstances in this case present issues of material fact, and is a live argument, a jury needs to decide this case.

Welch respectfully disagree with the Court of Appeals, Opinion, with regard to these issues, as they are in conflict with other Opinions, with

the Court of Appeals, and this Court. This Court should accept review to correct these conflicting error of law issues. RAP 13.4(b)(2).

IV. ARGUMENT

A. The Court of Appeals Opinion is Not Supported by Washington Law.

The Court of Appeals maintained that it engaged in a *de novo* analysis under Civil Rule 56 as to whether summary judgment was appropriate.

Nevertheless, this case is rife with genuine issues of material fact that precluded summary judgment. The evidentiary record does not contain any consistent documented assertions. These genuine issues of material fact, which must be construed in favor of the non-moving party, Mr. Welch, precluded summary judgment. It was improper under Washington law for a determination to be made in motion practice rather than at trial when facts are in controversy. CR 56.

When determining whether an issue of material fact exists on summary judgment, **a court must construe all facts and inferences in favor of the nonmoving party**. See *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008); *McNabb v. Dep't. of Corrs.*, 163 Wn.2d 393, 397, 180 P.3d 1257 (2008) (emphasis added).

A "material fact" for summary judgment purposes is one upon which all or part of the outcome of the litigation depends. See *Hill v. Cox*, 110 Wn.App. 394, 41 P.3d 495 (Div. III 2002), *review denied* 147

Wn.2d 1024, 60 P.3d 92 (emphasis added). Here, neither court properly applied these standards because at no time did they construe the facts in favor of Mr. Welch and in fact, the Court of Appeals manufactured "facts" to fit its desired result.

Summary judgment is proper if reasonable minds could reach only one conclusion from the evidence presented. See *Cano-Garcia v. King County*, 168 Wn.App. 223, 277 P.3d 34 (Div. II 2012), *review denied* 175 Wn.2d 1010, 287 P.3d 594.

B. The Court of Appeals, Erred in Asserting that No Evidence Supports Welch's Claim That the Trial Court Lacked Personal Jurisdiction Over Brandon Welch.

On June 21, 2021, Walden filed a Motion for Summary Judgment to get the case dismissed, and to Eject Welch, from the Property.

On August 6, 2021, Welch responded in opposition to Walden's Summary Judgment. Additionally, raised the issue of Walden failing to statutorily serve upon Welch his Counterclaim seeking to Quiet Title, and Eject Welch, from his Property. Furthermore, there is no "affidavit of service," that Walden had statutorily served upon Welch his counterclaim. This is a prerequisite for a court to obtain jurisdiction over a party.

In this case, Walden produced absolutely no evidence that he filed and served upon Welch with his notice of appearance, counterclaim seeking to quiet title, or ejectment, as required by the laws of the State of Washington.

Additionally, the Court of Appeals, Opinion does not dispute that Welch's son "helped build the Property," and that "sometime in May of 2009, he moved onto the Property."

In the linked case, before this Court, the Court of Appeals, the trial court, and Walden, were *all* well aware that *both* Keith and Brandon Welch, were in possession, and claiming interest in the Property.

Excerpts of Walden's ***"Original"*** Complaint for Unlawful Detainer, dated April 23, 2021, against ***both*** Keith Welch, and Brandon Welch.

> COMES NOW the Plaintiff, by and through the Law Office of Rob W. Trickier PLLC, and for cause of action alleges as follows:
>
> I.
>
> Christopher Walden, as landlord, rented to Keith Welch and Brandon Welch the premises located at 857 Tinas Coma Lane, Burlington, Skagit County, Washington.
>
> II.
>
> **Keith Welch and Brandon Welch** are in **possession** of the subject premises.
>
> III.
>
> **Plaintiff and Defendants entered into a residential rental agreement** for said **Defendants** occupancy of the premises. The rental agreement obligates the **Defendants** to pay monthly rent payable in advance, and to additional terms detailed below.
>
> IV.
>
> The **Defendants** are in arrears for rent for March 2021. Rent shall continue to accrue in accordance with the rental agreement/lease during the pendency of this case. *See* CP 3, 4.

Excerpts of Walden's ***Second*** "Amended" Complaint for Unlawful Detainer, dated July 8, 2021, against ***both*** Keith Welch, and Brandon Welch.

> COMES NOW the Plaintiff, by and through the Law Office of Rob W. Trickier PLLC, and for cause of action alleges as follows:

I.

Christopher Walden, is the owner of the premises located at 857 Tinas Coma Lane, Burlington, Skagit County, Washington by virtue of a special warranty deed executed November 2020 (See attached exhibit A incorporated as part of this complaint).

II.

Keith Welch and Brandon Welch are the "prior owners" of the situs and are in possession of the subject premises

III.

Plaintiff and Defendants *"never"* entered into any residential agreement.

IV.

This unlawful detainer is the appropriate action to obtain a writ of restitution in a post foreclosure sale pursuant to RCW 61.24.060(1) (see exhibit B) which provides in part that the new owner shall use the summary proceeding provided for in chapter 59.12 as against the prior owners or occupants after at least 20 days. *See* CP 93, 94.

Therefore, because the Court of Appeals Opinion, found that it was an undisputed fact, that Welch's son's occupancy of the Property, in May 2009, Welch's son was a party in possession; claiming a *hostile* right to possession, therefore, pursuant to Walden's counterclaim/ejectment action, was required to be *personally* served upon, pursuant to CR 19.

C. The Court of Appeals, Erred in Finding that Brandon Welch, was Not a Dispensable Party Pursuant to CR 19.

A trial court lacks jurisdiction if all necessary parties are not joined.

The Court of Appeals, Division I, in the matter of *Chris Walden v. Keith Welch, Brandon Welch, et al.*, No. 83114-3-I, filed on July 31, 2023, asserts in its Opinion, that:

> *"At the time, Welch and his son, Brandon Welch, still lived at the property…" and,*

> *"We set out the underlying facts in the linked case, Welch v. Walden, No. 83427-4-I Wash. Ct. App. July 31, 2023) (unpublished) and repeat them only as necessary."*

The Court of Appeals, Division I, in the matter of *Chris Walden v. Keith Welch, et al.*, No. 83427-4-I, filed on July 31, 2023, asserts in its Opinion, that that:

> *"Welch's son "helped build the Property…," and,*
>
> *that "sometime in May of 2009, he moved onto the Property,…" and,*
>
> *"Welch argues that the trial court lacked personal jurisdiction over his son…"*

Welch submitted in his Opening Brief and his Reply Brief the importance of <u>all</u> in possession of the Property as being "necessary" parties to the action. CR 19.

Pursuant to CR 19, the Court of Appeals, has the authority to determine whether a matter is properly before the court.

The Court of Appeals never ruled on the importance of Brandon Welch being a "necessary" party to Walden's Counterclaim/Ejectment action.

The Court of Appeals, the trial court, and Walden never raised the issue of whether Brandon Welch, was a necessary party, or determine the importance of <u>all</u> "necessary" parties, yet were all aware that Brandon Welch, was in possession and claiming *hostile* interest in the Property.

Under CR 19, joinder issues may be raised for the first time on appeal because a trial court lacks jurisdiction if all necessary parties are not

Joined. See State v. Aho, 137 Wn.2d 736, 740-41, 975 P.2d 512 (1999).

Under CR 19, a trial court must determine which parties are "necessary" for a just adjudication. Because the trial court lacks jurisdiction to adjudicate a dispute if all necessary parties are not before it, this issue may be raised for the first time on appeal by either party or this court. RAP 2.5(a)(1), 12.1(b); See Greengo v. Pub. Employees Mut. Ins. Co., 135 Wn.2d 799, 813, 959 P.2d 657 (1998) ("RAP 12.1(b) means exactly what it says: This court may raise issues *sua sponte* and may rest its decision thereon."); See Obert v. Envtl. Research & Dev. Corp., 112 Wn.2d 323, 333, 771 P.2d 340 (1989) ("[RAP 12.1(b)] clearly allows a new issue to be raised by the appellate court."); See Alverado v. Wash. Pub. Power Supply Sys., 111 Wn.2d 424, 429, 759 P.2d 427 (1988) (appellate court has "inherent authority to consider issues not raised by the parties if necessary to reach a proper decision.") (citing RAP 12.1(b)), *cert. denied*, 490 U.S. 1004 (1989).

A party is necessary if that party's absence "would prevent the trial court from affording complete relief to existing parties to the action or *if the party's absence would either impair that party's interest or subject any existing party to inconsistent or multiple liability*." See Coastal Bldg. Corp. v. City of Seattle, 65 Wn. App. 1, 5, 828 P.2d 7 (emphasis added), *review denied*, 119 Wn.2d 1024 (1992). If a necessary party is absent, the trial court must determine whether joinder is feasible. CR 19(a). If a necessary party

cannot be joined, the trial court must decide whether "in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable." CR 19(b).

At the November 12, 2021, hearing, the trial court asked the parties after spending months dealing with ***both*** cases if the two (2) actions were "inconsistent" or "cannot both be true at the same time," as follows:

> THE COURT: Two cases, 21-2-00257-29, *Walden vs. Keith Welch;* 21-2-00112-29, *Keith Welch vs. Christopher Walden*. Good morning. We have two matters involving *Mr. Walden* and *Mr. Welch* today. We have Cause No. 21-2-00257-29. We also have *Mr. Welch* vs. *Christopher Walden* under Cause No. 21-2-00112-29.
>
> THE COURT: And tell me this, gentlemen. Don't the two actions seem kind of inconsistent with one another? Or not? I haven't looked at that issue, but it seemed kind of odd that we have two things going on at once where title is either presumed or at issue.
>
> THE COURT: Well, I guess, not going to try to mix things up, but I'm just a little curious how these two will interplay with one another.

11-12-2021, Verbatim Report of Proceedings, pp. 4:2-7; pp. 4:10-14; pp. 4: 24-25; pp. 5:1.

Although there may be issues between the parties that might be decided in this action without affecting Brandon Welch rights, the relief that Walden requested, title ***"free and clear"*** of any restrictions arising out of the acquisition of the Property, cannot. Walden argued that he was entitled to a "[j]udgment quieting title . . . free and clear of any interest of plaintiff, and/or

any interest of occupants of the property, that were not subject to any *use* restriction thereto."

Walden failed to join all necessary parties because it declined to countersue all of the alleged possessors and, therefore, the trial court never obtained jurisdiction over this case.

Therefore, the Court of Appeals erred in asserting that Brandon Welch was not a necessary party to this dispute, and that the trial court could grant the relief requested without Brandon's presence. *See Bainbridge Citizens United v. Dep't of Natural Res.*, 147 Wn. App. 365, 198 P.3d 1033 (2008) (a trial court lacks jurisdiction if *all* necessary parties are not joined).

Accordingly, this Court should accept review of this matter pursuant to RAP 13.4(b) and correct the error of law and clarify the standards of an acceptable Court of Appeals Opinion, in the State of Washington.

D. The Court of Appeals Opinion, Cite Only *One* (1) Adverse Possession Case, *Herrin v. O'Hern,* 275 P. 3d 1231 (2012), in Opposition to Welch and Vendee's Agreement.

The Court of Appeals, referenced the *Herrin* case, as evidence that Welch's transferred title, or that the tacking of his son's possession with his own did not satisfy the 10-year hostility requirement.

Additionally, the Court of Appeals asserted that Welch's possession could not have been *hostile* until after February 2017. But the Court of Appeals, cites no applicable legal authority in opposition to Welch's ***hostility*** arguments.

The Court of Appeals makes a related argument in its Opinion, that Welch's Vendee or predecessor, cannot *"tack"* his period of adverse use with Welch, nor can Welch demonstrate that *any* "title" acquired by a predecessor could be conveyed to Welch. Again, the Court of Appeals does not explain how this assertion supports any legal argument, nor does the Court of Appeals cite any applicable legal authority. The Court of Appeals case cited is in conflict with its Opinion.

This Court should accept review of this particular issue, so as to correct this error of law. RAP 13.4(b)(2).

E. The Court of Appeals Never Argues in Opposition to Well Settled Washington Law, that Title Acquired by Adverse Possession is Implicitly Conveyed to a Successor Occupant Who is in *Privity*.

Well settled law addresses whether and how title to property acquired by adverse possession is conveyed between mutual successive occupants.

"When real property has been held by adverse possession for ten (10) years, such possession ripens into an original title. . . . The person so acquiring this title can ***convey*** it to another party without having had title quieted in him prior to the conveyance." *See El Cerrito, Inc. v. Ryndak,* 60 Wn.2d 847, 855, 376 P.2d 528 (1962). The description in the deeds will be held to include the disputed property "where there is *privity* between the successive occupants." *Id.* at 856 (quoting *Faubion v. Elder,* 49 Wn.2d 300,

307, 301 P.2d 153 (1956), *overruled in part on other grounds by Chaplin,* 100 Wn.2d 853); *See also Buchanan v. Cassell,* 53 Wn.2d 611,614,335 P.2d 600 (1959).

"Privity" for this purpose does ***not*** require a deed that conveys both the property to which the seller holds record title and the property acquired through adverse possession.

In *Howard v. Kunto,* for example, the privity required for a deeded conveyance of title acquired by adverse possession was found where a deed completely misdescribed the property formerly occupied by a seller and thereafter occupied by its buyer. 3 Wn. App. 393,400, 477 P.2d 210 (1970), *overruled in part on other grounds by Chaplin,* 100 Wn.2d 853. The court explained that "the requirement of *'privity'* is no more than judicial recognition of the need for some *"reasonable connection"* between mutual successive occupants of real property so as to raise their claim of right, may be *"united"* or *"tacked"* to each other to make up the time of *adverse* holding. *Id.; See Naher v. Farmer,* 60 Wash. 600, 111 P. 768 (1910) (permitting tacking when disputed land was not described in deed because the various owners believed they owned all the land enclosed by the fence). "A formal conveyance between the parties describing some or all of the property is not essential to establish such connection." *See Shelton v. Strickland,* 106 Wn. App. 45, 52-53, 21 P.3d 1179 (2001).

F. The "Privity" or "Nexus" Required to Permit Tacking of the *Adverse* Use.

As stated by Professor "William B. Stoebuck," (1960):

> To understand tacking, it is useful to recall the concept of *inchoate* title,.... Before the statute has run, an adverse possessor has something which,.... cannot stand up against the true owner, is rightful and good against everyone else. This shadow title,.... is founded in possession; so, it makes sense that it can be transferred by transferring possession. **There must be a relationship between mutual or successive adverse possessors, one in which, at a minimum, the prior possessor willingly turns over possession to the succeeding one.** This relationship the courts usually call privity, though, to avoid confusion with the several other meanings of that word, the word nexus is better.
>
> The **"privity"** or **"nexus"** required to permit tacking of the adverse use of mutual successive occupants of real property **does not have to be more than such a reasonable connection between the mutual successive occupants** as will raise their claim of right above the status of wrongdoer or trespasser.
>
> **A "formal" conveyance between the parties describing some or all of the property is not essential to establish such a connection.** "The requirement of privity had its roots in the notion that a succession of trespasses, even though there was no appreciable interval between them, should not, in equity, be allowed to defeat the record title." However, there is a substantial difference between the squatter or trespasser and a property purchaser. **"The deed running between the parties purporting to transfer the land possessed traditionally furnishes the *privity* of estate which connects the possession of the mutual successive occupants."**

Furthermore, these principles are distinct from the concept of *"tacking"* that is applied where no single possessor has been in possession for the statutory period and the adverse possession of multiple claimants

must be added together to establish title.

> A variant form of tacking occurs when an adverse possessor has already acquired title by running out the statute and then transfers "what he has" to a successor. **What he has at that point is not merely *inchoate* title but perfected legal title, though not paper title.** In strict theory, the perfected title, being as full legal title as any documentary title, should be transferred by a deed. . . . However, strict theory notwithstanding, **Washington courts also allow title** thus perfected to be turned over by the same acts that, **before it was perfected, would transfer it by tacking.** Whether the process should be called "tacking" at this point is debatable, but whatever it is, it is allowed.

17 STOEBUCK & WEAVER, *supra,* § 8.18, at 540 (footnote omitted).

The single case cited by the Court of Appeals, has nothing to do with how to *construe* the title conveyed between mutual successive occupants of adversely possessed property, nor had anything to do with the passage of title between mutual successive occupants of adversely possessed property.

It is clear under long-standing Washington case law that because Welch's Vendee acquired title to what Welch owned *(prior to February 2017),* and at the same time assumed possession and use of the Property, *privity* existed such that the title acquired by Welch's Vendee through adverse possession may now be claimed by Welch. This in and of itself creates a question of fact, sufficient to return this case to the trial court, to be resolved by a trier of fact, *i.e.,* a jury.

Therefore, because the Court of Appeals, Opinion, erred in overlooking these specific issues, this Court should accept review. RAP 13.4(b)(2).

G. It is in the Case of *Chaplin v. Sanders,* 100 Wn.2d 853, 857-858, 676 P.2d 431 (1984), Which in Actuality, is in the Context of Welch's *Hostility* Argument.

Chaplin, specifically states hostility does not require ill-will, but rather it imparts that claimant is in possession as the owner in contradistinction to holding in recognition of, or in subordination of the true owner. In fact, the *Chaplin* Court noted that it was reviewing the preexisting adverse possession law because it had led to mixed results. *See generally, Chaplin,* 100 Wn.2d at 855-860. *Chaplin* then held;

> "Thus, when the original purpose of the adverse possession doctrine is considered, it becomes apparent that the claimant's motive in possessing the land is irrelevant and no inquiry should be made into his guilt or innocence .... For these reasons we are convinced that the dual requirement that the claimant take possession in 'good faith' and not recognize another's superior interest does not serve the purpose of the adverse possession doctrine. The 'hostility/claim of right' element of adverse possession requires only that the claimant treat the land has his own as against the world throughout the statutory period. **The nature of his possession will be determined solely on the basis of the manner in which he treats the property.** His subjective belief regarding his true interest in the land and his intent to dispossess or not dispossess another is irrelevant to this determination."

Chaplin, 100 Wn.2d at 860-861, 676 P.2d at 435-36 (internal citations omitted) (emphasis added).

That is precisely the situation here. Welch and Vendee's agreement was not permissive, thus the single case cited by the Court of Appeals, is unhelpful as it is a *"permissive"* use case. Moreover, what Welch and his

Vendee's agreement "intended," is not relevant. The only factor that is relevant is "the nature of the possession." *See Chaplin,* 100 Wash.2d at 861, 676 P.2d at 436. Here, the nature of the possession is very clear; Vendee used the Property as his own; there is no dispute that he possessed the Property in a manner that a true landowner would have. Vendee's *acts* of possession, including maintenance and improvement of the Property, can support a claim of ownership and *hostility* to the true owner." Because Welch's Vendee had possessed the Property for the ten (10) year period, under a claim of right, the *hostility* requirement of adverse possession for the ten (10) year period was met.

H. The Court of Appeals Erred with Regard to it Assertion that Welch did *Not* Raise Issues Pertaining to His Adverse Possession Claim Against Walden.

The Court of Appeals asserted in its Opinion that there is no evidence in the record that supports Welch's "*belated"* claim of the 2009 transfer of title to his son.

RAP 2.5(a) contains several express exceptions from its general prohibition against raising new issues on appeal, including the "failure to establish facts upon which relief can be granted." This exception is fitting inasmuch as "[a]ppeal is the first-time sufficiency of evidence may realistically be raised." *See State v. Hickman,* 135 Wn.2d 97, 103 n.3, 954 P.2d 900 (1998).

Additionally, under RAP 2.5(a), the terms "failure to establish facts upon which relief can be granted" and "failure to state a claim"" are largely interchangeable. See 1 WASH. COURT RULES ANN. RAP 2.5 cmt. (a) at 640 (2d ed. 2004) ("Exception (2) uses the phrase 'failure to establish facts' rather than the traditional 'failure to state a claim.' The former phrase more accurately expresses the meaning of the rule in modern practice.").

A party may raise failure to establish facts upon which relief can be granted for the first time in the appellate court. RAP 2.5(a)(2). See *Gross v. City of Lynnwood,* 90 Wn.2d 395, 400, 583 P.2d 1197 (1978). The Appellate Court have consistently stated that a new issue can be raised on appeal " 'when the question raised affects the right to maintain the action.'" See *Bennett v. Hardy,* 113 Wn.2d 912, 918, 784 P.2d 1258 (1990), (quoting *Maynard Inv. Co. v. McCann,* 77 Wn.2d 616, 621, 465 P.2d 657 (1970)); See also *Jones v. Stebbins,* 122 Wn.2d 471, 479, 860 P.2d 1009 (1993).

For the record, Welch raise in his trial court pleadings, and his Opening and Reply Brief, the *hostile* possession of the predecessor in interest, along with the tacking of the predecessor in interest, possession with Welch's to satisfy the 10-year *hostility* requirement.

The Court of Appeals, cite no case law or precedents and authority set by previous judicial decisions on this particular issue, that would require the submission of a written contract to confirm hostile possession of the Property, or why tacking from said possessors' possession can't be applied

to person's time occupying the Property. See *DeHeer v. Seattle Post-Intelligencer,* 60 Wn.2d 122, 126, 372 P.2d 193 (1962). This Court should accept review on this particular issue, so as to correct this error.

I. The Trial Court Erred in Ruling in Favor of a Writ, Knowing That Not all Parties to the Action We're Served.

A final issue in this case is the enforcing of a writ of execution after an ejectment action judgment, to evict all persons in possession of the premises, whether or not they were named in the writ.

The rule of law is that an eviction of any person not named in the writ who claims a right to possession, or who claim to have been in possession of the premises on or ***before*** the date of the filing of the action, and who are not named in the writ, of the disputed premises that arose ***before*** the ejectment action was commenced, violated the rights of such individual to procedural due process under the Fourteenth Amendment of the United States Constitution and under the Washington State's Constitution, Art. I § Sec. 3. [1]

Under these circumstances and the facts of this case, Walden's writ was ineffective, and therefore, barred against Brandon Welch.

Therefore, because the Court of Appeals, Opinion, erred in overlooking this particular issue, this Court should accept review. RAP 13.4(b)(2).

VI. CONCLUSION

For all the foregoing reasons, Mr. Welch respectfully requests that the Supreme Court accept review as this Opinion, and some other similar Opinions rendered by the Court of Appeals, Division I, pursuant to RAP 13.4(b), and correct the error of law in this case, and clarify the specific statutory requirements pursuant to the QT Statute, mandated by the State of Washington Legislature, and this Court's decisions.

Respectfully submitted this 13th day of October, 2023.

/s/ Keith Welch
Keith Welch, Plaintiff/Appellant

[1] The Court of Appeals, the trial court and Walden, were *all* fully aware that Brandon Welch, a party in possession, and claiming an interest in the Property, was required under the law to be served upon a copy of Walden's counterclaim/ejectment suit, *before* the trial court could obtain subject matter jurisdiction over the case, therefore, the trial court was without authority to issue an ineffective writ.

VII. CERTIFICATE OF COMPLIANCE

The undersigned certifies that this document, exclusive of words contained in the appendices, the title sheet, the table of contents, the table of authorities, the certificate of compliance, the certificate of service, signature blocks, and pictorial images, if any, contains 4,996 words, in compliance with RAP 18.17.

Respectfully submitted this 13th day of October, 2023.

/s/ Keith Welch
Keith Welch, Plaintiff/Appellant

DECLARATION OF SERVICE

I, Keith Welch, certify under penalty of perjury under the laws of the State of Washington, that on the day I signed this declaration of service, I caused a copy of the Petition for Review, to be serve electronically *via* the Appellate Courts Portal, to this Court, and electronically mailed upon Counsel of record:

LAW OFFICE OF COLE & GILDAY, P.C. 10101 270th ST NW Stanwood, WA 98292 Telephone: (360) 629-2900 Facsimile: (360) 629-0220	

Signed at Mount Vernon, Washington, this 13th day of October, 2023.

/s/ Keith Welch
Keith Welch, Plaintiff/Appellant

Appendix A

FILED
7/31/2023
Court of Appeals
Division I
State of Washington

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

KEITH WELCH, an individual, Appellant, v. CHRIS WALDEN, an individual, Respondent.	No. 83427-4-I UNPUBLISHED OPINION

BOWMAN, J. — Keith Welch appeals the trial court's summary judgment dismissal of his action to quiet title by adverse possession. Because Welch owned the property for all but four of the years he claims to have adversely possessed it, the trial court did not err by dismissing his lawsuit. We affirm.

FACTS

In November 2003, Welch bought property located at 857 Tinas Coma Lane in Burlington. He took title to the property by statutory warranty deed, executed on November 3, 2003 and recorded November 17, 2003. In February 2007, Welch executed a deed of trust, granting GreenPoint Mortgage Funding Inc. a security interest in the property. The Skagit County auditor recorded the deed of trust on February 14, 2007.

On October 14, 2016, Quality Loan Service Corporation of Washington (QLS), acting as trustee, issued a notice of trustee's sale because Welch defaulted on the deed of trust. The Skagit County auditor recorded the notice on

October 18, 2016. On February 22, 2017, QLS conveyed title of the property to U.S. Bank National Association by a "Trustee's Deed upon Sale."

In 2018, Welch sued QLS, challenging the validity of the trustee's sale. See Welch v. Quality Loan Servs., Inc., No. 79099-4-I, slip op. at 6 (Wash. Ct. App. Dec. 2, 2019) (unpublished), https://www.courts.wa.gov/opinions/pdf/790994.pdf. The trial court entered a directed verdict against Welch, and we affirmed the verdict on appeal.[1] Id., slip op. at 6, 11.

On November 17, 2020, Chris Walden bought the property from U.S. Bank. He took title by special warranty deed recorded on November 25, 2020. Then, on December 22, 2020, Walden posted a "Notice of Termination and Affidavit" at the property, starting the process to evict Welch, who still lived there.

Welch sued Walden to quiet title by adverse possession on February 22, 2021. He filed a summary judgment motion the same day. On June 21, 2021, Walden answered and counterclaimed for an order or ejectment. He, too, moved for summary judgment. Walden argued that because Welch was the owner of record between November 2003 and February 2017, Welch could not show 10 years of hostile use of the property. The trial court granted summary judgment for Walden.

Welch appeals.

[1] Welch also sued in federal court, but the district court dismissed the action with prejudice because Welch could plead no "set of facts which would entitle him to relief." Welch v. US Bank Nat'l Ass'n, No. C19-2083MJP, 2020 WL 2114462, at *1, *3 (W.D. Wash. May 4, 2020).

ANALYSIS

Welch argues that the trial court erred by granting summary judgment for Walden on his adverse possession claim. We disagree.

We review rulings on summary judgment de novo, performing the same inquiry as the trial court. Ellis v. City of Seattle, 142 Wn.2d 450, 458, 13 P.3d 1065 (2000). Summary judgment is appropriate only when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." CR 56(c). We view all facts and draw all reasonable inferences in the light most favorable to the nonmoving party. Ellis, 142 Wn.2d at 458. We will grant summary judgment only if, from all the evidence, reasonable persons could reach but one conclusion. Id.

A defendant seeking summary judgment bears the initial burden of showing the absence of an issue of material fact. Herrin v. O'Hern, 168 Wn. App. 305, 309, 275 P.3d 1231 (2012). If the defendant meets this initial showing, the burden shifts to the plaintiff to show that facts support each element essential to their case. Id. If the plaintiff cannot make such a showing, summary judgment is proper. Id. at 309-10. In responding to a summary judgment motion, a plaintiff cannot rely on the allegations made in his pleadings, but must set forth specific facts showing that there is a genuine issue for trial by affidavits or as otherwise provided by CR 56(e). Id. at 310.

To prevail on an adverse possession claim, a claimant must show "10 years of possession that is (1) exclusive, (2) actual and uninterrupted, (3) open and notorious, and (4) hostile." Herrin, 168 Wn. App. at 310-11. The hostility

element of adverse possession " 'requires only that the claimant treat the land as his own as against the world throughout the statutory period.' " Id. at 311 (quoting Chaplin v. Sanders, 100 Wn.2d 853, 860-61, 676 P.2d 431 (1984)). "Hostility is not personal animosity or adversarial intent, but instead connotes that the claimant's use has been hostile to the title owner's, in that the claimant's use has been akin to that of an owner." Id. So, use of the land with the true title owner's permission cannot be hostile. Id.

Welch sued to quiet title by adverse possession in February 2021. But Welch held title to the property from November 2003 until February 2017, when QLS sold the property at a trustee's sale. Welch's possession of the land during that time cannot be hostile because he was the true owner. So, Welch could not have adversely possessed the property until February 2017—four years before he filed his lawsuit.

Welch argues for the first time on appeal that he adversely possessed the property as of May 2009 because at that time, he sold the land to his son, who built a house there. Welch offers no cognizable argument about how the purported sale of his property bolsters his adverse possession claim against Walden. In any event, no evidence in the record supports Welch's belated claim of a 2009 transfer of title to his son.[2]

[2] Below, Welch attached the declaration of his son to his summary judgment motion. But his son testified only that he "help[ed] build my father's home" and that "[s]ometime in May of 2009, I moved into my father's home." Because no evidence supports Welch's claim that he transferred title to his son, we do not address Welch's arguments that the trial court lacked personal jurisdiction over his son or that tacking on his son's possession with his own satisfied the 10-year hostility requirement.

Finally, Welch argues that the court had no jurisdiction to rule on summary judgment because Walden did not properly serve him with a notice of appearance under RCW 4.28.210. Welch cites no authority that a defendant's failure to serve a plaintiff with a notice of appearance deprives the trial court of jurisdiction. So, we presume he found none. DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962) (where a party cites no authority in support of a proposition, we may assume that he found none). Even so, under RCW 4.28.210, a defendant "appears in an action when he or she answers, demurs, makes any application for an order therein, or gives the plaintiff written notice of his or her appearance." Walden answered Welch's complaint on June 21, 2021. Walden's answer amounts to an appearance under RCW 4.28.210.

Walden asks for attorney fees under RCW 7.28.083(3). Under that statute, "[t]he prevailing party in an action asserting title to real property by adverse possession may request the court to award costs and reasonable attorneys' fees," and the court may award such costs if it "determines such an award is equitable and just." RCW 7.28.083(3). Attorney fees under RCW 7.28.083 are available to parties prevailing on appeal. Workman v. Klinkenberg, 6 Wn. App. 2d 291, 308-09, 430 P.3d 716 (2018). We award reasonable attorney fees to Walden as the prevailing party on appeal subject to compliance with RAP 18.1.

Because Welch cannot show he adversely possessed the property for 10 years, we affirm the trial court's order granting summary judgment for Walden.

Bowman, J.

WE CONCUR:

Díaz, J.

Birk, J.

KEITH WELCH - FILING PRO SE

October 13, 2023 - 4:44 PM

Filing Petition for Review

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	Case Initiation
Appellate Court Case Title:	Keith Welch, Appellant v. Chris Walden, Respondent (834274)

The following documents have been uploaded:

- PRV_Petition_for_Review_20231013163753SC159156_9011.pdf
  This File Contains:
  Petition for Review
  The Original File Name was PETITION FOR REVIEW.pdf

A copy of the uploaded files will be sent to:

- cole-gilday@stanwoodlaw.net
- david@fairhavenlegal.com
- kpwjr@att.net

Comments:

Sender Name: keith welch - Email: kpw7496@gmail.com
Address:
Po Box 1548
Mukilteo, WA, 98275
Phone: (206) 751-9927

Note: The Filing Id is 20231013163753SC159156