91865-1

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Jun 08, 2015, 9:14 am
BY RONALD R. CARPENTER
CLERK

RECEIVED BY E-MAIL

CASE NO. 70814-7-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

JUDITH ANDERSON

Respondent

v.

RICHARD AND MARGARET ANDERSON

Appellants

ANSWER OF RESPONDENT JUDITH ANDERSON TO APPELLANTS' PETITION FOR REVIEW

Roy T. J. Stegena, WSBA #36402
Rossi Vucinovich, PC
Attorneys for Respondent

Rossi Vucinovich, PC.
1000 Second Ave.
Suite 1610
Seattle, WA 98104
Telephone: (425) 646-800

TABLE OF CONTENTS

	PAGE NO.
TABLE OF AUTHORITIES	ii-iii
I. ISSUES PRECLIDING REVIEW	1
II. STATEMENT OF THE CASE	1
III. ARGUMENT	9
A. APPELLANTS FAILED TO PRESERVE FOR APPEAL THE SOLE ISSUE UPON WHICH THEIR PETITION FOR REVIEW IS BASED.	9
B. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING APPELLANTS' POST-TRIAL MOTION FOR RECONSIDERATION.	10
C. APPELLANTS MAY ONLY QUIET TITLE ON THE STRENGTH OF THEIR OWN TITLE, AND NOT ON ANY ALLEGED WEAKNESS IN RESPONDENT'S TITLE.	12
D. THE DISMISSAL OF APPELLANTS' COUNTERCLAIMS ON NUMEROUS BASES IS SUPPORTED BY THE RECORD.	13
1. Appellants Failed to Prove a Claim of Title Based on the Discredited Voorheis Survey.	13
2. The Affirmance of the Trial Court's Decision is unsupported by Controlling Case Law, Not in Conflict with it.	16
IV. CONCLUSION	20

TABLE OF AUTHORITIES

A. CASES	PAGE(S)
WASHINGTON STATE SUPREME COURT	
Angell v. Hadlsy, 33 Wn. 2d 837, 207 P.2d 191 (1949)	19
Lamm v. McTighe, 72 Wn.2d 587, 591, 434 P.2d 565 (1967)	16, 19
Light v. McHugh, 28 Wn. 2d 326, 183 P.2d 470 (1947)	19
P.E. Sys., LLC v. CPI Corp., 176 Wn.2d 198, 289 P.3d 638, (2012)	7
Robel v. Roundup Corp., 148 Wn.2d 35, 59 P.3d 611(2002)	8
State v. Riley, 121 Wn.2d 22, 30, 846 P.2d 1365 (1993)	9
Van Vonno v. Hertz Corp., 120 Wn. 2d 416, 427, 2d 1244 (1992)	9
ARKANSAS STATE SUPREME COURT	
Furlow v. Dunn, 201 Ark. 23, 144 S.W.2d 31 (1940)	17, 18
WASHINGTON STATE COURT OF APPEALS	
Fralick v. Clark County, 22 Wn. App. 156, 160; 589 P.2d 273,275 (1978)	16, 17
JDFJ Corp. v. International Raceway, Inc., 97 Wn. App. 1, 970 P.2d 343(1999)	10, 11
P.E. Sys., LLC v. CPI Corp., 176 Wn.2d 198, 289 P.3d 638, (2012)	7

River House Dev., Inc. v. Integrus Architecture, PS, 167 Wn. App. 221, 272 P.3d 289 (2012) 11

Secs. & Inv. Corp. v. Horse Heaven Hgts., 132 Wn. App. 188, 195, 130 P.3d 880 (2006) 12

Spradlin Rock Prods., Inc. v. Pub. Util. Dist. No. 1, 164 Wn. App. 641, 266 P.3d 229 (2011) 7

Stieneke v. Russi, 145 Wn. App. 544, 559 – 560, 190 P.3d 60 (2008) 13

Taplett v. Khela, 60 Wash. App. 751, 760, 807 P.2d 885 (1991) 14, 19

B. COURT RULES

CR 59 10, 11

RAP 2.5(a) 9

C. MISCELLANEOUS

Browder, The Practical Location of Boundaries, 56 Mich. L. Rev. 487, 529 (1958) 17

I. ISSUES PRECLUDING REVIEW

(1) Whether Appellants failed to preserve for appeal the sole issue upon which their Petition for Review is based.

(2) Whether the trial court properly exercised its discretion in denying Appellants' post-trial motion for reconsideration.

(3) Whether Appellants may quiet title based solely on an alleged weakness in their adversary's title rather than on the strength of their own title.

(4) Whether the trial court's dismissal of Appellants' counterclaims is supported by any basis the record.

I. STATEMENT OF THE CASE

For the past 39 years, since 1976, Judy has owned a square, ten acre parcel designated as 'Lot 4.' Richard owned Lot 2, located adjacent to and north of Judy's Lot 4, from 1997 to 2008. The land comprising these lots had been part of an undivided 125 acre-tract owned by Leroy Caverly, who divided a portion of it into square 10 acre lots in 1976. CP 42, finding of fact ("f.f.") 12, 13. Mr. Caverly sold the first two Lots, 3 and 4, Judy and her late husband, Charlie, in 1976. CP 46, f.f. 21.

Lot 4 was completely forested when Judy purchased it. There were no access roads, improvements or other physical features as possible

references to its boundaries. CP 56, ln. 8. Significantly, Mr. Caverly did not point out to Judy or her husband any physical references to the subject boundary of Lot 4, as there were none.

There had been no survey of Lot 4 when Judy purchased it. CP 56, ln. 5 – 7. The only survey of the area had been performed by Voorheis of 80 of Mr. Caverly's 125 acres in 1969, before he divided them into 10 acre square lots. Consequently, Voorheis surveyed neither Lot 4 nor 2 nor the boundary separating them, and placed no survey markers at either end of the subject boundary. CP 43, f.f.16, Trial Exhibit ("Ex.") 20.

The trial court found that Mr. Caverly established and sold Lot 4 to Judy 'based on his rough sketches and his legal description' that he provided to Judy and her husband. CP 46, f.f. 21, Exs. 5, 9 55, p. 3; CP 58, ln. 6. The legal description provided by Mr. Caverly for Lot 4 is:

> The South half of the Northwest quarter of the Southeast quarter of Section 22, Township 27 North, Range 6 East, W.M.

Trial Exhibits. 5, 8, 9.

Thus, Lot 4 is described as a fractional portion of a larger square section, the location of which is fixed and not in dispute. There is no contention that this legal description is defective or uncertain, or that it conflicts with the descriptions in any other relevant deeds.

Judy's husband installed a culvert over a small stream on Lot 4 'decades ago' in order to access the western portion of Lot 4, with the knowledge and assistance of Mr. Caverly. CP 48, f.f. 32; CP 57, ln. 1.

In 1988, Judy's son David installed in the northern part of Lot 4 a meandering, barbed wire fence to create an enclosure for horses. He attached it to trees where possible or to 'T-posts.' This fence was neither straight nor intended to mark any boundaries. CP 50, f.f. 37. Mr. Caverly sold Lot 2 to Carroll Boswell the following year, 1989. CP 47, f.f. 27.

Judy cleared Lot 4 between 1992 and 1994. CP 48, f.f. 32. The horse-confinement fence previously installed by Judy's son was removed along with the trees to which portions of it were attached. Judy had Lot 4 surveyed by Cascade Surveying after it was cleared. CP 48, f.f. 33. The parties, the trial court and the surveying community all agree that the Cascade survey accurately locates the subject boundary as legally described, and that the Voorheis survey does not. CP 49, f.f. 34.

More than twenty years after Judy purchased Lot 4, Richard purchased adjoining Lot 2 from Ms. Boswell in 1997. CP 42, f.f. 9. Richard signed an addendum to his purchase agreement, Exs. 1, 53. It stated that there was a discrepancy between the subject boundary as surveyed by Cascade Surveying and what Ms. Boswell described as the 'lines of occupation' to

a 'common boundary fence,' which the trial court determined to be the meandering horse confinement Judy's son installed on Lot 4. CP 50, f.f. 37. The addendum further states that Ms. Boswell made no warranties concerning the lot size or boundary locations.

Richard therefore acquired Lot 2 with actual notice of these uncertainties regarding the boundary between Lots 2 and 4. There is no mention of the Voorheis survey in the purchase agreement, its addendum or in the deed conveying to Lot 2 to Richard, Ex. 1, 53, 54. Richard states on page 9 of his Opening Brief that he believed Mr. Caverly established a curved boundary. He therefore did not rely on the Voorheis survey or the straight boundary a survey would necessarily yield when he purchased Lot 2.

Judy filed this law suit against Richard for trespassing on her Lot 4 and using the culvert her husband installed without her consent, and to quiet title based on the legal description in her deed, which is accurately represented by the Cascade survey. CP 379.

While the parties were engaged in discovery, Judy met her new neighbor, Mrs. Massey, and was thereby surprised to learn that Richard had sold Lot 2 to the Massey family, with whom Judy had no quarrel

about their common boundary. Reasonably believing her dispute with Richard was now moot, Judy voluntarily dismissed her action.

Several months after Richard sold Lot 2, he filed an amended answer containing counterclaims asking the court to carve out a narrow strip of land interposed between Judy's Lot 4 and the Massey family's Lot 2, and to quiet title to that strip in Richard's favor. The culvert Judy's husband installed lies within the area to which Richard claimed title. CP 57, lns. 1 – 9; Ex. 23. If Richard acquired Judy's culvert he could use it to cross the stream flowing through both lots to gain access to his other real estate holdings to the west. The trial court concluded that Richard's counterclaims are ". . . a means of establishing access to Richard Anderson's land to the west." CP 42, f.f. 10.

Richard has not alleged that his real estate holdings to the west of Lots 2 and 4 are land-locked, nor does he claim entitlement to an easement for access. Indeed, when Richard sold Lot 2 he reserved an easement across its south end for access to his land to the west. CP 42, f.f. 10.

Rather than use the access easement he reserved when he sold Lot 2, Richard saw an opportunity to turn Ms. Boswell's mistaken belief that the horse fence marked the boundary to his advantage, so that he rather than

Judy would benefit from the efforts expended by Judy's late husband in installing the culvert on the land Richard claimed.

The Voorheis survey itself had not been pled among Richard's counterclaims as a basis of recovery. To the contrary, the theories of recovery in his counterclaims by their nature all operate to quiet title to a boundary at odds with the legal description, while a survey necessarily does the opposite, it embraces the legal description.

However, if there was any uncertainty about whether Richard's claims were based on the Voorheis survey itself, he eliminated any such uncertainty at the start of trial. Richard announced in his trial memo that ". . . only Rich's claims based on use and occupation . . . remain . . . More particularly, the evidence will establish the 'True Boundary' in this case is the 'persistent line created by the swale and fence remnant . . ." (CP 288, CP 295, Emphasis added.) Thus, even if Richard's counterclaims can be construed broadly enough to include a claim based on the Voorheis survey itself, Richard affirmatively eliminated it as a basis for recovery at the start of trial.

The relevance of the Voorheis survey at trial was therefore limited to, at most, possibly establishing the location of the straight part of the fence/ swale line on which Richard relied, which he failed to do.

The trial court ruled that Richard failed to prove his claim that an express physical boundary had been established by Mr. Caverly, i.e. a fence and irregularly shaped swale. Rather, the court found that:

> . . . [Mr. Caverly] sold Charles and Judy Anderson Tracts 3 and 4 based upon his rough sketches and his legal description, not upon physical features visible to the common grantor and the buyers.

The court therefore ruled:

> . . . that Defendants have not established by clear, cogent and convincing evidence that the common grantor established a boundary other than the one set forth in the legal description. It follows that there could not have been an agreement or meeting of the minds between Mr. Caverly and Charles and Judy Anderson regarding such a boundary.

CP 58.

The court also noted that Richard did not establish any of his claims by a preponderance of the evidence either. CP 58, fn. 9.

Richard does not challenge any of the trial court's factual determinations. Opening Brief, p. 27. The terms of an agreement are matters of fact. Spradlin Rock Prods., Inc. v. Pub. Util. Dist. No. 1, 164 Wn. App. 641, 266 P.3d 229 (2011), P.E. Sys., LLC v. CPI Corp., 176 Wn.2d 198, 289 P.3d 638, (2012). Richard therefore does not challenge the trial court's determination that Mr. Caverly established and Judy

agreed to the boundary based on the legal description and rough sketch he provided. That unchallenged ruling is a verity on appeal. Robel v. Roundup Corp., 148 Wn.2d 35, 59 P.3d 611(2002).

The trial court therefore ruled that Richard failed to carry his burden of proving that Mr. Caverly established and Judy agreed to a boundary other than the legally described boundary.

After trial, Richard filed a CR 59 motion for 'reconsideration' in which he urged the trial court to reform the boundary based on the Voorheis survey. Unlike his claims based on 'use and occupation' to a curved line, which he represented to be his only claims at the start of trial, Richard's new post-trial claim is based instead on the Voorheis survey itself, or at least on a straight line hypothetically projected from it since Voorheis never surveyed the boundary at issue. Thus, Richard did not ask the trial court to reconsider this new (or previously eliminated) claim, but rather to give it an initial consideration, after the trial's completion. The trial court properly exercised it discretion in denying the motion.

On appeal, Richard acknowledges on page 29 of his Opening Brief that he believed Mr. Caverly established a curved boundary. Thus, Richard admittedly did not rely on the Voorheis survey when he

purchased Lot 2, or at trial. His Petition for Relief based on the Voorheis survey should therefore be denied.

III. ARGUMENT

A. APPELLANTS FAILED TO PRESERVE FOR APPEAL THE SOLE ISSUE UPON WHICH THEIR PETITION FOR REVIEW IS BASED.

Richard seeks to quiet title based on a boundary hypothetically projected from the inaccurate Voorheis survey, which did not actually survey either of the lots in question or the boundary separating them. Review by this Court should be denied for a variety of reasons. First, Richard failed to assert a claim based on the Voorheis survey at trial, and therefore failed to preserve it for appeal. RAP 2.5(a). "Arguments not raised in the trial court generally will not be considered on appeal". State v. Riley, 121 Wn.2d 22, 30, 846 P.2d 1365 (1993). *Id.* at 1371. Van Vonno v. Hertz Corp., 120 Wn. 2d 416, 427, 841 P.2d 1244 (1992).

Richard's formal announcement at the outset of trial that his only claims to be tried were "based on use and occupation" to a "persistent line created by the swale and fence remnant . . ." necessarily precludes any claim based on the Voorheis (or any other) survey because surveys are not based on considerations of use and occupancy, but rather on legal descriptions. (CP 288, CP 295, Emphasis added.) Furthermore, it is

undisputed that the 'line created by the swale and fence remnant' is irregularly shaped or 'curved,' and that the legal description, by contrast, establishes a straight boundary.

Thus, Richard affirmatively eliminated from the trial the sole issue upon which his Petition for Review is based. Following Richard's representation that his only claim at trial was of title to a curved line based on use and occupation, the Voorheis survey of a straight line retained only limited relevance, specifically in connection with possibly establishing the location of the straight part of the fence / swale line on which Richard relied but ultimately failed to prove. The Voorheis survey as an actual basis for recovery, however, had already been eliminated at the outset of trial, as the trial court and Court of Appeals properly concluded.

B. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING APPELLANTS' POST-TRIAL MOTION FOR RECONSIDERATION.

Richard first raised the Voorheis survey as a basis for recovery after trial in a motion for 'reconsideration' pursuant to CR 59. In a procedurally analogous situation the court in JDFJ Corp. v. International Raceway, Inc., 97 Wn. App. 1, 970 P.2d 343 (1999) stated:

> Civil Rule 59 does not permit a plaintiff, finding a judgment unsatisfactory, to suddenly propose a new theory of the case. JDFJ's motion for reconsideration was in essence an

> inadequate and untimely attempt to amend its complaint in general, violating equitable rules of estoppel, election of remedies, and the invited error doctrine. We refuse to permit such a perversion of the rules.

Id. at 7.

Richard's motion for 'reconsideration' at the trial court level was the same 'perversion of the rules' the Court refused to permit in JDFJ, *Id.*[1] Indeed, Richard's CR 59 motion did not actually seek 'reconsideration' at all. Rather, it sought under the guise of a motion for reconsideration the initial consideration of a new (or previously eliminated) claim fundamentally different than what he represented to the trial court as his 'only remaining claims.'

The court in River House Dev., Inc. v. Integrus Architecture, PS, 167 Wn. App. 221, 272 P.3d 289 (2012) stated, "We review a trial court's denial of a motion for reconsideration for abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Id.* at 231. "The trial court's discretion extends to refusing to consider an argument raised for the first time on reconsideration absent a good excuse." *Id.* Richard neither established nor asserted any 'good excuse' for asserting a claim based on the Voorheis

[1] JDFJ, *Id.*, is not distinguishable on the basis that Richard is not the plaintiff. Richard was the 'counterclaim plaintiff' at trial. He was the only party who asserted a claim at trial and had a burden of proof to carry.

survey for the first time after trial. The trial court was therefore well within its discretion in denying Richard's post-trial motion for reconsideration.

C. APPELLANTS MAY ONLY QUIET TITLE ON THE STRENGTH OF THEIR OWN TITLE, AND NOT ON ANY ALLEGED WEAKNESS IN RESPONDENT'S TITLE.

As Richard acknowledges in his first issue for review, he proposes that title be quieted in his favor based on an alleged weakness in Judy's title rather than on the strength of his own. His characterizes his appeal as a "Common Grantor case seeking to bind the Original Grantee," i.e., his adversary, Judy. (Emphasis added, Petition for Review, p. 2, issue 1.)

As Richard described the scope of his appeal in his Opening Brief, this is a 'case about Judy' (p. 6), in which he "only seeks to bind Judy" (p. 27) to the 'Voorheis Survey Line.' By only seeking to bind Judy to the hypothetical line he now prefers, Richard has abandoned any reliance on the strength of his own title, and instead relies solely on an alleged weakness in Judy's title to the disputed area.

However, it is well established in Washington that "A party seeking to quiet title must succeed on the strength of its own title, and cannot prevail based on the weakness of the other party's title." Secs. & Inv. Corp. v. Horse Heaven Hgts., 132 Wn. App. 188, 195, 130 P.3d 880 (2006). Richard's appeal, as he himself characterizes it, is in direct

contravention of this long-standing rule. Richard has no satisfactory response to this fatal defect in his appeal. His actual response, beginning at the bottom of page 7 of his Reply Brief, is simply the contention that Judy's title is weak, and his is strong. However, Richard cannot rely on any alleged weakness in Judy's title under established Washington law, and he has abandoned any reliance on the strength of his own title by only challenging Judy's. Richard's Petition should therefore be denied.

D. THE DISMISSAL OF APPELLANTS' COUNTERCLAIMS ON NUMEROUS BASES IS SUPPORTED BY THE RECORD.

1. Appellants Failed to Prove a Claim of Title Based on the Discredited Voorheis Survey.

Even if this Court were to somehow reach the merits of Richard's claim based on a straight line hypothetically projected from the discredited Voorheis survey, the trial court's ruling is amply supported by the record, as the Court of Appeals corrected concluded. "It is well recognized that an appellate court may uphold the trial court's ruling on appeal on any basis supported by the record." Stieneke v. Russi, 145 Wn. App. 544, 559 – 560, 190 P.3d 60 (2008).

The Voorheis survey as a basis for recovery by Richard is precluded for numerous reasons in addition to those already addressed above. First, it is undisputed that Voorheis did not survey Lots 2 or 4 or

the line separating them, but rather an undivided tract consisting of 80 acres from which the lots in question were subsequently carved out.

Second, there is no factual basis in the record to suggest that anyone projected a boundary line from the Voorheis survey at or around the time of Judy's purchase in 1976. "The lack of a finding on an issue is presumptively a negative finding against the person with the burden of proof." Taplett v. Khela, 60 Wash. App. 751, 760, 807 P.2d 885 (1991).

Third, Richard admits that when he purchased Lot 2 he believed the common grantor established a curved boundary consisting of a fence line and a swale. Opening Brief, p. 29. He therefore did not rely on the Voorheis survey when he purchased his property, just as he did not rely on it at trial.

Fourth, projecting a boundary from the Voorheis survey as of the date Judy purchased Lot 4 would be purely speculative. Before Judy's purchase in 1976, the Game Department's surveyor correctly plotted the location of a missing quarter corner monument in 1974, thereby revealing the error made by the 1969 Voorheis survey in using an existing pipe located 48 feet from the correct location. CP 47, f.f. 25, CP 49, f.f. 34. Had Lot 4 been surveyed when Judy purchased it in 1976, the surveyor would have encountered both the pipe incorrectly placed by Voorheis and

the replacement marker accurately placed by the Game Department's surveyor in 1974. One can only speculate whether a surveyor in 1976 would have used the incorrectly located pipe on which Voorheis relied, or the replacement monument correctly located and placed by the Game Department's surveyor in 1974. However, viewing the facts in the light most favorable to Judy, a surveyor in 1976 would more likely have chosen the Game Department surveyor's correctly located replacement monument, as the now generally accepted Cascade survey did.

Fifth, the trial court found that when Judy purchased lot 4 from Mr. Caverly, they agreed that the subject boundary was based on its legal description rather than on any particular survey of that legal description. As demonstrated above, these terms of their agreement are unchallenged matters of fact that are now verities.

Accordingly, Richard's reliance on the trial court's finding that the legal description was based on the Voorheis survey is misplaced. There is no contention that the agreed-upon legal description is defective, uncertain or ambiguous. The agreed-upon legal description itself controls, not an inaccurate survey Richard never even relied on until after trial.

Thus, even if it had been properly raised, a quiet title claim based on the Voorheis survey is not supported by the record in any event.

2. The Affirmance of the Trial Court's Decision is Supported by Controlling Case Law, Not in Conflict with it.

Richard's Petition does not rely on established case law, but rather on mischaracterizations of established case law. The elements of the common grantor rule are as set forth in Fralick v. Clark County, 22 Wn. App. 156, 160; 589 P.2d 273,275 (1978):

> It is clear that a grantor who owns land on both sides of a line which he has established as the common boundary is bound by that line. . . However, for the boundary line to become binding and conclusive on grantees,
>
> It must plainly appear that the land was sold and purchased with reference to the line, and that there was a meeting of the minds as to the identical tract of land to be transferred by the sale.
>
> In other words, the question of applicability of the common-grantor theory presents two problems: (1) was there an agreed boundary established between the common grantor and original grantee, and (2) if so, would a visual examination of the property indicate to subsequent purchasers that the deed line was no longer functioning as the "true boundary?"

Id. at 160 (Emphasis added.)

The first question under this analysis is whether the common grantor and the original grantee agreed to a boundary at odds with the boundary legally described in the deed. Fralick, *Id.*; Lamm v. McTighe, 72 Wn.2d 587, 591, 434 P.2d 565 (1967). Because Judy and Mr. Caverly

agreed to the legal description itself rather than a boundary at odds with the legal description, Richard's common grantor claim necessarily fails.

At trial, Richard unsuccessfully attempted to satisfy the visual inspection requirement of the Rule's second level that applies to subsequent grantees. On appeal he pretends that the visual inspection requirement applicable to subsequent grantees never applied to him after all. He states on page 9 of his Petition, "Here, the second level, binding a subsequent grantee, was never applicable." On the contrary, Richard specifically pled in his counterclaim, "The boundaries marked on the ground by the fence . . . are . . . binding on Defendants [Richard and his wife] as subsequent purchasers with inquiry notice under the Common Grantor Doctrine." CP 369.

Richard's argument relies on a mischaracterization of a footnote to the Fralick decision recognizing an exception, not applicable here, to the Rule's visual inspection requirement he failed to satisfy at trial. It states:

> Of course, even in the absence of an on-the-ground marking, a subsequent purchaser with actual notice of the agreement is bound by the line. Furlow v. Dunn, 201 Ark. 23, 144 S.W.2d 31 (1940); Browder, The Practical Location of Boundaries, 56 Mich. L. Rev. 487, 529 (1958).

(Fralick, 22 Wn. App., 160, fn. 1, Emphasis added.)

The agreement to which Furlow, *Id.* specifically applies is an agreement between the common grantor and original grantee to a boundary at odds with the legal description. The trial court concluded that no such agreement was reached. CP 58. Furthermore, the actual notice to which Furlow refers is a subsequent grantee's actual notice of such an agreement between the common grantor and the initial grantee. Richard admits that he did not have such notice, since he believed Mr. Caverly established a fence along the curved visible line as the southern boundary of Tract 2 . . ." Opening Brief, p. 29.

Furlow is therefore inapplicable because the types of agreement and notice it requires are both absent. Richard nonetheless argues Furlow's applicability by misstating its holding. He argues that Furlow applies because Judy had actual notice of her own agreement with Mr. Caverly.[2] However, Furlow's exception to the Rule's visual inspection requirement is satisfied only by a subsequent grantee's actual notice of an agreement between the common grantor and initial grantee to a boundary at odds with the legal description.

[2] This adds nothing to the analysis. Everyone who enters into a binding agreement necessarily has actual notice of that agreement.

Richard's discussion of actual notice and inquiry notice is premised on his mischaracterization of Fralick, and therefore without merit. Richard's Common Grantor Rule claim necessarily failed because neither the visual inspection requirement nor the alternative of proving a subsequent grantee's actual notice of an agreement to a boundary at odds with the legal description was satisfied.

Richard also mischaracterizes Light v. McHugh, 28 Wn. 2d 326, 183 P.2d 470 (1947). In Light, the property seller pointed out a fence she told the buyer marked the property's south boundary, and the buyer accepted it as the boundary. *Id.* at 329 and 331. The court held that the agreed-upon fence controlled the boundary's location.

The present case is factually distinguishable. There is no evidence that Mr. Caverly pointed out any physical features as representing the boundary. "The lack of a finding on an issue is presumptively a negative finding against the person with the burden of proof." Taplett v. Khela, 60 Wash. App. 751, 760, 807 P.2d 885 (1991). Light is therefore distinguishable.

Similarly distinguishable is Angell v. Hadlsy, 33 Wn. 2d 837, 207 P.2d 191 (1949), in which the seller pointed out two iron stakes as

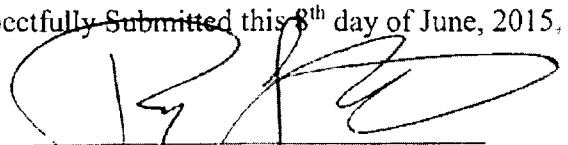
marking the boundary at issue. This Court held the pointed out was binding.

The decisions of the trial court and Court of Appeals are therefore in complete harmony with established case law governing the Common Grantor Rule.

IV. CONCLUSION

For any or all of the foregoing reasons, the Petition for Review should be denied.

Respectfully Submitted this 8th day of June, 2015.



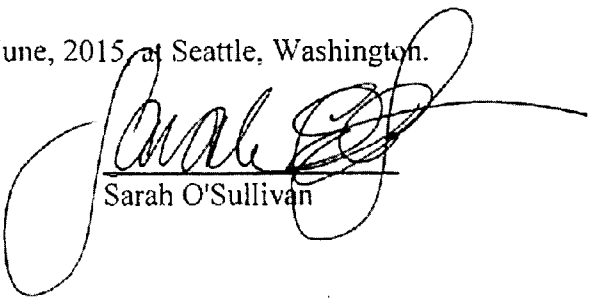
Roy T. J. Stegena, WSBA#36402
Rossi Vucinovich, PC
Attorneys for Respondent Judith Anderson

CERTIFICATE OF SERVICE

I declare, under penalty of perjury under the laws of the State of Washington and the United States of America, that on the 8th of June, 2015, I caused a copy of *Answer of Respondent Judith Anderson to Appellants' Petition for Review* to be served on all parties and/or their counsel of record in the manner indicated below:

Gary W. Brandsetter PO Box 1331 Snohomish, WA 98291-1331	[X] By First Class Mail [ ] By ABC Legal Messenger [ ] By Email [ ] By Facsimile

Dated this 8th day of June, 2015, at Seattle, Washington.



Sarah O'Sullivan

OFFICE RECEPTIONIST, CLERK

To: Roy Stegena
Cc: Sarah O'Sullivan; Gary Brandstetter
Subject: RE: Anderson v. Anderson Case No. 70814-7-1

Rec'd 6/8/15

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Roy Stegena [mailto:rstegena@rvflegal.com]
Sent: Monday, June 08, 2015 9:13 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: Sarah O'Sullivan; Gary Brandstetter
Subject: Anderson v. Anderson Case No. 70814-7-1

Dear Sir or Madam,

Attached for filing is the Answer of Respondent Judith Anderson to Appellants' Petition for Review in the matter of Anderson v. Anderson, Case No. 70814-7-1.

I represent Respondent Judith Anderson. My WSBA # is 36402. My e-mail address is rstegena@rfvlegal.com.

Please confirm receipt and let me know if you have any difficulties opening the attached document or if you have any questions or concerns.

Thank-you,

Roy T.J. Stegena

Roy T.J. Stegena
Rossi Vucinovich PC
1000 2nd Ave.
Suite 1610
Seattle, WA 98104

Local Number: 425 646 8003
Toll Free: 866 357 7245

ROSSI VUCINOVICH PC