

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY AP
DEPUTY

No 51913-5-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

SKIPPER W KUZIOR,

Petitioner,

Vs

Defendants

Tacoma Schools, Lincoln Tree Farm

BRIEF OF APPELLANT

Pro Sea

Attorney for Appellant

Mark F. O'Donnell

Attorney for Appellee

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TABLE OF AUTHORITIES.....

Gamboa v Clark, 180 Wn. App. 256, 321 P.3d1236 2014

Cuillier v. Coffin, 57 Wn.2d 624, 627 (1961)

Drake v Smersh, 122 Wn. App. 147,153-4, 89

P.3d726(2004)

Roediger v Cullen, 26 Wn.2d 690

Wels v Hippie 269Or. App785, 787(2015)

STATUTES.....

RCW 61.24.050

CONSTITUTIONAL AUTHORITY.....

6th Amendment of US Constitution “Just Compensation”
for a State or government agency acquiring land

INTRODUCTION.....

A. Lincoln Tree Farm Segregated 1102 linear Feet off of Lot one using a third party boundary line adjustment dated 2012

B. Lincoln tree farm then removed a decades old boundary line fence and gate as well as Destroyed a well-built Lean to structure facts they clearly admit to in their depositions

C. Lincoln tree farm then hired Dianne Conway April 2016 from Honeywell to send a letter that they were claiming the 1102 ft. segregation under the statutes of adverse possession for a government school for periodic logging to raise funds for education that I stay in the new boundaries or I will be charged with Trespass

D. After waiting Three months for Tort claim I opened a lawsuit for damages Landslides have been caused dumping thousands of tons of silt into salmon bearing North muck creek do to some reckless logging in August 2017 after Legal action was already underway Tacoma Schools hired Mark O'Donnell to represent both parties

E. In November 2017 Lincoln tree farm had a surveyor that was licensed in Lake Stevens county not Pierce County do a brand new survey and sketch They then attached it to a sketch that was dated 1980 no signature's the 1980 sketch was never properly filed or recorded in 1986 it was filed outside title block as a practice easement

F. Lincoln Tree Farms Attorney Honeywell Diane Conway Then represented the third party on Lincoln tree farms dime to use the fence and gate that Lincoln tree farm admits to destroying to try to get quite title to my personal residence so they can threaten us with firearms and shoot all of my livestock

G. Chicago Title company granted A 1974 title to lot 1
my property to Henry Reitzug Mark and Lisa Hadman
on April 6 2012 TR4347374 I ended up with a 1986
title a quarter mile away from my properties physical
location TR 55586 the 200 feet of ingress egress lot
11 a road easement

H. I have started a title insurance claim to try to get my
correct land title back

ARGUMENT.....

The court allowed MR. ODONNELL to present color
coded exhibits at the trial VRP page 5 line24-25 entirety of page
7 lines -25. ODONELL then used these exhibits to confuse The
Honorable Frank Cuthbertson.

These exhibits had Frank Cuthberston so confused he granted
Quiet title over some hand drawn sketches done by ODONNELL with

colored sharpies. VRP page 9 line 15-23 THE COURT: Okay the document suggests this easement that was conveyed is in the southern part where Mr. Odonnell indicated in green the Easment is. And so it doesn't in any way impact, that I can see, Mr Kuziors claim, and its clear what the boundary line is now and its clear where that easement is. And, so, candidly, I don't see anything that would preclude us from quieting title to Lincoln Tree farm itself.

The error was great the easement follows the centerline of Section 36 this easement was purchased and can not be moved.

The hand drawn sketch showing the easement in the southern Portion of Lincoln Tree Farm was deliberate Title Slander to my Families recorded Easement and should never have been used for For these purposes.

The 2017 Roup survey changes the direction of this centerline and therefore removes easement according to the survey. My 2015 title was changed as well to parallel the new centerline I bought directly from family and my title was re-recorded 2018 to correct this deliberate error and return my building parcel A combined for tax purposes with my wetlands combination recombination parcels C and D.

ASSIGNMENT OF ERROR.....

The most obvious assignment of error would be the Title Slander perpetrated by attorney O'Donnell the night before trial.

He used a sharpie to mock a binding prescriptive Easement and change the outcome of the preliminary ruling. VRP page 2 -3
line22 -2 The court: And while I know that Mr. O'Donnell had moved to strike the pleading, nonetheless, the quiet title, which was

one of the requests' from defendants, it just is slightly different
issues and there may be issues of fact to be resolved regarding the
quiet title.

Fact :Mr. Roupe gave an opinion VRP page 4 line 10-11

ODonnel: So he's unequivocally testified there are no easements that
are shown in either the of the recorded titles or any recorded surveys.

ISSUES RERTATED TO ASIGNMENTS OF ERROR...

Adverse possession and prescriptive easements are
complicated concepts to most landowners. Valuable property
rights can be lost to strangers and land rustling neighbors, the
courts can sometimes reward longtime bad behavior. The

Washington Supreme Court has recently made a decision to promote harmony in Washington State, and make prescriptive easements tougher to establish in the case of *Gamboa v. Clark*, 183 Wn.2nd 38, 348 P.3d 1214 (2015). The Gamboas and Clarks owned adjoining parcels of enclosed agricultural land which had originally been part of one larger parcel separated by a primitive road, this gravel road crossed the Clarks' property. The road was used by the Gamboas to access their home and by the Clarks for farming grapes on their parcel. The road had been used by both parties and their predecessors for these purposes for decades. Each was aware of the other's use of the road, and neither party gave the other permission, objected or interfered with the other's use. After an unrelated dispute arose between the parties in 2008, the Gamboas brought an action seeking a prescriptive easement to use the gravel road to the extent on the Clarks' property. The Court found that the elements of a prescriptive easement were

all present in this case, with the possible exception of “adversity”. The Gamboas’ use of the road was “open, notorious, continuous, hostile and uninterrupted over the prescriptive period of ten years” and the Clarks had “knowledge of such use at the time when [they] would be able at law to assert and enforce his or her rights.” Incidentally, it’s not clear to me how the use can be found to be “hostile” without also being “adverse”.

In certain circumstances, Washington courts have found that a use of someone’s property will be presumed to be with the owner’s permission and therefore not “adverse”. For example, in the case of unenclosed lands, the regular crossing of another’s property is presumed to be with permission. *Roediger v. Cullen*, 26 Wn.2d 690. A presumption of permissive use also applies to enclosed or developed land cases when it is “reasonable to infer that the use was permitted by neighborly sufferance or acquiescence.” The third situation recognized was

when the owner created the road and the claimant's use did not interfere with the owner's use. *Cuillier v. Coffin*, 57 Wn.2d 624, 627 (1961). In this case, the trial court ruled that because the land was enclosed, there was no presumption of permission from the Clarks, and in effect, accepted a presumption of adverse use. In this close case, that shift from a presumption of permissive use, to placing on the Clarks the burden of establishing permissive use, led to the ruling that the Gamboas were entitled to a prescriptive easement to use the gravel road over the Clarks' property. Division III of the Court of Appeals disagreed, and found that the trial court erred in not recognizing that the Clarks should enjoy a presumption of permissive use, placing on the Gamboas the burden of rebutting that presumption to show their use was "adverse". *Gamboa v. Clark*, 180 Wn. App. 256, 321 P.3d 1236 (2014). This can be done by presenting evidence that the claimant's use was "adverse and hostile to the rights of the owner" such as by showing he "interfered with the owner's use of the land in some

manner” or that the owner’s acts or statements acknowledged the claimant’s right to an easement.

Interestingly, Division I of the Washington Court of Appeals (*Drake v. Smersh*, 122 Wn. App. 147, 153-54, 89 P.3d 726 (2004)) as well the Oregon Court of Appeals (*Wels v. Hippe*, 269 Or. App 785, 787 (2015)) have recently taken positions more closely aligned with the trial court approach to the presumption of adversity. However, the Washington’s Supreme Court held that even in cases of enclosed land, “an initial presumption of permissive use applies to enclosed or developed land cases in which there is a reasonable inference of neighborly sufferance or acquiescence.” *Id.* at 1220. “Showing a reasonable inference of neighborly sufferance or acquiescence is a fairly low bar.” *Id.* at 1221. In this case the fact that both parties knew the other used the road and didn’t object, and the use did not interfere with the owner’s use of its land, was enough to create this inference. No prescriptive easement. I can live with this decision, and it fits the traditional Scottish

silent but sharing culture of the Northwest. Why put the burden on the neighbor who allows a neighbor to use his or her road to be nasty to make sure he or she doesn't lose property rights? Why encourage more fence building when a policy which assumes that neighbors will be generous with each other creates a more pleasant atmosphere? Even with the new property lines 1102 feet removed from their historic boundaries I have continue to allow children to access my trail to see the old growth forest my family has preserved since the 1820's

STATEMENTS OF THE CASE.....

Quieting Title to improperly filed overlap surveys erasing Prescriptive easements. Moving large lot boundaries to expand government holdings without paying just compensation is a violation of the sixth amendment of the US Constitution. Schools are rich they take money from everyone in property Tax to take the very property

they Tax would make land worthless therefore how can a citizen pay tax on an asset with no intrinsically pertinent Tax value

ARGUMENT.....

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CONCLUSION.....

This lawsuit was generated to deal with the issue of access to my families Native American Historical site **Tree Point no Point** a 500 year old plus Historical site were my family protected the indigenous tribes from being slaughtered by territorial militia, General Montgomery, Coronial Shaw of the Confederate Army Sir Isaac Stevens territorial governor.

Our families tree is located were the Puget Sound Median Washington States prime meridian from 1840-1890 meets Muck Station **Puget Sound Agriculture** HBFTC 40 acre government Lots were painstakingly surveyed by my family and members of the Cowlitz Tribe to make sure all of our cousins would not have to move from their homes. These survey line transverses accurately south to Willamette Station in the Oregon territory.

We also maintain a base line to A Historic cabin overlooking chambers bay were the stokers for the steamship Beaver would reside. Chop wood for two days to travel one day so goes the Legend of the Beaver.

My wife has handicap legs her Mother Angel is related to the Gleason's we accrued the property from Daniel Gleason was a direct descendant of Daniel Mounts as well as John McLeod our legendary Ancestor.

Dismissing the timber theft from steelier school as well as the destruction of our Lean to was not a sighs of weakness' I want to work with the School as well as the county to get this beautiful early Washington state history out to the public. I want to share our families **Tree Point no Point** treaty tree on the Puget Sound Meridian Washington's 1st Prime Meridian 500 year old + Douglas fir tree. That saved so many lives in the past and protected so many others.

Dated this 1 day of March 2019



Skipper W Kuzior #

DECLARATION OF SERVICE

2019 MAR -1 PM 1:32

STATE OF WASHINGTON

The undersigned declares under penalty of perjury under the laws of the State of

Washington that on this day the undersigned caused to be served in the manner indicated below a copy of the foregoing document directed to defendants and the following individuals:

Appelers' Brief, Motion dismissing council extend time for Brief

Mark F O'Donnell

901 5th Ave Ste. 3400

Seattle, WA 98164-2026

modonnell@pregodonnell.com

Via hand delivery Courier service

Via E-Service or email with

Recipient's approval

Via First Class mail postage paid

Via Certified Mail

Dated at Tacoma Washington this 1 day of ^{March} ~~January~~ 2019



SKIPPER WILLIAM KUZIOR