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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

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NO. 41952-I-II

COURT OF APPEALS DIVISION II  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON

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TY HAND

A single person, respondent

v.

CHLOE E. PARR

A single person, appellant

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REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

	<u>Page No.</u>
<u>STATEMENT OF THE CASE - REPLY:</u>	1
<u>REPLY -ARGUMENT:</u>	2
<u>CONCLUSION:</u>	4

TABLE OF AUTHORITIES

<u>CASES:</u>	<u>Page no.</u>
<u>Cingular wireless LLC. v. Thurston Co:</u> 131 WN APP 756, 129 P.3d 300 (2006)	2
<u>Imrie v. Kelley</u> 16 WN. APP 1. 250, 622 P3d 1045(2010)	2
<u>Estate of Jones</u> 152 WN.2d 1, 93 P.3b 147 (2004)	2
<u>Thorndike v. Hesperian Orchards</u> 54 WN.2d 1, 250 p.3d 1045(2010)	2
<u>State v. O'Neill</u> 148 WN.2d 564, 62 P2D 489 (2003)	2
 <u>STATUTES AND COURT RULES:</u>	
Rules of Appellate Procedure 10.3(G)	2
Superior Court Rule 46	4

IN THE COURT OF APPEALS STATE OF WASHINGTON

WILLIAM TY HAND	)	
	)	
Plaintiff/Respondent	)	NO. 41952-I-II
	)	Kitsap No. 09-2-02242-1
	)	
	)	APPELLANT’S REPLY
	)	BRIEF
v.	)	
	)	
CHLOE E. PARR,	)	
	)	
A single woman,	)	
	)	
Defendant/Appellant	)	
	)	
	)	
	)	
	)	
	)	

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REPLY TO RESPONDENT’S STATEMENT OF THE CASE

The record in this case indicates that Mrs. Parr has resided on parcel B since 1964. Parcel B contains a hedge adjacent to boundary of Parcel A, but the said hedge was planted 2 to 3 feet to the south of boundary shown on Ex 2. It was not planted on the boundary and the legal title to the hedge row was always appurtenant to parcel B. R.P.74

The hedge was removed in January 2009; a fence was erected on Parr’s side of the boundary line, which lines up with a wooden fence erected by the respondent to the north. R.P. 106 & R.P. 59

There is a historical path running between the parcels. The entire path is on Parcel A. At the furthest point to the east, the center of the hedge is 8 feet from

Hand's garage. At full maturity and in 2000, when defendant purchased the property, the hedge had grown 2 to 3 feet from its center. ( Ex.23)

However, the path narrows gradually to 2.9 ft in width because the garage is not parallel with the parcel boundary, or the hedge. (Ex.23)

There is no evidence that the DeClements ever used more of the path, other than access to the south side of the garage or against the branches of the hedge. There was no evidence that the DeClements ever claimed the pathway was 8ft wide at its widest point.

Parr never claimed that she owned the path. As a practical matter, her hedge covered property of approximately 2 feet at the top of the embankment.

Parr wasn't aware that Hand walked anywhere other than the center of the path.

### **ARGUMENT**

Parr was not required to make objection to the Findings of Fact upon their presentation.

RAP 10.3(G) contemplates assignments of error challenging the court's findings for lack of substantial evidence. The Imrie v. Oneil, Cingular Wireless, and in re: Estate of Jones recite the familiar rule that Findings of Fact unchallenged on Appeal, are verities following the holding of Thorndike v. Hesperian Orchards , 54 WN.2d 570, 343 p.2d 183 (1959).

Finding of Fact No. 7 is not sustained by evidence, no survey says the boundary is only 2 feet from the garage. Exhibit 6 cited in support is of the drain

tile which is further west of the area shown in exhibit two and in the area shown by Ex. 6; the garage is closer to the boundary.

Exhibit no.9 shows a bamboo shade of fence, which Hand claims was thirty- four inches from the edge of his garage, but is not clear which part he was measuring, and thirty-four inches is just shy of 3 feet. He testified the hedge was 8 feet away, but we don't know if he measured at that location.

The exhibit 18 photo barely shows the path, but shows the staircase as larger and it was only 4ft wide.

On the claim of a prescriptive easement, the boundary is relevant. Respondent was claiming a prescriptive easement over appellant's property.

He had the burden of proving by a preponderance of the evidence that the historic path he walked on for 9 years was in fact crossing over into parcel B. Exhibit 2 alone indicates he couldn't walk through a hedge 6ft across. He didn't acquire an easement if the pathway was on the other side of the boundary.

Parr testified the hedge had grown larger and extended to within inches from the boundary. Marvin Sindt gave extensive testimony and exhibit 23 was admitted, and both contradict Hand's claims as to the width of the path.(R.P. 126)

The court's ruling on the adverse possession claim denied Hand any claim to own the ground underneath the hedge.

Conclusion of Law No.3 is erroneous and is not in accord with the law. In exhibit 2 and you can't measure courses and distances by a photograph.

Parr was not precluded from the reviewing this conclusion. Cf. <sup>R</sup>46  
appellant made the same argument about impossibility of a prescriptive easement  
on page 5 of the appellant's brief.

Respondents brief quotes Lyall's testimony R.P.9 that the pathway looked  
like it was 6 to 8 feet wide. Parr's measurements are that the pathway was 4 to 5  
feet at the widest point, because the hedge had grown to the boundary line.

### CONCLUSION

This court should reverse the Superior Courts judgment requiring Parr to raise the  
level of the land formally occupied by the hedge on the theory that Hand had a  
prescriptive easement over the same land.

Respectfully submitted,

*Walter M. Hackett Jr.*

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