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**Court of Appeals**  
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**State of Washington**  
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IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

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STEVEN M. CROSETTI and CARRIE A. CROSETTI, husband and wife,

Appellants/Plaintiffs,

v.

ALEXANDER PAWLOFF and JANE DOE PAWLOFF,  
husband and wife,

Respondents/Defendants.

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**BRIEF OF APPELLANTS**

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VANDEBERG JOHNSON &  
GANDARA, LLP

Daniel C. Montopoli, WSBA #26217  
James A. Krueger, WSBA #3408  
Erica A. Doctor, WSBA #43208  
Attorneys for Appellants

1201 Pacific Avenue, Suite 1900  
P. O. Box 1315  
Tacoma, WA 98401-1315  
Telephone: (253) 383-3791

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## I. INTRODUCTION

This is a case of adverse possession where the party claiming adverse possession cannot establish the exclusive use required for his claim. In this case, the Defendant Alexander Pawloff asserted a counterclaim for adverse possession against Plaintiffs Steven and Carrie Crosetti. As the party claiming possession, the Defendant had the burden of establishing each element of an adverse possession claim.

After a bench trial, the superior court ruled in favor of the Defendant, despite the court issuing a finding of fact that did not support the court's conclusion that the Defendant had established the exclusive use necessary for adverse possession. In this finding of fact, the court acknowledged that the Plaintiffs' immediate predecessor had cleared the disputed area three times, including shortly before the Plaintiffs purchased the property in 2017. This finding, by itself, negates the court's conclusion that the Defendant satisfied the exclusivity requirement, and warrants reversal of the court's ruling.

Moreover, substantial evidence established that the Plaintiffs' predecessor regularly maintained the disputed area, "weed whacking" the area at least three times a year for the 12 years he owned the Plaintiffs' property. Thus, the Defendant cannot, as a matter of law, satisfy the exclusive use requirement of an adverse possession claim. The Defendant's

failure to establish exclusive use also means that the Defendant cannot satisfy the continuous and uninterrupted possession element also required for his adverse possession claim.

Furthermore, substantial evidence at trial established that the Defendant did not meet his burden on proving the other required elements of an adverse possession claim. For these reasons, the superior court's ruling in favor of the Defendant, and its designation of him as the prevailing party entitled to his attorney fees in the quiet title action, should be reversed by this Court.

In addition, the superior court erred in dismissing the Plaintiffs' timber trespass claim because the evidence established that the Defendant went onto the Plaintiffs' property and knowingly and willingly cut down a tree belonging to the Plaintiffs. Accordingly, the Plaintiffs should be awarded treble damages, and their attorneys' fees, for this timber trespass.

For these reasons, the Court should reverse the superior court's rulings quieting title to the Defendant through adverse possession and awarding the Defendant his attorneys' fees. The Plaintiffs should be held to be the prevailing party in the quiet title action and in their timber trespass and trespass claims. This matter should be remanded to the superior court for a determination of the Plaintiffs' reasonable attorneys' fees. In addition, the Plaintiffs should be awarded their attorneys' fees incurred in this appeal.

## II. ASSIGNMENTS OF ERROR

1. The superior court erred in entering Finding of Fact No. 4 because there is no evidence in the record that K.J. Koranda owned the Pawloff Property from March 1990 to 1998.

2. The superior court erred in entering Finding of Fact No. 6 because Exhibits 1 & 1A do not show that Defendant Pawloff “occupied” the Detail of Occupation area.

3. The superior court erred in entering Findings of Fact Nos. 9, 10, 11, 15, and 16, because these findings are not supported by substantial evidence in the record.

4. The superior court erred in entering Finding of Fact No. 17 because this finding omits the fact that Carrie Crosetti observed Pawloff dragging branches away from where the hazelnut tree was cut down.

5. The superior court erred because the court failed to find that the Plaintiffs’ predecessor in interest, Lazlo Csuha, weeded the Detail of Occupation area at least three times a year from 2005 until he sold the property to the Crosettis in 2017.

6. The superior court erred in entering Conclusions of Law Nos. 4 and 8 because these Conclusions of Law are not supported by the court’s Finding of Fact No. 14.

7. The superior court erred in entering Conclusions of Law Nos. 3, 4, 5, 6, 7, 8, 9, 10, and 11, because neither Defendant Pawloff nor his predecessor in interest, K.J. Koranda, satisfied the elements of an adverse possession claim for the required statutory period of ten years.

8. The superior court erred in quieting title in the Detail of Occupation area to Defendant Pawloff. (Conclusion of Law No. 14)

9. The superior court erred in granting an injunction that prohibits the Crosettis from entering the Detail of Occupation area. (Conclusion of Law No. 15).

10. The superior court erred in concluding that Defendant Pawloff is the prevailing party in the civil action. (Conclusion of Law No. 16)

11. The superior court erred in concluding the Crosettis failed to prove their timber trespass claim. (Conclusion of Law No. 17)

12. The superior court erred by ignoring the Crosettis' trespass claim.

13. The superior court erred in entering its August 21, 2019 order denying the Plaintiffs' motion to amend the findings of fact and conclusions of law.

14. The superior court erred in entering an order granting Defendant Pawloff's motion for an award of attorneys' fees and in entering judgment awarding attorneys' fees and costs to Defendant Pawloff.

15. The superior court erred in entering Judgment and Order Granting Fee Simple Title to Defendant Pawloff.

In accordance with RAP 10.4(c), the superior court's findings of fact and conclusions of law are set out in Appendix B.

### **III. ISSUES RELATED TO ASSIGNMENTS OF ERROR**

1. Did the superior court err in concluding that the Defendant satisfied the exclusivity element of an adverse possession claim when the court's conclusion is contradicted by its Finding of Fact No. 14, which found that the Plaintiffs' predecessor had used the disputed area throughout the statutory period for an adverse possession claim? (Assignments of Error Nos. 5, 6, 7, 8, 9, 10, 13, 14, 15)

2. Did the superior court err in concluding that the Defendant, and the Defendant's predecessor, established the elements of an adverse possession claim, when the court's conclusions are not supported by substantial evidence? (Assignments of Error Nos. 1, 2, 3, 5, 6, 7, 8, 9, 10, 13, 14, 15)

3. Did the superior court err in quieting title in favor of the Defendant, when the Defendant failed to plead his quiet title counterclaim

with the specificity required by Washington law? (Assignments of Error Nos. 8, 9, 10, 13, 14, 15)

4. Did the superior court err in denying the Crosettis' claim for timber trespass when there is substantial evidence in the record to support their claim? (Assignments of Error Nos. 4, 10, 11, 13, 14)

#### **IV. STATEMENT OF THE CASE**

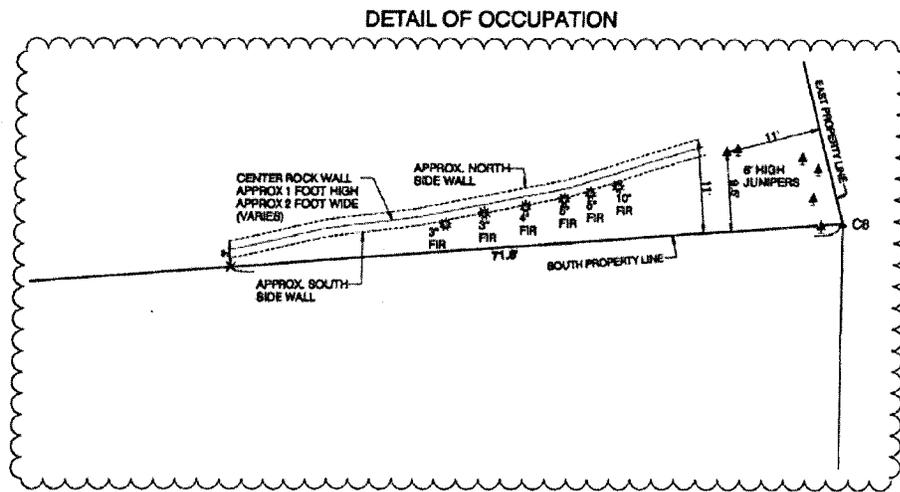
The Crosettis and Pawloff own neighboring single-family homes in Puyallup, Washington, with an boundary between the two properties. Ex. 1, Verbatim Report of Proceeding (VRP) Vol. 1 at 25:25-26:3. The Crosetti Property (Lot 6 on Exhibit 1) lies to the north of the Pawloff Property (Lot 5). *See* Exhibits 1 and 1A,<sup>1</sup> VRP Vol. 1 at 26:14-20. There is a steep slope between the properties. VRP Vol. 2 at 16:13-18.

The area in dispute in this lawsuit, identified as the "Detail of Occupation" on page 2 of Exhibits 1 & 1A, is located near the bottom of the sloped area, and constitutes a wedge-shaped portion of the Crosetti Property. Exs. 1, 1A; VRP Vol. 1 at 26:14-20. The Detail of Occupation depicts six fir trees planted by Pawloff, the juniper (or arborvitae) trees he

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<sup>1</sup> Exhibit 1 is the diagram-sized copy of the survey of the Crosetti Property, while Exhibit 1A is a letter-sized copy of the same survey. For convenience, a copy of Exhibit 1/1A is attached to this brief as Appendix A.

moved onto the Crosetti Property in 2016, and the one-foot tall line of rocks, as they appeared in April 2018:



Detail of Occupation, Exhibits 1 & 1A (page 2).

#### A. The Crosetti Property

The Crosettis purchased their home in June 2017. VRP Vol. 1A at 13:14-21; Ex. 2. They purchased their property from Laszlo and Joelle Csuha (“Csuhas”), who had owned the property since 2005. VRP Vol. 1A at 120:8-11. When the Csuhas purchased the property in 2005, Pawloff was their neighbor. *Id.* at 121:4-7. When the Csuhas sold the property to the Crosettis in 2017, Pawloff remained their neighbor. *Id.* at 121:1-3.

When the Csuhas purchased the property in 2005, there was no wood fence, rock wall or other feature separating their property from the Pawloff property. VRP Vol. 1A at 122:8-125:14, 129:10-131:8, Ex. 12.

While he owned the property, Mr. Csuha considered the boundary to be what the plat map showed it to be: a straight line running from a stake at the front corner of the two lots to the corner of a chain link fence at the rear of the two lots. VRP Vol. 1A at 125:18-25. Accordingly, when he performed yard maintenance, Mr. Csuha maintained the property up to the true property boundary. VRP Vol. 1A at 136:4-16. Over the 12 years he owned the property, Mr. Csuha regularly maintained his property to the true boundary line, including the Detail of Occupation area now claimed by Pawloff, through “weed-whacking” and clearing of brush and other debris. VRP Vol. 1A at 136:4-139:4.

**B. The Dispute Between the Crosettis and Pawloff**

After the Crosettis purchased the Crosetti Property in 2017, they began significant remodeling and yard work on their property. VRP Vol. 1A at 15:16-16:10. On Sunday, April 22, 2018, Mr. Crosetti told Pawloff of the Crosettis’ intention to build a new fence along the property boundary, VRP Vol. 1A at 16:23-18:23. Mr. Crosetti also informed Pawloff that he had ordered a survey to show the property line. VRP Vol. 1A at 18:15-18.

The next day, the surveyors set metal stakes on the corners of each of the boundaries of the Crosetti Property and wooden stakes along the plat line of the property. VRP Vol. 1A at 21:16-19. On Tuesday, April 24, 2018, Mr. Crosetti came home to see that the property line markers had been

pulled up and tossed onto his driveway, and a new orange fence had been erected along the Crosetti lot side of the Detail of Occupation area, with “no trespassing” signs posted on the fence. *Id.* at 21:20-22:2. Mr. Crosetti photographed the orange fence and the discarded property markers. Exs. 18 & 19, VRP Vol. 1A at 22:18-23:20. The orange fence deprived the Crosettis of the use of a portion of their property.

In addition, the Crosettis had a hazelnut tree on their property that was a favorite of Mr. Crosetti. VRP Vol. 1A at 34:20-36:10; Ex. 7. The Crosettis believe that Pawloff cut down the hazelnut tree because Carrie Crosetti observed Pawloff kneeling by the tree’s stump and picking up branches and carrying them off of the Crosetti Property. VRP Vol. 1A at 57:15-58:14; VRP Vol. 2 at 57:24-58:11.

### **C. The Crosettis File Suit**

On April 26, 2018, the Crosettis filed this lawsuit. Clerk’s Papers (CP) at 1-4. In their Complaint, the Crosettis sought a declaratory judgment that the disputed property belongs to the Crosettis and an order enjoining Pawloff from erecting a fence on the Crosettis’ property, or from otherwise coming onto the property. CP at 3. In addition, the Crosettis sought damages for trespass and timber trespass. CP at 3-4.

Pawloff subsequently filed his Answer and Counterclaims. In his Answer, he claimed that a rock wall defined “a wedge-shaped piece of

property north of the property line that is about 25 feet long and 10 feet wide at its widest place” and that this rock wall has served as the property boundary. CP 9. Pawloff alleged that he had taken title to this disputed area through adverse possession, and he asserted trespass and nuisance claims against the Crosettis. CP at 10-11.

Following a bench trial, the Honorable G. Helen Whitener held that Pawloff had proved his counterclaim for adverse possession and granted title to the disputed area and beyond to him. CP at 287 (¶¶ 5-10, 14). The court denied Pawloff’s counterclaims for trespass and nuisance. CP at 287 (¶¶ 12-13). The court also denied the Crosettis’ claim for timber trespass, CP at 288 (¶ 17), without addressing their claim for trespass. On August 21, 2019, the trial court denied the Crosettis’ objections to, and motion to amend, the court’s findings of fact and conclusions of law. CP 289.

Finding Pawloff to be the prevailing party, the court awarded him attorney fees and costs. CP at 287 (¶ 16); 290-92. On August 29, 2019, the Crosettis timely appealed the court’s findings of fact and conclusions of law, the order entered on August 21, 2019, and the order granting Pawloff’s motion for an award of attorneys’ fees. CP 281-92.

## **V. SUMMARY OF THE ARGUMENT**

An adverse possession claim requires actual possession that is open and notorious, continuous and uninterrupted, exclusive, and hostile

throughout the required statutory period. The party claiming adverse possession has the burden of proving each element.

In this case, the Defendant, Alexander Pawloff, had the burden of establishing each element of an adverse possession claim for the 10-year statutory period. Following trial, the superior court issued Findings of Fact and Conclusions of Law in favor of Pawloff, holding that he had established his counterclaim for adverse possession.

The superior court, however, issued Finding of Fact No. 14 which does not support the court's conclusion that Pawloff had the exclusive use of the disputed area necessary for adverse possession. In the finding, the court found that the Crosettis' immediate predecessor had cleared the disputed area on three occasions, including shortly before the property was sold in 2017. This finding, by itself, means that Pawloff cannot establish the exclusivity element necessary for an adverse possession claim. In addition, there is substantial evidence in the record that the Crosettis' predecessor regularly maintained the disputed area, weed-whacking the property at least three times a year and maintaining a trail for his children to use. Because the court's conclusion that Pawloff had established exclusive use is not supported by the Finding of Fact No. 14 or by substantial evidence in the record, Pawloff's adverse possession claim fails as a matter of law.

Moreover, substantial evidence in the record does not support the superior court's conclusion that Pawloff had satisfied the other elements of his adverse possession claim. Thus, the superior court erred in granting Pawloff's adverse possession counterclaim and in granting him his attorney fees as the prevailing party in the quiet title action.

In addition, the superior court erred in rejecting the Crosettis' claim for timber trespass. Substantial evidence at trial established that Pawloff went onto the Crosettis' property to remove a valuable hazelnut tree. For this reason, the court erred in dismissing their claim for timber trespass.

## **VI. ARGUMENT**

### **A. Standard for Review**

The trial court's rulings on the elements of adverse possession are mixed questions of law and fact and are not binding on an appellate court. *Petersen v. Port of Seattle*, 94 Wn.2d 479, 485, 618 P.2d 67 (1980) (“elements of adverse possession are mixed questions of law and fact not binding on this court.”) Following a bench trial, the appellate court determines whether challenged findings of fact are supported by substantial evidence in the record, and if so, whether the findings support the conclusions of law. *Landmark Dev., Inc. v. City of Roy*, 138 Wn.2d 561, 573, 980 P.2d 1234 (1999).

Substantial evidence exists if the record contains “evidence of sufficient quality to persuade a fair minded rational person of the truth of the declared premise.” *World Wide Video, Inc. v. City of Tukwila*, 117 Wn.2d 382, 387, 816 P.2d 18 (1991). Questions of law are reviewed de novo. *Kim v. Lee*, 145 Wn.2d 79, 86, 31 P.3d 665 (2001).

**B. Adverse Possession Requires Actual Possession That is Open and Notorious, Continuous and Uninterrupted, Exclusive, and Hostile For A Ten-Year Period.**

**1. The Ten-Year Statutory Period for Adverse Possession**

Adverse possession as a legal doctrine in Washington is a combination of both statute and case law allowing, under certain circumstances, the possessor of real property who lacks title to the property to acquire title to the possessed property. *See* 17 W.B. Stoebuck & J.W. Weaver, *Wash. Prac.: Real Estate: Property Law* § 8.1 at 505 (2d ed. 2004) (“Stoebuck & Weaver”). A commonly applied statutory basis for adverse possession is found in RCW 4.16.020(1), which provides for a 10-year statute of limitations:

The period prescribed for the commencement of actions shall be as follows:

Within ten years:

(1) For actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery unless it appears that the plaintiff, his or her ancestor, predecessor or grantor was seized or possessed of the premises in question within ten years before the commencement of the action.

RCW 4.16.020(1). To satisfy the statute of limitations when there are successive owners of property, Washington cases allow for the tacking of the periods of possession, provided that there is some level of privity between the owner and the owner's predecessor. *See e.g., Shelton v. Strickland*, 106 Wn. App. 45, 52, 21 P.3d 1179 (2001).

When the Crosettis filed their complaint in April 26, 2018, they had owned the Crosetti Property for less than one year. See VRP Vol. 1A at 13:14-21; Ex. 2. Because the statutory period for establishing adverse possession is 10 years, RCW 4.16.020(1), Pawloff must show that the Crosettis' predecessors in interest, the Csuhas, had actual notice of his adverse use of the Detail of Occupation since at least April 26, 2008, and that his use was exclusive. *Chaplin v. Sanders*, 100 Wn.2d 853, 861, 676 P.2d 431 (1984). In other words, Pawloff must show that the Csuhas knew or should have known that his occupancy of the Detail of Occupation constituted an ownership claim. *Anderson v. Hudak*, 80 Wn. App. 398, 405, 907 P.2d 305 (1995).

As discussed below, Pawloff did not establish that the Crosettis or the Csuhas had actual notice of his adverse possession claim for the required 10-year period. Nor did Pawloff satisfy as a matter of law the requirements of an adverse possession claim.

## **2. The Required Elements of an Adverse Possession Claim.**

At the root of an adverse possession claim is the concept that the possessor must be in actual possession of the property at issue, for the requisite statutory period, and occupying such property in a manner consistent with true ownership. *See, e.g., LeBleu v. Aalgaard*, 193 Wn. App. 66, 82, 371 P.3d 76 (2016). To demonstrate such possession, the party claiming adverse possession must show actual occupation that is: (1) exclusive, (2) continuous and uninterrupted, (3) open and notorious and (4) hostile. *Chaplin v. Sanders*, 100 Wn.2d 853, 857, 676 P.2d 431 (1984); *ITT Rayonier, Inc. v. Bell*, 112 Wn.2d 754, 757, 774 P.2d 6 (1989); *Stoebuck & Weaver*, § 8.8 at 517.

### **a) Exclusive possession**

The possessor's occupation of property must be exclusive to that of the true owner. *ITT Rayonier, Inc.*, 112 Wn.2d at 759. As with the uninterrupted element discussed below, the nature of the property will play a role in determining the requisite level of exclusivity, with courts looking for a level of exclusiveness consistent with activities of a true owner of the property given the nature and location of the property in question. *Id.*

The exclusivity element does not exist if the party claiming adverse possession shares the disputed area with another. *Id.* at 758-59 (citing *Thompson v. Schlittenhart*, 47 Wn. App. 209, 734 P.2d 48, *rev. denied*, 108

Wn.2d 1019 (1987)); Stoebuck & Weaver, § 8.19 at 541 (“[T]he exclusivity element means that an adverse possessor may not share possession of the area claimed with the true owner . . . .”) In *Thompson*, for example, the court held that the exclusivity element was lacking because the alleged adverse possessor had shared the use of the disputed area. 47 Wn. App. at 212.

**b) Continuous and Uninterrupted Use**

Once begun, the possession at issue must exist uninterrupted for the requisite statutory period—10 years under RCW 4.16.020(1). If the possession is interrupted, the possessor must begin the possession again and the statutory time clock is reset. *See Lingvall v. Bartmess*, 97 Wn. App. 245, 255-56, 982 P.2d 690 (1999). “[S]poradic acts on the land, without the placement of permanent improvements, will not satisfy the requirement of uninterrupted possession.” Stoebuck & Weaver, § 8.17 at 537.

**c) Open and Notorious Use**

This element requires that the possession at issue be open and notorious, meaning that it is visible to the true owner of the property in such a fashion that the true owner is put on notice that his or her land is being occupied. Stoebuck & Weaver, § 8.11 at 523. Typically, such open and notorious occupation is shown by the use of the property or construction of physical improvements such as fences or building. *Id.*

**d) Hostility**

Prior to *Chaplin v. Sanders*, hostility required a level of subjective belief by the possessor that he or she occupied the property as the owner and that their claim was not subordinate to the title of the true owner. Overruling decades of prior decisions, the court in *Chaplin* held that the “hostility/claim of right element of adverse possession requires only that the claimant treat the land as his own as against the world throughout the statutory period.” *Chaplin* at 862. Rather than a subjective belief system, *Chaplin* held that the objective acts of the possessor would be the measure of hostility: “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.” *Id.*

As discussed below, the evidence and testimony at trial established that Pawloff failed to satisfy several key elements of an adverse possession claim.

**C. The Superior Court Erred in Granting Pawloff’s Adverse Possession Counterclaim Because the Court’s Findings Defeat the Exclusivity Element and Because Substantial Evidence Does Not Support the Other Requirements of Adverse Possession.**

To establish ownership of the Detail of Occupation area through adverse possession, Pawloff must show actual possession that is: (1) open and notorious, (2) continuous and uninterrupted, (3) exclusive, and (4)

hostile. *Chaplin v. Sanders*, 100 Wn.2d 853, 857, 676 P.2d 431 (1984); *ITT Rayonier, Inc. v. Bell*, 112 Wn.2d 754, 757, 774 P.2d 6 (1989). Each of these elements must exist concurrently for a period of 10 years. RCW 4.16.020(1). Because the holder of legal title is presumed to have possession, the party claiming to have adversely possessed the property has the burden of establishing the existence of each element of an adverse possession claim. *ITT Rayonier*, 112 Wn.2d at 757.

Here, to overcome the presumption that possession lies with the Crosettis as holders of legal title, Pawloff has the burden of proving each element. Because Pawloff failed to establish several of the elements of adverse possession, his claim of ownership of the Detail of Occupation fails.

**1. Pawloff's use of the Detail of Occupation area was not exclusive.**

As noted above, the adverse possessor's occupation of property must be exclusive to that of the true owner. *ITT Rayonier, Inc.*, 112 Wn.2d at 759. Exclusivity in adverse possession does not require the claimant to prove his or her possession was "*absolutely exclusive.*" *Lilly v. Lynch*, 88 Wn. App. 306, 313, 945 P.2d 727 (1997) (emphasis in original). The "occasional, transitory use by the true owner" permitted by the claimant as a "neighborly accommodation" does not nullify a claimant's showing of exclusive possession. *Lilly*, 88 Wn. App. at 313 (quoting Stoebuck at

§ 8.19 (1995)). As Professor Stoebuck noted, neighborly accommodations, such as “the true owner’s occasionally walking across the disputed area or now and then using it for recreational purposes” will not defeat the exclusivity requirement. Stoebuck § 8.19 at 541. However, a true owner’s use of disputed property in a manner “indicat[ing] ownership” is incompatible with the claimant’s attempt to show exclusive possession and will defeat an adverse possession claim. *Bryant v. Palmer Coking Coal Co.*, 86 Wn. App. 204, 217, 936 P.2d 1163 (1997).

**a) Finding of Fact No. 14 does not support the superior court’s conclusion that Pawloff satisfied the exclusive use requirement.**

Here, the superior court found that the Crosetti’s predecessor cleared the disputed area three times, including before the property was sold in 2017:

Lazlo Csuha, during his occupancy of the Crosetti Property cleared the Area of Occupancy three times. The first time was when he purchased the property, the second time was during his ownership of the property and the third time was when the property was to be sold.

Findings of Fact No. 14. CP 285. Indeed, Csuha testified that he completely cleared his property—including the disputed area—three times. VRP Vol. 1A at 134:18-137:25, 146:8-18.

Finding of Fact No. 14, by itself, defeats Pawloff’s adverse possession claim because he cannot, as a matter of law, satisfy the exclusive

use requirement. The thorough clearing of the disputed area was not a neighborly accommodation. Rather, it was an act of ownership incompatible with an adverse possession claim. Because Finding of Fact No. 14 does not support the court's holding that Pawloff satisfied the exclusivity requirement, his adverse possession counterclaim fails as a matter of law.

**b) Substantial evidence in the record does not support the superior court's conclusion that Pawloff satisfied the exclusivity requirement.**

In Conclusions of Law Nos. 4 and 8, the superior court found that Pawloff exclusively used the disputed area. As noted in the preceding section, these conclusions are not supported by Finding of Fact No. 14.

In addition, the court's finding that Pawloff exclusively used the disputed area is not supported by substantial evidence. On the contrary, there was overwhelming evidence in the record that the Crosettis' predecessor, Lazlo Csuha, regularly maintained the disputed Detail of Occupancy area:

Q. So what I would like you to describe for the Court, please, is that when you first moved into your house, or shortly thereafter, what if any was the first maintenance work you did on the grounds?

A. On the grounds. In 2005, I believe we moved in like in April. The property looked pretty chaotic. The previous owner didn't do any maintenance on it. And the first thing I did, I did a weed whacking or weed eating down

to ground level around the property in every direction. It wasn't a complete cleaning, clearing like we did later on. But I did that in 2005, summertime, or when the younger shoots started to come up.

Q. And the clearing that you just described, how far did that go toward Pawloff's house?

...

A. So I cleared it up to the point where Alex had the grass.

...

Q. ... Did you or did you not do any maintenance work on the grounds in 2006?

A. Yes. I believe in 2006, one year after we moved in, we did a complete clearing of the property. We used a chopper. We used a chain saw for the larger trees or brushes and the weed whacker. And it took us two days, a whole weekend to do that.

...

Q. And in 2006, when you did that, how close to Pawloff's house did you go?

A. I went pretty much as far as his green grass, as you can see here.

Q. Okay.

A. In this picture [Ex. 23], it's visible, his green lawn from his house.

VRP Vol 1A at 134:18-137:25.

From 2005 until 2017, Csuha continually maintained the disputed

Detail of Occupation area up to the green grass of Pawloff's yard:

Q. ... So we talked about 2005, 2006. How about 2007? Did you do anything to maintain your property?

A. Yes. I believe the next year, I did weed whacking and weed eating, kind of grass cutting and brush cutting but no larger tree or bushes.

Q. And how far toward Pawloff's house did you go?

A. Similar, similar line.

Q. Okay.

A. I know about three times a year, three times a summer because those are -- those bushes grow really fast. So I had to do it probably three times every summer from, I would say, from April to September.

Q. Okay. Now, your testimony is you did this clearing and weed whacking and brush cutting and so forth approximately three times. How many years did that go on?

A. I did that every year, the low brush weed eating, every year.

Q. When you say "every year," is that every year that you owned the property?

A. That's correct.

Q. And would that have been until 2017, when you sold to Mr. and Mrs. Crosetti?

A. Yes.

VRP Vol 1A at 138:11-139:9.

During cross-examination, Csuha reiterated that he thoroughly cleared the entire property, including the Detail of Occupation area, three times when he owned the Crosetti Property, and he used his weed-eater in

the disputed area three to four times a year. VRP Vol. 1A at 146:8-18, Vol. 2 at 20:8-12. Csuha added that he would prune a type of fern that he called a pafran in the disputed area. VRP Vol. 2 at 21:1-15.

Regarding the six fir trees in the Detail of Occupancy area, Csuha explained that he would go in and around those trees when he was using his weed-whacker:

Q. Mr. Csuha, I'd like to clarify something and that is your testimony about when you were using a weed-eater or a weed-whacker, you sometimes referred to, and I'd like you to explain to the Court, please, what you did when you got to the six fir trees when you were weed-whacking.

A. Okay. I just -- I always started up, and I went going down, started with the flat area, and then I -- and then toward those six trees, and I just weed-eated around them and never went further from there -- from there -- from the six trees, so I never -- I kind of squeezed myself through those six small trees and then weed-eated there, just -- just around them in a -- probably in a -- in a two-foot radius area around it just to take out other wide grass and low-laying brushes completely down to the ground.

VRP Vol. 2 at 35:6-19.

Csuha also testified that when he owned the Crosetti Property, he maintained a trail through the disputed Detail of Occupation area so that his children could visit their friends in an adjoining subdivision. VRP Vol. 2 at 25:2-7, 28:22-30:21, 40:14-41:6; Ex. 8. He cleared the path because his children complained about the bushes:

THE COURT: So when you lived there, there was brush in the area that's now flat?

THE WITNESS: Yes. And that's what I had to clear every time when -- when my kids were complaining that -- that it -- "it hurts when we walk down because the bushes are sticking us." So I went down there, and I cleared it very close to what we see here like underground.

THE COURT: When was the first time you think you created this path through here?

THE WITNESS: Let's see. I purchased the property in 2005. The first time I did it, probably -- I have to guess, but it's probably a close one, probably 2008 or 2009.

THE COURT: And you walked that about fifteen times?

THE WITNESS: Yes, myself and my wife, probably, and my kids a lot more than that and the neighbor kids walked up as well.

VRP Vol. 2 at 41:22-42:14. Csuha stated that his children used the trail "probably 50 times." VRP Vol. 2 at 40:20-23.

Because Csuha's extensive maintenance of the disputed area is an act of true ownership, and not a neighborly accommodation by the Defendant, Pawloff cannot satisfy the exclusivity requirement. The failure to establish the exclusivity requirement, by itself, warrants overturning the superior court's decision to quiet title to Pawloff through adverse possession. As discussed below, there are additional grounds for overturning this decision.

**2. Continuous and uninterrupted use does not exist.**

To satisfy this requirement, the possession at issue must exist uninterrupted for the requisite statutory period of 10 years. *See* RCW 4.16.020(1). If the possession is interrupted, the possessor must begin the possession anew while the statutory time clock is reset. *See Lingvall*, 97 Wn. App. at 255-56.

Here, Csuha's regular maintenance and periodic clearing of the disputed area not only defeated Pawloff's exclusive use, but it also interrupted his possession of the disputed area. The superior court found that Csuha cleared the disputed area shortly before the property was sold in 2017. CP 285 (Finding of Fact No. 14). Csuha's actions while owning the Crosetti Property interrupted Pawloff's possession and restarted the 10-year statutory period. Because Pawloff's possession has not been continuous for 10 years, his adverse possession counterclaim fails as a matter of law.

**3. Pawloff's use of the Detail of Occupation area was not open and notorious.**

At trial, Pawloff claimed adverse possession based upon three factors: (1) a line of fir trees, (2) a rock wall and fence, and (3) yard maintenance. VRP Vol. 4 at 95:9-99:25. As discussed below, the evidence at trial established that these factors were not sufficiently open and notorious to support his claim for adverse possession.

**a) The fir trees and bamboo do not support the open or notorious element.**

Defendant Pawloff stated that he planted six fir trees in the Detail of Occupation. Vol. 3 at 46:13-19; Exs. 9, 116. Under Washington law, planting a line of trees alone is insufficient to establish a claim of adverse possession. *Anderson*, 80 Wn. App. at 399-400 (“[T]he planting of a row of trees alone, without some use that is open and hostile, does not satisfy the elements of adverse possession.”).

In *Anderson*, the court of appeals held that the planting of a row of trees did not satisfy the open and notorious requirement. *Anderson*, 80 Wn. App. at 404. Because *Anderson* concerned a boundary dispute with facts similar to this one, a discussion of the case is helpful.

In 1960, Aline Anderson divided her large parcel, retaining the westerly 150 feet and conveying the easterly 120 feet to her son and daughter-in-law. 80 Wn. App. at 400. Sometime in the early 1960s, her son and daughter-in-law planted a line of trees in their backyard along what they thought was their property line. In 1977, Anderson disposed of her westerly 150 feet. *Anderson*, 80 Wn. App. at 400.

Anderson’s daughter-in-law, Delores, thought the 1977 conveyance granted her a 15-foot strip of land located west of the trees. But a survey conducted by new owners, the Hudaks, showed not only that the 15-foot

strip of land was on the Hudaks' property, but the line of trees was, too. *Id.* The daughter-in-law filed suit to quiet title to the strip of land in herself via adverse possession.

In rejecting the adverse possession claim, the court of appeals held that the Andersons had failed to establish that their possession was open and notorious. *Anderson*, 80 Wn. App. at 404. To satisfy this requirement, a claimant must “[use] the land so that any reasonable person would assume that the claimant is the owner. ... In other words, the claimant must show that the true owner knew, or should have known, that the occupancy constituted an ownership claim.” *Id.* at 405 (citation omitted). Because there were no affirmative acts of ownership, Anderson failed to satisfy the open and notorious requirement. *Id.*

Like the claimant in *Anderson*, Pawloff's planting of trees did not satisfy the open and notorious requirement. The Plaintiffs' predecessor, Lazlo Csuha, believed the fir trees were just part of the natural landscape, noting there were hundreds of shoots and saplings that sprouted around the Crosetti Property during his period of ownership:

Q. ... Did you attach any significance to those six trees?

A. Not at all.

Q. ... When you saw those six trees, did anything about them indicate to you that Pawloff was claiming that was the new property line?

A. No.

Q. Why? If he planted six trees there, why didn't that indicate to you he was now claiming a portion of your property?

A. We live in a neighborhood on the hill where there's too many trees. That was one of the kind of positives we liked about that area, is it's almost like an arboretum, or almost like a forest.

VRP Vol 1A at 123:8-124:2.

As Csuha noted, the trees that Pawloff planted were of the same species as the fir trees that naturally grew on the Crosetti Property. VRP Vol. 1A at 30:6-9. Because they were small and looked the same as the other trees, he believed that they had been naturally seeded by the other trees on the property. VRP Vol. 1A at 29:12-30:5; Vol. 2 at 86:19-87:10.

As with the fir trees, Csuha also maintained the area around the bamboo trees. VRP Vol. 2 at 27:7-28:8. When he purchased the property in 2005, the bamboo trees were very young and he assumed that they had been planted by the previous owner of his property for privacy. VRP Vol. 2 at 13:5-15, 27:24-25.

Similarly, Pawloff's mother, Heike Pawloff, testified that the bamboo and the fir trees that her son planted were to provide visual screening and not to establish a new boundary. VRP Vol. 2 at 111:20-21. Heike Pawloff also testified that her son planted bamboo on the surveyed boundary line and slightly beyond the surveyed line, as a visual screen for

privacy and not to claim a portion of the Crosetti Property. VRP Vol. 2 at 116:12:16, 163:22-165:1; Ex. 112.

Moreover, Pawloff did not plant the trees along the entire length of what he claims to be the property line in the Detail of Occupation. The six trees occupy just a small portion of the Detail of Occupation area that Pawloff claims. Ex 1 & 1A. As such, they were not sufficient to alert the Csuhas or the Crosettis, or anyone else, that Pawloff was claiming that as the property boundary between the lots.

**b) Neither a rock wall nor a fence established open and notorious use.**

To demonstrate actual possession, it is helpful for the party claiming adverse to have maintained a fence, wall, or hedge, for at least part of the distance claimed. Stoebuck & Weaver, § 8.10 at 523. If, however, “adverse possession is claimed up to a fence, it must be a line fence and not a fence used for some other purpose, such as an interior fence to contain animals.” *Id.* § 8.10 at 523.

In his counterclaim, Pawloff asserted that a rock wall, established by a predecessor, marked a boundary over an area that was 25 feet long. CP 9 (¶¶ 7.3-7.4). In the survey conducted in April 2018, a rock wall that is approximately one-foot high and two-feet wide is depicted in a portion of the Detail of Occupation. Exs. 1 & 1A (p. 2).

When he purchased the Crosetti Property in 2005, Csuha testified that there was no rock wall or fence separating his property from the Pawloff property. VRP 1A at 122:8-16. While there were some rocks on the ground, Csuha stated that these rocks did not amount to a wall and that he considered the rocks to be of no significance. VRP 1A at 122:17-25. There was no indication of any claim to his property. VRP 1A at 126:21-127:12.

Moreover, photographs taken by Csuha in 2006 show no evidence of a fence or rock wall even though the pictures depict the area between the two properties. Ex. 12, VRP Vol. 1A at 127:23-131:4; Ex. 23, VRP 1A at 131:9-133:13. Csuha also stated the rocks that appear in Exhibit 9, a photograph taken in 2018, appeared *after* he sold the property. VRP Vol. 2 at 38:10-22.

Csuha's testimony is consistent with the testimony of Steven Crosetti, who testified that the rock wall appeared sometime after July 5, 2017. VRP Vol. 1A at 27:8-17. Comparing Exhibit 15, a photograph taken on July 5, 2017, with Exhibit 8, a photograph taken on December 25, 2017, supports Crosetti's conclusion that the rocks appeared after July 5, 2017. VRP Vol. 1A at 27:4-17. Even Pawloff's mother acknowledged that there are more rocks now than in the past. VRP Vol. 2 at 171:5-14.

Because substantial evidence did not support Pawloff's open and notorious use of the disputed area, his claim for adverse possession fails as a matter of law.

**4. Pawloff's use of the Detail of Occupation area was not hostile.**

To establish hostility, Pawloff must show that he treated "the land as his own as against the world throughout the statutory period." *Chaplin v. Sanders*, 100 Wn.2d at 860-61. Hostility "does not import enmity or ill-will, but rather imports that the claimant is in possession as owner, in contradistinction to holding in recognition of or subordination to the true owner." *Chaplin*, 100 Wn.2d at 857-58 (citation omitted). The ultimate test is exercise of dominion over the land in a manner consistent with actions a true owner would take. *ITT Rayonier*, 112 Wn.2d at 759. In *Anderson*, for example, the court held that the claimant did not establish hostility because merely planting a line of trees did not satisfy the hostility requirement. *Anderson*, 80 Wn. App. at 404.

Here, substantial evidence in the record did not establish that Pawloff used and possessed the Detail of Occupation area as a true owner would have for the entire statutory period. Despite his assertion that he owned the land in the Detail of Occupation, Pawloff never told Csuha that the land Csuha was weed-whacking and maintaining belonged not to the

Csuhas, but to him, nor did he ever rebuild the fence he claims marked the property boundary to prevent Csuha from performing yard work in and around the fir trees and up to the true property line. Because Pawloff never demonstrated the hostility necessary to establish his claim of ownership of the Detail of Occupation area, his adverse possession claim fails.

**5. There was no evidence at trial to support the court's conclusion that Pawloff's predecessor had satisfied the elements of an adverse possession claim for an eight-year period.**

In Conclusion of Law No. 3, the superior court concluded that K.J. Koranda, Pawloff's predecessor, had satisfied the elements of an adverse possession claim for an eight-year period. CP 286. Ms. Koranda did not testify at trial, nor did any neighbor of Ms. Koranda testify. Thus, there was no evidence to support the court's conclusion. Indeed, the court did not enter any findings of fact that would support such a conclusion. With no evidence to support this conclusion of law, it should be disregarded by this Court.

**D. Because Quiet Title Actions Require that the Property Being Claimed Be Described with Certainty, the Court Erred in Granting Pawloff's Adverse Possession Counterclaim.**

An action to quiet title is a common method by which the possessor of property asserts title and ownership of property possessed. *See* RCW 7.28.010 (any "person having a valid and subsisting interest in real property, and a right to the possession thereof, may recover the same by an action in the superior court of the proper county ...") Courts in a quiet title

action sit in equity. *Finch v. Matthews*, 74 Wn.2d 161, 166, 443 P.2d 833 (1968); *Kobza v. Tripp*, 105 Wn. App. 90, 95, 18 P.3d 621 (2001).

A complaint in a quiet title action must describe with certainty the property being claimed in the action:

The plaintiff in such action shall set forth in his complaint the nature of his estate, claim or title to the property, and the defendant may set up a legal or equitable defense to plaintiff's claims; and the superior title, whether legal or equitable, shall prevail. **The property shall be described with such certainty as to enable the possession thereof to be delivered if a recovery be had.**

RCW 7.28.120 (emphasis added).

A defendant who seeks to quiet title must also describe with certainty the property being claimed in the defendant's answer:

The defendant shall not be allowed to give in evidence any estate in himself, herself, or another in the property, or any license or right to the possession thereof unless the same be pleaded in his or her answer. If so pleaded, the nature and duration of such estate, or license or right to the possession, shall be set forth with the certainty and particularity required in a complaint.

RCW 7.28.130. The failure to properly describe the property warrants dismissal of the claim. *See Horr v. Hollis*, 20 Wash. 424, 55 P. 565 (1898).

Here, Defendant Pawloff asserted a counterclaim to quiet title through adverse possession. CP 10. In the Answer, he described the property as "a wedge-shaped piece of property north of the property line that is about 25' long and 10' wide at its widest place." CP 9 (¶ 7.3).

At trial, however, Pawloff greatly and impermissibly expanded his claim for adverse possession, apparently asserting a right to claim a property line that is 71.8 feet long:

Q. ... And you're now changing what you're telling the Court, aren't you? You no longer are saying that you want twenty-five feet of Mr. and Mrs. Crosettis' property, but you're saying that you want seventy-one or maybe more feet than that; is that accurate?

A. Well, when I said "twenty-five," that was -- that was an estimate, and it wasn't really that good. I was referring -- I had, apparently, this photograph -- or this drawing in front of me, and just as it says here, it only says 71.8 feet on here, so I was guessing that that area was -- was twenty-five; it was just a guess. But I refer to this drawing, and, yes, the wedge-shaped portion in this drawing is -- is -- is the claim.

VRP Vol 4 at 34:25-35:12.

Pawloff's failure to accurately describe the disputed area warrants dismissal of his quiet title counterclaim.

**E. The Trial Court Erred In Rejecting Crosettis' Timber Trespass Claim.**

In Washington, liability for timber trespass occurs:

Whenever any person shall cut down, girdle, or otherwise injure, or carry off any tree, . . . timber, or shrub on the land of another person, . . . without lawful authority.

RCW 64.12.030. This statute applies to a "direct trespass," which encompasses the removal of timber, trees, or shrubs from a plaintiff's

property without lawful authority. *Gunn v. Riely*, 185 Wn. App. 517, 526-27, 344 P.3d 1225 (2015).

The timber trespass statute provides for treble damages: “[A]ny judgment for the plaintiff shall be for treble the amount of damages claimed or assessed.” RCW 64.12.030. If, however, the “trespass was casual or involuntary,” then “judgment shall only be given for single damages.” RCW 64.12.040. Thus, to recover treble damages under RCW 64.12.030, a plaintiff must show that the defendant “knowingly and willfully cut trees belonging” to another without lawful authority. *Happy Bunch, LLC v. Grandview N., LLC*, 142 Wn. App. 81, 97, 173 P.3d 959 (2007).

A plaintiff may rely upon circumstantial evidence to establish the willful or reckless commission of a timber trespass. *Seattle-First Nat'l Bank v. Brommers*, 89 Wn.2d 190, 570 P.2d 1035 (1977); *Henriksen v. Lyons*, 33 Wn. App. 123, 125-26, 652 P.2d 18 (1982) (“Willful behavior [in a timber trespass claim] can be established by circumstantial evidence.”) Circumstantial evidence is evidence from which the trier of fact could reasonably infer that an event was caused by the defendant’s conduct. *See e.g., Conrad v. Alderwood Manor*, 119 Wn. App. 275, 285, 78 P.3d 177 (2003). In *Brommers*, the court held that the circumstantial evidence in the record was sufficient to support the trial court’s finding that the defendant

knew that it did not have lawful authority to remove the trees. *Brommers*, 89 Wn.2d at 197-99.

Here, substantial evidence in the record supported the Crosettis' timber trespass claim. Carrie Crosetti, for example, testified that she observed Pawloff kneeling by the hazelnut tree's stump and picking up branches and carrying them off of the Crosetti Property. VRP Vol. 1A at 57:15-58:14; VRP Vol. 2 at 57:24-58:11.

Furthermore, Pawloff admits that he entered onto the Crosettis' property and limbed, chopped, and physically removed vegetation on the Crosettis' property. VRP Vol. 4 at 14:6-14. Notably, he admits that the vegetation he removed was entirely on the Crosettis' property. *Id.* at 14:15-16. Pawloff knew he did not have permission to enter onto the Crosettis' property, but he did so because he claimed that the vegetation was interfering with the growth of trees on his property. *Id.* at 14:17-21. Contrasting Exhibit 7, which depicts the hazelnut tree, with Exhibit 17, which depicts the area after the hazelnut tree had been cut down, Pawloff acknowledged that the hazelnut tree was no longer interfering with his trees. VRP Vol. 4 at 23:14-24:14.

Because substantial evidence in the record supported the Crosettis' timber trespass claim, the court erred in dismissing the claim and their request for treble damages, as provided for in RCW 64.12.030.

**F. The Court Erred In Ignoring the Crosettis' Trespass Claim.**

The trial court's findings of fact and conclusions of law did not address the Crosettis' claim for trespass. CP 3 (§ 5.3); 161-66. Presumably, the court believed that its holding in favor of Pawloff's adverse possession claim negated the Crosettis' trespass claim. As discussed above, however, the trial court erred in granting Pawloff's adverse possession claim.

Thus, Pawloff is liable to the Crosettis in damages for trespass because there is no dispute that Pawloff intentionally erected on the Crosettis Property a fence that interferes with their exclusive use and possession of their property. *See Bradley v. Am. Smelting & Ref. Co.*, 104 Wn.2d 677, 681, 709 P.2d 782 (1985).

That Pawloff desired the property line to be somewhere other than where it is does not save him from liability. *Id.* at 682 ("If the actor knows that the consequences are certain, or substantially certain, to result from his act, and still goes ahead, he is treated by the law as if he had in fact desired to produce the result."). Because he did not meet the elements to establish a claim to the Detail of Occupation by adverse possession, the Detail of Occupation belongs to the Crosettis, and Pawloff is trespassing.

**G. The Crosettis Should Be Awarded Their Attorneys' Fees at Trial and on Appeal.**

The quiet title provisions in RCW Chapter 7.28 authorize the Court to award attorney fees to the prevailing party in a proceeding to quiet title through adverse possession:

The prevailing party in an action asserting title to real property by adverse possession may request the court to award costs and reasonable attorneys' fees. The court may award all or a portion of costs and reasonable attorneys' fees to the prevailing party if, after considering all the facts, the court determines such an award is equitable and just.

RCW 7.28.083(3). In addition, RCW 4.24.630 allows for an award of attorneys' fees whenever a person intentionally commits timber trespass.

The rules of appellate procedure provide for an award of attorneys' fees on appeal when authorized by a contract, a statute, or a recognized ground of equity. RAP 18.1; *Workman v. Klinkenburg*, 6 Wn. App.2d 291, 308-09, 430 P.3d 716 (2018) (citation omitted). In *Workman*, the court held that RCW 7.28.083(3) provides the basis for an award of attorney fees on appeal under RAP 18.1. *Workman*, 6 Wn. App.2d at 309.

Because the Crosettis should be declared the prevailing party in the quiet title and timber trespass actions, they should be awarded their attorneys' fees incurred at trial. Under RAP 18.1, they should also be awarded their attorneys' fees on appeal.

## VII. CONCLUSION

For the above reasons, the Court should reverse the superior court's rulings quieting title to Pawloff through adverse possession and awarding Pawloff his attorneys' fees, and the Crosettis should be held to be the prevailing party in the quiet title action and in their timber trespass and trespass claims. This matter should be remanded to the superior court for a determination of their reasonable attorneys' fees. In addition, the Crosettis should be awarded their attorneys' fees incurred in this appeal.

RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of February, 2020

VANDEBERG JOHNSON &  
GANDARA, LLP

By 

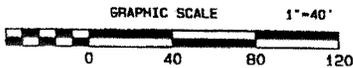
Daniel C. Montopoli, WSBA #26217  
James A. Krueger, WSBA #3408  
Erica A. Doctor, WSBA #43208  
Attorneys for Appellants

## **Appendices**

**Appendix A:** Exhibit 1 (and 1A)

**Appendix B:** Findings of Fact and Conclusions of Law, entered on August 1, 2019 (CP 283-288)

# **APPENDIX A**



### RECORD OF SURVEY

LOCATED IN THE SW 1/4 OF THE NW 1/4 OF SECTION 12  
TOWNSHIP 19 N, RANGE 4 E, WILLAMETTE MERIDIAN  
PIERCE COUNTY, WASHINGTON

TAX PARCEL  
8015000080

#### LEGEND

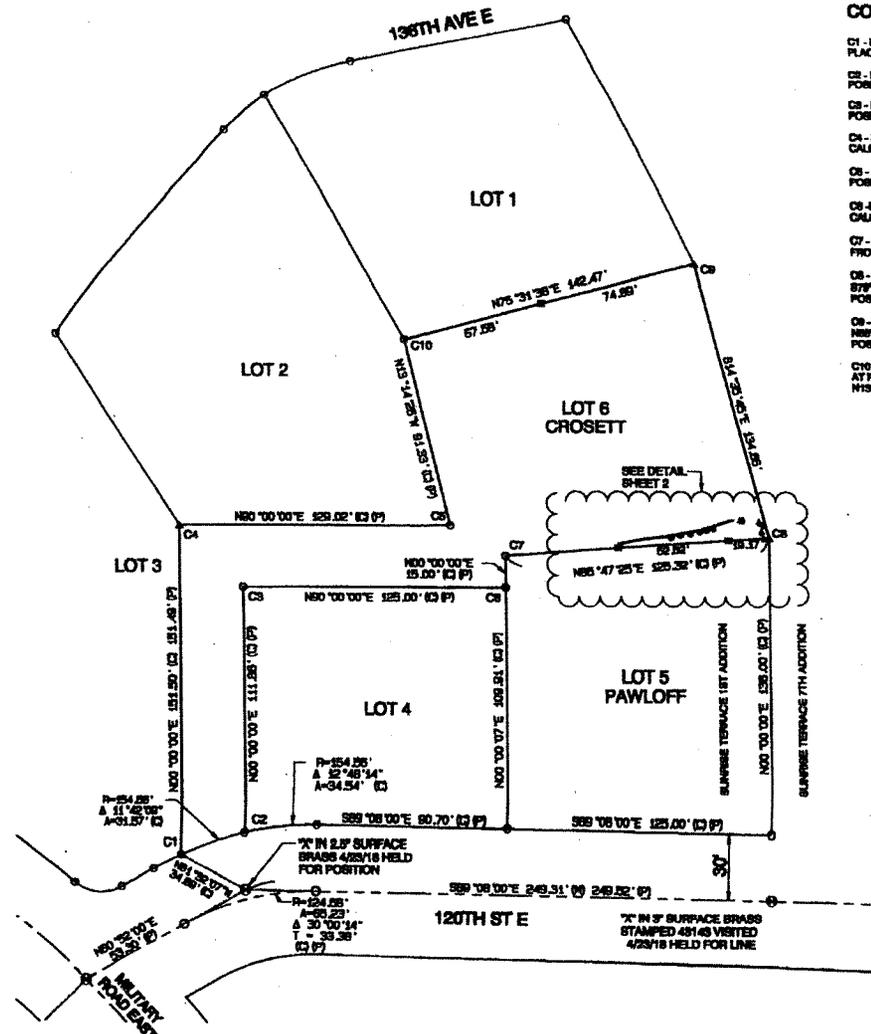
- CALCULATED MONUMENT OR FOUND AS NOTED
- ▲ FOUND 1" SQUARE HEAD BOLT
- CALCULATED CORNER OR FOUND AS NOTED
- SET 2" X 2" WOOD HUB ON LINE
- FIR TREE
- JUNIPER
- (C) CALCULATED
- (M) MEASURED
- (P) PLAT

#### SURVEYOR'S NOTES

1. BASIS OF BEARING: SUNRISE TERRACE FIRST ADDITION
2. THE METHOD OF MONUMENT LOCATION WAS BY FIELD TRAVERSE. THE INSTRUMENT USED WAS A TRIMBLE S-6 TOTAL STATION
3. THIS SURVEY DOES NOT PURPORT TO SHOW ALL EASEMENTS OR UTILITIES EXCEPT AS SHOWN.
4. THIS SURVEY COMPLIES WITH ALL STANDARDS AND GUIDELINES OF THE SURVEY RECORDING ACT CHAPTER 58.09 RCW AND 332-130 WAC
5. ADDITIONAL REFERENCES:  
DEED OF TRUST 201708290769  
BOUNDARY LINE ADJUSTMENT 200001275002  
RECORD OF SURVEY 200110035003  
SUNRISE TERRACE 7TH ADDITION

#### LEGAL DESCRIPTION

LOT 6, SUNRISE TERRACE FIRST ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 26 OF PLATS, PAGES 09 AND 80, RECORDS OF PIERCE COUNTY, WASHINGTON.  
SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.



#### CORNER NOTES

- C1 - FOUND REBAR, NO I.D. CAP AT RECORD POSITION, PLACED I.D. CAP ON REBAR
- C2 - FOUND REBAR AND I.D. CAP L81897A, AT RECORD POSITION
- C3 - FOUND REBAR AND I.D. CAP L81897A, AT RECORD POSITION
- C4 - FOUND 1" BOLT N 89°08'21"E 0.87' FROM CALCULATED POSITION
- C5 - FOUND REBAR AND I.D. CAP L81897A, AT RECORD POSITION
- C6 - FOUND REBAR NO I.D. CAP N81°40'0"E 0.14' FROM CALCULATED POSITION, PLACED I.D. CAP ON REBAR
- C7 - FOUND REBAR AND I.D. CAP N77°21'00"W 0.87' FROM CALCULATED POSITION
- C8 - FOUND 1" BOLT IN CONCRETE WALL, 87°28'51"E 0.87' FROM CALCULATED POSITION
- C9 - FOUND 1" BOLT IN CONCRETE WALL, N89°07'1"E 0.48' FROM CALCULATED POSITION
- C10 - FOUND REBAR AND I.D. CAP L81897A AT RECORD POSITION, ALSO FOUND 1" BOLT N15°08'00"W 0.87' FROM CALCULATED POSITION

ORIGINAL



**AZURE GREEN**  
CONSULTANTS

feasibility planning engineering surveying

409 East Pioneer, Suite A - Puyallup, WA 98372 phone 253.770.3144 fax 253.770.3142

#### AUDITOR'S CERTIFICATE

FILED FOR RECORD THIS 15<sup>th</sup> DAY OF May 2018 AT PPH  
AT THE REQUEST OF CARRIE AND STEVEN CROSETTI  
\$169.00  
AUDITOR'S FEE NO. 201800015003  
Auditor for Julie Anderson  
COUNTY AUDITOR

#### SURVEYOR'S CERTIFICATE

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY SUPERVISION ON APRIL 2018, IN CONFORMANCE WITH THE REQUIREMENTS OF SURVEY RECORDING ACT AT THE REQUEST OF CARRIE AND STEVEN CROSETTI.

THOMAS J. GALVIN  
CERTIFICATE NUMBER 42686



#### RECORD OF SURVEY SHEET 1 OF 2

CARRIE AND STEVEN CROSETTI

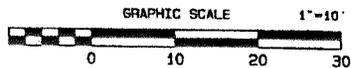
DRAWN BY: TG  
CHECKED: TG  
SCALE: 1 INCH = 40 FEET  
JOB NO: 2807  
DATE: MAY 01, 2018

201805015003



# RECORD OF SURVEY

LOCATED IN THE SW 1/4 OF THE NW 1/4 OF SECTION 12  
TOWNSHIP 19 N, RANGE 4 E, WILLAMETTE MERIDIAN  
PIERCE COUNTY, WASHINGTON



### LEGEND

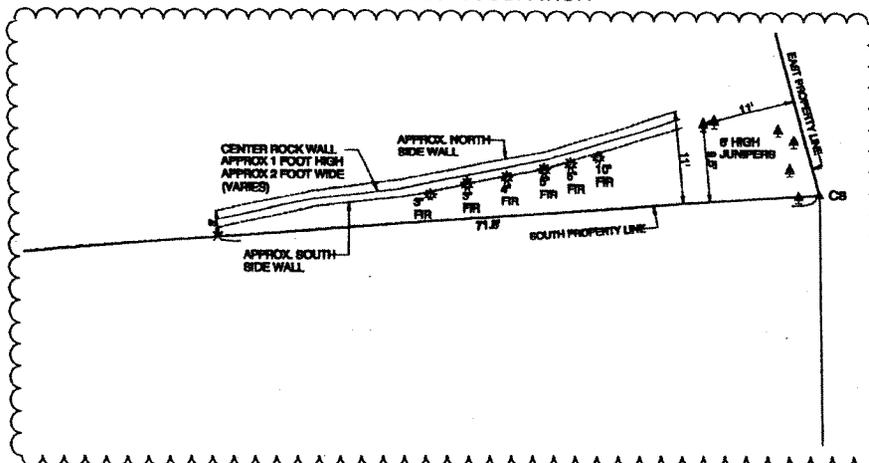
FOUND 1" SQUARE HEAD BOLT ▲

SET 2" X 2" WOOD HUB ON LINE ■

FIR TREE \*

JUNIPER ▲

### DETAIL OF OCCUPATION



### CORNER NOTES

CS - FOUND 1" BOLT IN CONCRETE WALL  
OPPOSITE 8.57' FROM CALCULATED  
POSITION

ORIGINAL

 <b>AZURE GREEN</b> CONSULTANTS <i>feasibility + planning + engineering + surveying</i> 409 East Pioneer, Suite A - Puyallup, WA 98372 phone: 253.770.3144 fax: 253.770.3142		RECORD OF SURVEY SHEET 2 OF 2
		CARRIE AND STEVEN CROSETTI DRAWN BY: TS CHECKED: TS SCALE: 1 INCH = 30 FEET JOB NO: 2507 DATE: MAY 01, 2018

201805015003

# **APPENDIX B**

0045



8/5/2019 1885

**IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE**

STEVEN M. CROSETTI and CARRIE A. CROSETTI, husband and wife,

Plaintiff(s)

vs.

ALEXANDER PAWLOFF and JANE DOE PAWLOFF, husband and wife,

Defendant(s)

Cause No: 18-2-07593-4

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

(OR)

THIS MATTER having come before the Honorable G. Helen Whitener, Judge of the above-entitled Court, for trial on July 1, 2019. Plaintiffs appeared through counsel James Krueger and Erica Doctor. Defendant appeared through counsel Elizabeth Thompson. The Court having heard the testimony of the following witnesses:

- (1) Plaintiff Steven Crosetti
- (2) Plaintiff Carrie Crosetti
- (3) Defendant Alexander Pawloff
- (4) Witness Thomas Galvin
- (5) Witness Ken Fenn
- (6) Witness Laszlo Csuha
- (7) Witness Heike Pawloff

The Court having received Exhibits Nos. 1 and 1a, 2-9, 11-15, 17-19, 21, 23, 25, 27-28, 101, 104, 111-126 and 130-131 admitted into evidence and having considered the arguments of counsel, and being otherwise fully advised in the premises, the Court makes the following:

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**FINDINGS OF FACT**

1. June 27, 2017 Plaintiffs Steven Crosetti and Carrie Crosetti ("Plaintiff Crosetti") purchased the real property located at 13611 Military Road E., Puyallup, WA ("the Crosetti Property") from Laszio and Joelle Csuha. **Ex. No. 2**
2. 2005 to 2017 Laszlo Csuha and his wife Joelle owned the Crosetti Property
3. April 1, 1998 Defendant Pawloff purchased the Pawloff Property located at 13619 120<sup>th</sup> Street E, Puyallup, WA ("the Pawloff Property") from K.J. Koranda. **Ex. No. 101**
4. March 1990 to 1998 K.J. Koranda owned the Pawloff Property.
5. May 2018 the Crosettis commissioned a survey of the Crosetti Property. The survey was completed by Azure Green Consultants, Inc., to locate and document the location of the boundary between the properties. **Ex. No. 1 and 1A**
6. The survey showed that a portion of land described in the Crosetti's deed was occupied by Defendant Pawloff ("Detail of Occupation"). **Ex. No. 1 and 1A**
7. The Detail of Occupation area described the location of a rock wall (North, South and Center), approximately 1 foot high and 2 feet. wide (varies); a line of six fir trees and a small group of 6 feet high Juniper trees. **Ex. No. 1 and 1A**
8. In 1998 after purchasing his property Defendant Pawloff observed in the Detail of Occupation area, a wood and rock wall fence between the Crosetti Property and the Pawloff Property. Defendant Pawloff believed the fence was part of his property and that it was built by the prior owner K.J. Koranda. **Ex. No. 111-112, 114-116, 119, 121 and 123.**
9. During his occupancy Defendant Pawloff did not maintain the wood fence but did maintained the rock wall. At the time the Crosettis purchased the Crosetti Property only the rock wall identified in the survey and a few pieces of wood were left on the ground. **Ex. No. 8-9, 15, 17, 21, 25 and 124.**

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10. Defendant Pawloff has maintained and used the Detail of Occupation as his own property since the date he purchased. He has gradually improved the area landscaping, clearing vegetation, increasing stones on the remaining rock wall, weeding, cultivating the land, planting and caring for native, non-native ornamental bamboo plants and a lawn. **Ex. No. 25, 112, 115-116 and 120-130.**
  
11. On or about the year 2000 Defendant Pawloff in order to exclude others and provide privacy screening planted a row of six small fir trees native to the area and non-native bamboo plants in the Detail of Occupation. **Ex. No. 13-14, 19, 21, 111-112 and 116.**
  
12. Defendant Pawloff's mother and witness Heike Pawloff, is an avid gardener who weeded and documented through photographs the work she and her son did in the Detail of Occupation area during her yearly visits starting in 1998 except for the years 2011 to 2015 when she did not visit. **Ex. No. 116 and 131.**
  
13. In 2016 Defendant Pawloff planted arborvitae / juniper trees in the Detail of Occupation area. **Ex. No. 8-9, 15, 17, 25, 116, 119-120, 122-124 and 130.**
  
14. Lazlo Csuha, during his occupancy of the Crosetti Property cleared the Area of Occupancy three times. The first time was when he purchased the property, the second time was during his ownership of the property and the third time was when the property was to be sold.
  
15. During Csuhas' occupancy Defendant Pawloff weeded, maintained and cultivated the Detail of Occupation area up to the rock wall and the opposite side of the rock wall on the Crosetti Property was overgrown with bushes and not maintained. **Ex. No. 21, 111, 114-117 and 119-124.**
  
16. Lazlo Csuha knew where the boundary line was located on the Crosetti Property and he was aware of Defendant Pawloff's use of the Detail of Occupation area during his occupancy. He noticed the rocks along the path, and the evergreen trees but thought they were indigenous to the area. He did not discuss or communicate to Defendant Pawloff any concerns regarding Defendant Pawloff's use and conduct in the Detail of Occupation area.
  
17. The Crosettis believe Defendant Pawloff cut down their hazelnut tree because Plaintiff Carrie Crosetti one-time observed Defendant Pawloff kneeling near some branches outside the Detail of Occupation area where the hazelnut tree was cut down. Ms. Crosetti did not observe Defendant Pawloff cut or remove any trees planted and the Crosettis never communicated any concerns to Defendant

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Pawloff regarding the cutting down of the hazelnut tree on the Crosetti Property. Defendant Pawloff admits to cutting down shrubbery on the Crosetti's property in an area outside the Detail of Occupation area and denies he cut down the hazelnut tree.

18. Plaintiffs Crosetti have two small Chihuahua dogs that have defecated and urinated on the Pawloff property and have approached Defendant Pawloff in a manner he perceived as aggressive. Plaintiff Carrie Crosetti admits that the dogs did defecate and or urinate and admits that the dogs did escape from her and approached Defendant Pawloff on his property. She immediately cleaned the area where the dog defecated and immediately retrieved the dogs and apologized when they escaped. Plaintiffs Crosetti fenced an area on their property for their dogs which has prevented them from leaving their property and the incidents have not happened again.

19. In 2018 during landscape work on the Crosetti Property, the Crosetti's landscape contractor drove a piece of machinery onto Defendant Pawloff's property creating ruts on the property. Plaintiff Crosetti offered to fix the ruts and Defendant Pawloff declined the offer and decided to fix the ruts himself. **Ex. No. 18.**

**CONCLUSION OF LAW**

1. The Record of Survey completed by Azure Green Consultants, Inc. accurately depict the boundaries of the Crosetti Property, The Pawloff Property and the Detail of Occupation area.
2. The Detail of Occupation area accurately describes the location of a rock wall, six fir trees and 6 feet tall junipers.
3. K.J. Koranda, Defendant Pawloff's immediate predecessor in title, during her eight years of ownership of the Pawloff property possessed and occupied as her own property the Detail of Occupation area exclusively, actually and in an uninterrupted manner, openly, notoriously and in a manner hostile to all other interests.
4. Defendant Pawloff during his ownership of the Pawloff property continued to possess and occupy as his own property the Detail of Occupation area exclusively, actually and in an uninterrupted manner, openly, notoriously and in a manner hostile to all other interests.

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5. Defendant Pawloff has proved his claim of adverse possession of the Detail of Occupation area on the Crosetti's Property.
6. Defendant Pawloff has proved that the Detail of Occupation area has been occupied in a manner that was actual and uninterrupted.
7. Defendant Pawloff has proved that the Detail of Occupation area has been possessed and used in a hostile manner.
8. The Csuhas, the Crosettis immediate predecessor in title, had actual and constructive notice that Defendant Pawloff was possessing and using exclusively the Detail of Occupation area in a way that would lead a reasonable person to assume that he was the owner.
9. Defendant Pawloff has proved that his use of the Detail of Occupation area was open and notorious.
10. Defendant Pawloff has proved that the manner in which he treated the Detail of Occupation area and the character of his possession was hostile.
11. Defendant Pawloff has proved that for a period exceeding 10 years the Detail of Occupation area was adversely possessed first during the eight year occupancy of K.J. Koranda the immediate predecessor in title of the Pawloff property and continued during his occupancy starting in 1998 to the present.
12. Defendant Pawloff has failed to prove his Trespass claim and it is hereby dismissed with prejudice.
13. Defendant Pawloff has failed to prove his Nuisance claim and it is hereby dismissed with prejudice.
14. Defendant Pawloff is granted quiet title in the Detail of Occupation area identified in the survey completed by Azure Green Consultants, Inc.
15. Defendant Pawloff is granted an injunction prohibiting the Crosettis from entering the Pawloff property to include the Detail of Occupation area.
16. Pursuant to RCW 7.28.083(3) Defendant Pawloff is the prevailing party in this civil action and is awarded reasonable attorney fees and costs.

0050

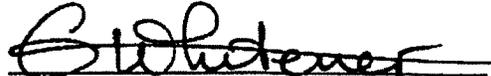
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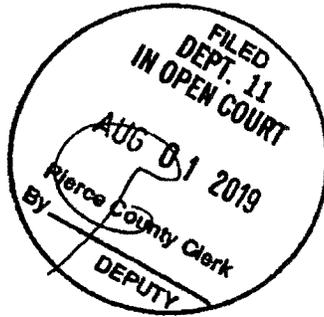
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17. Plaintiff Crosetti has failed to prove their Timber Trespass claim and it is hereby dismissed with prejudice.

DATED this 1<sup>st</sup> day of August 2019.

  
JUDGE G. HELEN WHITENER



## CERTIFICATE OF SERVICE

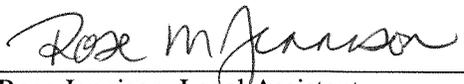
The undersigned makes the following declaration under penalty of perjury as permitted by RCW 9A.72.085.

I am a legal assistant for the firm of Vandenberg Johnson & Gandara. On the 3<sup>rd</sup> day of February, 2020, I caused to be served via email and first class mail a copy of the foregoing document to:

Elizabeth Thompson  
Law Office of Elizabeth Thompson PLLC  
825 Milton Way, No. 1652  
P. O. Box 1652  
Milton, WA 98354  
*ethompson@elizabeththompsonlaw.com*

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

Dated this 3<sup>rd</sup> day of February, 2020, at Tacoma, Washington.

  
\_\_\_\_\_  
Rose Jennison, Legal Assistant

**VANDEBERG JOHNSON & GANDARA**

**February 03, 2020 - 2:28 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 53756-7  
**Appellate Court Case Title:** Steven M. Crosetti, et al, Appellants v. Alexander Pawloff, et al, Respondents  
**Superior Court Case Number:** 18-2-07593-4

**The following documents have been uploaded:**

- 537567\_Briefs\_20200203142743D2978195\_5324.pdf  
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Briefs - Appellants  
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