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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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PHYLLIS Y. RAINWATER,

APPELLANT

v.

RAINSHADOW STORAGE, LLC, a Washington Limited Liability  
Company; JOHN R. DICKINSON and LORI R. DICKINSON, dba, WE DIG  
IT,

RESPONDENTS

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APPELLANT'S REPLY BRIEF

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## **I. INTRODUCTION**

It is undisputed that from April 15, 1988 until February 22, 2017, the only people who occupied, claimed possession of, used and maintained the disputed area were the Clark family and then Gene and Phyllis Rainwater. The Jarmuths, the reputed owners of the disputed area, admit that they never stepped foot in the disputed area, much less occupied it. The Jarmuths further admit they believed that the natural area directly to the east of the boundary trees was the western boundary of their property. When viewing the evidence in a light most favorable to Rainshadow, there are no issues of material fact and summary judgment should be granted in favor of Phyllis on her claims for adverse possession and mutual recognition and acquiescence. But, at a minimum, there are issues of material fact that warrant reversal of the Trial Court's order granting summary judgment in favor of Rainshadow.

## **II. CLARIFICATION OF FACTS**

Rainshadow ignores the numerous statements and evidence in the record, which demonstrates that Phyllis, and the Clark family before her, satisfied each of the elements necessary for adverse possession. Furthermore, while Rainshadow devotes a portion of its response brief to discussing the clear and convincing evidence standard, it does not identify any evidence that contradicts Dale and Troye Jarmuths' statements that

they believed the natural area abutting the boundary trees was their western boundary.

For example, Troy Jarmuth admitted in her declaration that:

...Dale and I have always stockpiled our yard debris at the west side of our land. We hauled it by riding lawnmower and tow trailer. Those trips were slow and laborious and occurred during the growing seasons. I never once saw anything along our property line that resembled a fence or blockage that would raise suspicion or concern. We intentionally kept that area in its natural state. It was thick with evergreen trees, bushes, and wild bramble. It protected the deer during hunting season, too.

In January, 2007, a portion of that area was demolished due to the Clallam-Cline Irrigation Ditch project. We offered our open field to Bruch & Bruch Construction (contractor on the project) to store their heavy equipment and materials for easy access. They agreed to return our field and the blacktop on Strawberry Lane back to its original condition after the project was finished. In order to join the Clallam and Cline irrigation ditches near the west boundary line of our property, the contracting company cleared a swath of trees, bushes and wild bramble. In early May, 2007, Bruch & Bruch Construction completed their final commitment to us, they reseeded our field and repaired Strawberry Lane. **Upon completion of the project, we let our western boundary line return to its natural state again with no obstacle, obstruction, fence, or barrier in sight.**<sup>1</sup>

(emphasis added)

During Dale Jarmuth's deposition he testified that:

Q. Have you ever gone to the tree line since you moved into your property?

A. Yes.

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<sup>1</sup> CP 462, lines 16 – 28, CP 463, lines 1 – 6, CP 465.

Q. Can you describe your property before it was subdivided and sold to Rainshadow?

A. Well, I'm sure you've seen the photos. There was five acres, mostly field. That western boundary was where the irrigation ditch was and the trees that we're speaking of.

Q. And would it be hayed up to the irrigation ditch?

A. Yes.

Q. And between the irrigation ditch and the tree line can you describe the condition of that area from 1993 until you sold the property?

A. There was a grassy area in there that I think, you know, was just brush and weeds.

Q. And how tall was that brush area?

A. The brush was – I would say it was something like 8 feet in some places. Maybe more.

Q. So you said that you did go in that area at some point between the irrigation ditch and the trees?

A. No.

Q. So you would walk up to the irrigation ditch but not cross it?

A. Correct. I went just up to where I had my little pump house there at the ditch, but never went on the other side of that.

Q. Did you have any understanding of who owned the trees or whose property the trees were located on?

A. I knew they were on my property and I assumed some were on the Rainwaters' property.

Q. So you thought the trees essentially straddled the property line?

A. Correct.

Q. Now, did you ever see a fence near those trees?

A. Never.

Q. And you never went on the west side of the trees; correct?

Q. Do you recognize that wood fence or gate that's depicted there?

A. Yes.

Q. When you first saw the fence did you think it was on your property at all?

A. No.

Q. When we look at Exhibit 18-A right now – and I realize there's no ditch now – where would the line of trees that we're talking about be? Would that be on your side or on the Rainwaters' side?

A. Well, I assumed on both sides.

Q. Both sides?

A. Yes.

Q. And you said you had never gone on to Gene and Phyllis' property; is that correct?

A. Correct.<sup>2</sup>

In her deposition, Donna Gast stated:

Q. Now, when you first moved into your home at 140 Strawberry Lane, who lived at Phyllis's property?

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<sup>2</sup> CP 046, lines 16 – 24, CP 048, lines 7 – 25, CP 049, lines 1 – 2, 7 – 25, CP 050, lines 3 – 5, 14 – 16, CP 051, lines 7 – 13, 19 – 21.

A. It was owned by Roger and Helen Clark. They had put a house on it but were not living in it full time; and then shortly after we moved in – we moved in September of 1991 – that spring, I believe, they moved in full time, so it would have been 1992 that they moved in.

Q. Now, do you understand that part of this lawsuit concerns the trees on the eastern part of Phyllis's property?

A. um-hmm, yes.

Q. Now, were those trees there when you purchased your home in 1988?

A. Yes.

Q. Do you know approximately how big the trees were when you first moved in?

A. They were mature trees. They were not – you know. They weren't, like little trees. They were mature trees.

Q. And do you remember approximately how many trees were there?

A. No. I have no idea.

Q. More than ten?

A. Yes.

Q. And were these trees in approximately a straight line?

Q. From 1991 until the Clarks sold their property in 2003, they maintained the yard and pasture up to the trees; is that correct?

(After objections and discussion.)

A. Yes.

Q. Were the Clarks the ones that maintained their property?

A. Yes.

Q. Now, Phyllis purchased the property in 2003 with her husband Gene; is that correct?

A. Yes.

Q. And did they continue to maintain their field up to the tree line.

A. Yes. They mowed it.

Q. Now, at some point a mesh wire fence was installed on the western side of the trees; is that correct?

A. Correct.

Q. Can you tell me when that happened?

A. That happened in approximately 2003.

Q. Can you tell me who installed that mesh fence?

A. Gene and my husband Glen.

Q. What was the purpose of installing that mesh fence?

A. We had purchased three mini-horses. Two of them were stallions and had to be separated from the female, and Gene and Phyllis offered to let us use that field as grazing for one of the stallions.

Q. Was the horse free to roam, that that where it lived, or did it line on your property and then it would graze in the field?

A. No, it stayed on Gene and Phyllis' property.

Q. With their permission?

A. Yes.

Q. When this fence was installed on the trees, was it your understanding that this was being placed on Phyllis's property?

A. No, not necessarily. It was not ever intended to be a property line or a permanent fence. It was just to contain the horses.

Q. But you didn't think you were putting it on somebody else's property, did you?

A. No. No.

Q. So you thought were you putting it on Phyllis's property?

A. Yes.

Q. Did you ever see the Jarmuths on the west side of the trees, either of them?

A. No.<sup>3</sup>

Glen Gast stated in his deposition:

Q. Did you ask permission of Gene to put up the fence on his property?

A. Oh, yeah. Gene and I were good friends.

Q. Was it your understanding that the fence was being installed on his property.

A. I assume. There was nothing discussed about it being on his property or not. We just used the trees because it was convenient, rather than digging post holes, because we have a lot of Sequim Potatoes here.

Q. And what happened after that year and a half?

A. We sold the horses.

Q. And was the fence left against the trees?

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<sup>3</sup> CP 021, lines 1 – 8, 19 – 25, CP 022, lines 14 – 25, CP 023, lines 5 – 25, CP 024, lines 1 – 4, CP 025, lines 3 – 8, 11 – 24, CP 026, lines 16 – 21, CP 027, lines 1- 10, CP 029, lines 16 – 18.

A. Yes.

Q. Now, did Gene mow his property while the horses were pasturing for that year or year and a half?

A. No. He didn't have to mow it while they were in there. They kept the grass down real well.

Q. Did he resume mowing his property?

A. While he was alive, he mowed. They came down usually just in the summertime, and then they spent the winter in Arizona.

Q. Would Gene mow up to the trees?

A. Yes.

Q. And how close to the trees would he get?

A. Oh, maybe 10 feet from the trees, because the grass up close to the trees did not grow. It was very sparse.

Q. So it was pretty much maintained, meaning there was no at all grass or weeds up to the tree line?

A. Right.

Q. All right. And do you know if Gene asked permission of anybody to install the fence?

A. No, he did not.

Q. Do you know if it was Gene's understanding that he owned the property where the trees were located? (after objection)

A. I would assume so.<sup>4</sup>

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<sup>4</sup> CP 236, lines 3 – 23, CP 237, lines 1 – 23.

In discussing the wooden fence at the entry to Phyllis's property,

Mr. Gast responded:

Q. Was the fence longer than what is depicted in this picture?

A. Yes, it was.

Q. And if you remember, approximately how long is this fence in this picture here?

A. You're asking me how long it is?

Q. Yes, if you know. Or do you know the current condition of the fence?

A. Maybe 10 or 12 feet.

Q. And do you remember how long it was before it was reduced in size?

A. No.

Q. Was it twice as big?

A. Yes, probably.

Q. And when you installed this, did you believe you were installing it on Gene's property?

A. I assumed it was on Gene's property.<sup>5</sup>

As detailed in Phyllis's opening brief, she provided ample testimony demonstrating her and her husband Gene's use, occupation and maintenance of the boundary trees and disputed area.

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<sup>5</sup> CP 240, lines 19 – 25, CP 241, lines 1 – 10.

### **III. REPLY ARGUMENT**

An overriding misstatement by Rainshadow in its brief is what marked Phyllis's east boundary. Rainshadow alternatively argues either there were no fences or that the wire mesh fence installed to keep the Gasts' miniature horses from escaping did not mark the common boundary. These arguments are red herrings.

The tree line is the fence that Phyllis claims as her eastern boundary in addition to the area she maintained to the west and south. The boundary trees have existed for well over 20 years. The aerial photographs in Terry Curtis' declaration clearly, and unequivocally, show that the lots were laid out in a neat rectangular form with clear boundaries that were respected by the adjoining land owners throughout the years. CP 285, 295, 299, 302, 307, 319, 321 and 323.

Rainshadow misstates or ignores numerous material facts. First, Rainshadow ignores the fact that the tree line, itself, is a fence. *Lakes at Mercer Island Homeowners Ass'n. v. Witrak*, 61 Wn. App. 177, 182, 810 P.2d 27 (1991). The boundary trees are comprised of 16 to 17 trees located in a straight line, planted close together, and acted as a boundary line. This is demonstrated by how the Clark family, Phyllis and the Jarmuths used their respective properties. They each stayed on their side

of the trees, never venturing into the other's property.<sup>6</sup> This is further supported by Terry Curtis' declaration and the numerous pictures spanning 27 years that establish clear occupational lines. Any fair-minded reasonable person can easily conclude that the well-maintained tree line was the boundary line between Phyllis's and the Jarmuths' properties.

Terry Curtis' pictures further support Phyllis's claim that the boundary trees and maintenance of the area west of the trees along her eastern boundary established her ownership by adverse possession. Phyllis testified she and Gene maintained the property up to and including the tree line. CP 386, lines 10 -18, CP 389, lines 1-8. Donna Gast testified that she saw the Clark family maintain their property up to the tree line. CP 221, lines 2-4. Mrs. Gast also testified that Gene would mow up to the tree line. CP 431, line 14. The Jarmuths admit that they never stepped foot, much less maintained, the area west of the boundary trees. CP 253, lines 19 -25. Only twice, while they owned the property from 1994 to 2017, did the Jarmuths clear the natural area to within a few feet of the boundary trees. Once in early 2007, CP 462, lines 23-28, CP 463, 1-4, and again in 2016, CP 323.

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<sup>6</sup> See Declarations and Depositions of Phyllis, CP 388, Dale Jarmuth, CP 046, lines 21-24, CP 046, lines 16 – 25, CP 048 – 049, cp 050, lines 3-16, CP 051 lines 7 – 21, and Troye Jarmuth, CP 035, lines 9-11, CP 042, lines 11-21, CP 249, lines 14-21.

Rainshadow's argument that no one saw Gene and Phyllis in the disputed area is not only irrelevant, but also incorrect. Glenn Gast's testimony that he helped Gene install the animal fence on the trunks of the boundary trees in question puts Gene in the disputed area. Even more compelling is the testimony from the Gasts, the Jarmuths, and Phyllis that establish that the only people to have used the disputed area were the Clark family, Gene and Phyllis, and Mr. Gast with Gene's permission. Donna Gast testified that the Clark family maintained the disputed area up to the tree line. CP 220, lines 5-17. She also testified that Gene mowed in the disputed area up to the tree line until the time he could no longer do it. CP 451, lines 14 – 15. This corroborates Phyllis's testimony regarding Gene's activity in the disputed area, CP 386, lines 10 – 18, in addition to Phyllis and Gene's use of the area where they would sit and enjoy the trees. CP 386, lines 25-26, CP 387, lines 1-3. This spanned 10 years from 2003 until 2013. Thereafter, Phyllis had others maintain the area up to and including the boundary trees. CP 389, lines 1 – 8.

Rainshadow blazingly claims it had no knowledge of fencing on the entire western boundary until Ryan Schaafsma started the work on removing the branches, bramble and trees, or knowledge that Phyllis claimed ownership of the disputed strip. Respondent's Brief at 10. Ryan Schaafsma told Robert Lint that he initially thought the tree line was the

common boundary, but when he learned he needed to move the irrigation ditch he conveniently relied solely on the survey. CP 367, lines 5-16.

When Rainshadow trespassed onto Phyllis's property in 2017, there was an established large tree line, and a large 14-foot wooden fence, at the entrance to Phyllis's property. The fence had Phyllis's address on it. This wooden fence extended east 14 feet and then was connected by wire fencing going north to the tree line. There was a locked gate attached to this fence. Rainshadow had to go through those barriers to get to the disputed area. The grass to the west of the tree line was neatly trimmed, as demonstrated by Rainshadow's own pictures.

Further, as Robert Lint testified, there was a wire fence connected to 8 to 12 steel posts running in a north-south direction on the eastern side of the boundary trees. This fence was located in the Jarmuths' natural area. Part of the fencing can be seen in the debris pile Rainshadow created when it tore the fencing out. One metal post is seen with tree roots growing into it. Clearly, that fence was there for a long time, and an impediment to accessing Phyllis's property from the Jarmuths' side. Rainshadow's claim that it had no notice that someone else might be claiming the disputed area defies common sense.

The fact that the wire mesh fence remained on the trunks of the boundary trees is further proof of Phyllis's ownership claim to the

disputed area. It was installed in 2003 and remained there until February, 2017 when it was removed by Rainshadow. It may not be seen from far away, but anyone claiming ownership to the disputed area would certainly see it if they ever attempted to occupy the disputed area. But, the Jarmuths never claimed or went anywhere near the disputed area.

Further, Mr. Schaasfsma told Mr. Lint that he initially believed the tree line was the common boundary. He only changed his mind when he learned he needed more space to relocate the irrigation pipe running through the property he just acquired from the Jarmuths. It was only then that he decided to solely rely on the survey line. CP 367, lines 8-16,

For Rainshadow to claim there is no evidence of maintenance up to the boundary trees ignores the pictures that Terry Curtis and Phyllis provided, as well as, its own pictures on the days they cut the boundary trees and removed the large wooden fence. Mr. Curtis' pictures show how Phyllis's and the Jarmuths' properties were maintained for over 20 years before Rainshadow's trespass. Phyllis's pictures show how the boundary trees were maintained under the branches when she first brought the property. Rainshadow's pictures show the area west of the boundary trees into Phyllis's property neatly maintained up to the tree trunks. From these pictures and the inferences that can be drawn from them, a reasonable fair-minded person can find Phyllis, and the Clark family maintained the trees

and tree line for all those years. *See, Twidwell v. Davidson*, 54 Wn.2d 75, 338 P.2d 326 (1959).

Rainshadow's statement that there is no proof of maintenance under the tree overhang also ignores Glen Gast's statement that you really didn't need to mow under the overhang as the branches suppressed any growth under them. Thus, Phyllis only needs to demonstrate occupation of the disputed area, based on the nature of the area, as a true owner would occupy it. This was a pasture area, not a lawn. It was mowed as needed. There is no need to show daily occupation or maintenance. A reasonable fair-minded person can easily conclude from the evidence that the Clark family and Phyllis maintained the disputed area as true owners.

Rainshadow argues that Phyllis cannot show that their 10 years of use of the disputed area was hostile because she and Gene allowed Mr. Gast, with Gene's help, to install the animal fence and allowed their miniature horses to graze in the disputed area. Brief of Respondent, page 32, paragraph 2 ("Phyllis couldn't show actual possession of the property by her for a block of Ten (10) years because between 2003-2005 the property is sued by the Gast"). Rainshadow intentionally ignores the Gasts' admission that they obtained Gene's permission to use their property. *See, O'Brien v. Schultz*, 45 Wn.2d 769, 278, P.2d 322 (1954) (holding that renting property to third parties does not break the time

continuum for adverse possession). This demonstrates Phyllis and Gene's dominion and control of the disputed area.

Further, Rainshadow blatantly misstates the law when it argues that adverse possession did not start until 2007 when the property was fully fenced. It is black letter law that: "An Adverse Possessor need not enclose the claimed parcel." *Bryant v. Palmer Coking Coal Co.*, 86 Wn. App. 204, 212, 936 P.2d 1163 (1997). "Boundaries may be defined by the use of the property." *Id.* Phyllis claims the entire area was enclosed when she purchased the property in 2003. The pictures from both Phyllis and Mr. Curtis show how the Clark family, and then Gene and Phyllis maintained the boundary trees and remaining boundary area in a neat, straight line. Donna Gast testified that the Clark family maintained this area prior to Phyllis and Gene. Phyllis testified that Gene maintained the area while he could and she then hired others to maintain the property, including the disputed area, when he couldn't. Phyllis continued to do maintain the disputed area after Gene's death.

Rainshadow, without citing any authority, argues that Phyllis abandoned the property, and thereby her adverse possession claim, when she took Gene to Arizona in 2013 for his medical treatments, and then listed the property for sale. However, "an intention to abandon is originally an essential element of an abandonment. Acts, which

unexplained, would be sufficient to establish an abandonment, may be answered by showing there never was an intention to give up and relinquish the right claimed.” *Turner v. Gilmore*, 50 Wn.2d 829, 831, 314 P.2d 658 (1957). “To establish an abandonment, it is necessary to show not only acts indicating a practical abandonment, but actual intent to abandon. Acts, which unexplained, would be sufficient to establish an abandonment, may be answered by showing there never was an intention to give up and relinquish the right claimed.” *Id.* Contrary to Rainshadow’s argument, the facts show that Phyllis never intended to abandon her property, the disputed area or her claim to the boundary trees. When she took Gene to Arizona it was for his medical treatments. When they left for Arizona the property was fully fenced, the entry way was secured with a locked fence. Phyllis always paid the utility bills, real estate taxes and other expenses related to the property.

The act of listing one’s home for sale is not an act of abandonment; it is the opposite. It is the ultimate showing that you claim the property as your own, as against the world. You are claiming the right to transfer title of the property to another.

Finally, as explained by Robert Lint, the mortgage company was misinformed as to why Phyllis and Gene had gone to Arizona. Once it understood the situation, the foreclosure was stopped. The mortgage is

still recorded against the property today. Rainshadow cannot prove abandonment.

For almost 30 years, Phyllis and her predecessor, the Clark family, are the only people who used, maintained, occupied or asserted control over the disputed area. This use was open and notorious, exclusive, continuous and hostile to the Jarmuths. Even when viewing the evidence in a light most favorable to Rainshadow, Phyllis has demonstrated that she acquired title to the disputed area by adverse possession.

Phyllis, and the Clark family before her, recognized the boundary trees as the common property line with the Jarmuths' property. The Jarmuths also testified that they believed the natural area abutting the boundary trees was the common boundary. There is no contradictory evidence in the record.

Rainshadow, in effect, argues that Phyllis must prove her claims by having a daily log of when and how she maintained the disputed area. This is not the correct legal standard. Phyllis must only demonstrate use of the disputed area as that of a true owner that puts the world on notice of her claim of ownership. Phyllis clearly meets this evidentiary burden.

The Clark family maintained the area and even installed sprinklers in the area. Although no one can presently testify who put the sprinklers in, the Clark family purchased the lot shortly after it was subdivided. Who

else could have logically put them in? The Clark family must have maintained the sprinklers because they still work.

Rainshadow's reliance on the two unpublished opinions is misplaced and wholly distinguishable. *Whyte v. Jack*, No. 69174 - 1 - I (Wn. App. September 3, 2013)<sup>7</sup> involves adverse possession claims to property next to a shared driveway covered by an easement agreement. Whyte's predecessors' work on the disputed area never prevented Jack from using the property. In other words, Whyte's use was not hostile to Jack.

*Whyte* is distinguishable from this matter. Here, the boundary trees and fencing that were maintained by the Clark family and then Phyllis who established dominion over the boundary trees and the entire area west of the trees. This is evidenced by the fact that the Jarmuths never once set foot near the boundary trees, much less on the western side of the trees in the disputed area.

In *Vanderhoof v. Mills*, 175 Wn. App. 1050 (2013), the Vanderhoofs sought title to wild and unimproved land under the doctrines of adverse possession and mutual recognition and acquiescence. The property was a 60-acre farm that was split into a four-acre house site with

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<sup>7</sup> GR 14.1 states in part that unpublished opinions of the Court of Appeals filed on or after March 1, 2013, may be cited as non-binding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the court deems appropriate.

the other 56 acres remaining farm land. Around 1971 a fence was built to keep the neighbor's cattle off of the house site.

The disputed area was wild and undeveloped. Prior owners could not recall how the corners were marked. One prior owner never thought about the fence as a boundary line. Another prior owner testified that the fence was to keep some cattle from getting out and some from getting in. Because the prior owners never recognized the fence as the common boundary, the court dismissed the Vanderhoofs' claims for mutual recognition and acquiescence.

In this case, both Dale and Troye Jarmuth admitted, under oath, that the natural area or the boundary trees were the common boundary. There is no contradictory evidence in the record.

Regarding the adverse possession claim, the court found that the Vanderhoofs' use of the area was not sufficient to put the title owner on notice that a claim of ownership was being made. For example, the Vanderhoofs did not dispute that what mowing was done was not observed or should have been observed by the neighbor. In addition, the trees that were planted by the Vanderhoofs were not distinguishable from the wild trees in the disputed area.

Phyllis's situation is much different than the Vanderhoofs. Phyllis's eastern boundary is clearly marked by non-native, large trees and

a maintained yard. The Jarmuths knew that the Clark family and then Phyllis and Gene maintained the property west of the boundary trees. More importantly, the Jarmuths maintained their field 15 to 20 feet to the east of Phyllis's boundary trees. The aerial photographs of the two properties for 2007 and 2016 show how the Jarmuths, at most, would clear the natural area up to a few feet of the boundary trees, and then would let the natural area grow back. They never entered onto Phyllis's property to maintain the disputed area or to claim it as their own. And immediately after Phyllis learned that the trees had been removed from her neighbor Judy Lang, she had her fiancée, Robert Lint, investigate the damage.

Rainshadow's argument that Phyllis's statement about the Clark family's use of the property, ignores the uncontested statements provided by the Gasts and the Jarmuths. Donna Gast testified she saw Mr. Clark occupy and maintain the property and up to the boundary trees. Both Dale and Troye Jarmuth admitted never entering Phyllis's property, except once, to address an issue with one of Mr. Clark's sons.

The evidence cannot be viewed in isolation without looking at the whole picture. Taking all of the evidence, the statements by Phyllis, the Gasts and the Jarmuths, coupled with the numerous pictures detailing the condition of the disputed area, a trier of fact can reasonably infer that the boundary trees was the common boundary between Phyllis's and the

Jarmuths' property. Phyllis treated the disputed area and boundary trees as a true owner would. And she did so openly, notoriously, exclusively and for more than the required 10 years.

#### **IV. CONCLUSION**

The evidence demonstrates that Phyllis acquired the boundary trees and all of the area west of the trees through adverse possession. At a minimum, however, there are issues of fact that warrant reversal of the Trial Court's order granting summary judgment in favor of Rainshadow. Regarding Phyllis's claims for mutual recognition and acquiescence, the only evidence in the record is that Phyllis and the Jarmuths recognized that the boundary trees and the entire area west of the trees were owned by Phyllis. This is not only supported by the admissions made by Dale and Troye Jarmuth, but it is also supported by their actions – they never once set foot near the boundary trees or claimed title to them. This evidence mandates reversal of the Trial Court's order and granting summary judgment in favor of Phyllis on her claims for mutual recognition and acquiescence.

This Court should reverse the Trial Court, enter summary judgment in favor of Phyllis on her claims for adverse possession and mutual recognition and acquiescence, and remand the matter to the Trial Court for a hearing on Phyllis's damages.

Respectfully submitted this 11<sup>th</sup> day of July, 2019.

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PER EMAIL PERMISSION

## CERTIFICATE OF SERVICE

I, Mindy Davis, hereby declare and state as follows:

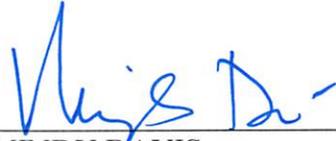
1. I am over the age of majority, competent to testify and make the following statements based upon my own personal knowledge and belief.

2. I am now and at all times herein mentioned employed by the offices of BELL & DAVIS PLLC, PO Box 510, Sequim, WA 98382.

3. In the appellate matter of Phyllis Y. Rainwater v Rainshadow Storage, et.al. I did on the date listed below, (1) cause to be filed with this Court a Appellant's Reply Brief; and (2) to be delivered via email arrangement to Shane Seaman, [shane@crosssoundlaw.com](mailto:shane@crosssoundlaw.com) , who is counsel of record of Rainshadow Storage LLC and to: Claudia Shannon, [claudia.shannon@libertymutual.com](mailto:claudia.shannon@libertymutual.com), who is counsel of record for We Dig It.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

DATED: July 11, 2019

  
\_\_\_\_\_  
MINDY DAVIS

**BELL & DAVIS PLLC**

**July 11, 2019 - 4:17 PM**

**Transmittal Information**

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