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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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**REPLY BRIEF OF APPELLANTS**

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## I. INTRODUCTION

The brief of Respondent Alex Pawloff ignores the key issue in this case: whether the superior court's Finding of Fact No. 14 means that Pawloff cannot, as a matter of law, satisfy the exclusive use requirement of an adverse possession claim. In this finding, the court found that Lazlo Csuha, the prior owner of the property owned by Plaintiffs Steven and Carrie Crosetti, had cleared the disputed area three times, including shortly before the Crosettis purchased the property in 2017. This finding, by itself, negates the court's conclusion that Pawloff satisfied the exclusivity requirement, and warrants reversal of the court's ruling. While Pawloff may choose to ignore Finding of Fact No. 14, the law cannot do so.

Furthermore, as discussed in the Appellants' opening brief, substantial evidence at trial established that Pawloff did not meet his burden of proving the other required elements of an adverse possession claim. Thus, the superior court's ruling in favor of Pawloff, 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. For these reasons, and because the superior court erred in dismissing the Crosettis' claims for timber trespass and trespass, the decision of the superior court should be overturned.

## II. ARGUMENT IN REPLY

The party claiming adverse possession must prove 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) ; 17 W.B. Stoebuck & J.W. Weaver, *Wash. Prac.: Real Estate: Property Law* § 8.8 at 517 (2d ed. 2004). Each of these elements must exist concurrently for 10 years. *ITT Rayonier*, at 757; 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. Thus, 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 disputed area fails.

### A. Pawloff's Use of the Disputed Area Was Not Exclusive.

To establish adverse possession, the claimant's occupation of the disputed area must be exclusive to that of the true owner. *ITT Rayonier*, 112 Wn.2d at 759. While occasional use of a disputed area by the holder of legal title will not defeat a claim for adverse possession, use of the disputed

property in a manner “indicat[ing] ownership” by the true owner will defeat a claim for adverse possession. *Bryant v. Palmer Coking Coal Co.*, 86 Wn. App. 204, 217, 936 P.2d 1163 (1997) ; Stoebuck & Weaver, § 8.19 at 541. The exclusivity element does not exist if the party claiming adverse possession shares the disputed area with another. *ITT Rayonier*, 112 Wn.2d 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 (“exclusivity element means that an adverse possessor may not share possession of the area claimed with the true owner . . . .”)

**1. Finding of Fact No. 14, and substantial evidence in the record, establishes that Pawloff cannot satisfy the exclusivity requirement of an adverse possession claim.**

As discussed in the Appellant’s opening brief, the superior court found that the Crosettis’ predecessor cleared the disputed area<sup>1</sup> 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—the Crosettis’ predecessor in interest—testified that he completely cleared the disputed

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<sup>1</sup> The disputed area in this case is sometimes called the Area of Occupancy or the Detail of Occupation.

area three times, including shortly before he sold the property to the Crosettis in 2017. Verbatim Report of Proceedings (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.

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 area:

- He thoroughly cleaned the disputed area three times, with the last time occurring shortly before he sold the property in 2017. VRP Vol. 1A at 146:8-18, Finding of Fact No. 14;
- Csuha, who owned the Crosetti property from 2005 to 2017, regularly maintained the disputed area several times a year while

he owned the property. VRP Vol 1A at 134:18-137:25, 138:11-139:9;

- When Csuha maintained the disputed area he went up to the green grass of Pawloff's yard. VRP Vol 1A at 134:18-135:18, 137:19-138:17;
- Using a "weed whacker", Csuha would go in and around the six fir trees that were in the disputed area. VRP Vol. 2 at 35:6-19;
- Csuha maintained a trail through the disputed area for his children to use when visiting friends in an adjoining subdivision. VRP Vol 2 at 2:2-7, 28:22-30:21, 40:14-41:6, Ex. 8;
- Csuha's children used this trail at least 50 times. VRP Vol 2 at 40:20-23.

These facts demonstrate that Csuha asserted ownership over the disputed area. At a minimum, Csuha shared the disputed property with Pawloff and the sharing of the disputed area with the true owner of the property defeats a claim for adverse possession. *See ITT Rayonier*, 112 Wn.2d at 758-59.

**2. Respondent's brief ignores Finding of Fact No. 14 and glosses over the substantial evidence demonstrating that Pawloff failed to establish the exclusivity requirement.**

In the 43-page brief submitted by Pawloff, there are only two references to Finding of Fact No. 14 and both of these references appear in

tables summarizing the errors alleged by the Crosettis. Resp. Br. at 22, 35. There is no discussion of this finding and no attempt to reconcile this finding with the superior court’s conclusion that Pawloff satisfied the exclusivity requirement. Instead, there is only one sentence in the brief that directly references Finding of Fact No. 14, and this sentence simply refers to other evidence in the record:

|              |   |
|--------------|---|
| CL No. 4 & 8 | <p><b><u>Alleged Error:</u></b> Conclusions of law are not supported by Findings of Fact No. 14</p> <p><b><u>Response:</u></b> Conclusions were supported by substantial evidence of Pawloff’s use of the disputed area, including testimony of Pawloff and his mother and photographs; Laszlo admitted that he noticed the elements of occupation by Pawloff</p> |
|--------------|---|

Resp. Br. at 35.

Pawloff may choose to ignore Finding of Fact No. 14, but this Court should not.

As discussed in the Appellants’ opening brief, a true owner’s use of disputed property in a manner “indicat[ing] ownership” overcomes a claimant’s attempt to show exclusive possession and defeats an adverse possession claim. *Bryant*, 86 Wn. App. at 217. Conversely, a neighborly accommodation, 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 & Weaver*, § 8.19 at 541.

Indeed, the case discussed on pages 31-32 of Pawloff's brief, *Crites v. Koch*, 49 Wn. App. 171, 175-76, 741 P.2d 1005 (1987), is a neighborly accommodations case that is easily distinguishable and not relevant to the case at hand. In *Crites*, the court stated:

[T]he type of use made by the appellants -- occasional parking of equipment and crossing -- was a type of use permitted by the community as a neighborly courtesy. Allowing such use would be expected of an owner and appellants' use of the southern part for such purposes did not vitiate the exclusivity of Crites' possession.

*Crites*, 49 Wn. App. at 175-76. Because *Crites* is not relevant, Pawloff's reliance on it is misplaced.

Here, Csuha's thorough clearing of the disputed area, and his regular maintenance and "weed whacking" of the disputed area, are not acts of neighborly accommodation, but acts of true ownership over the disputed area. As such, they vitiate the exclusivity of Pawloff's possession.

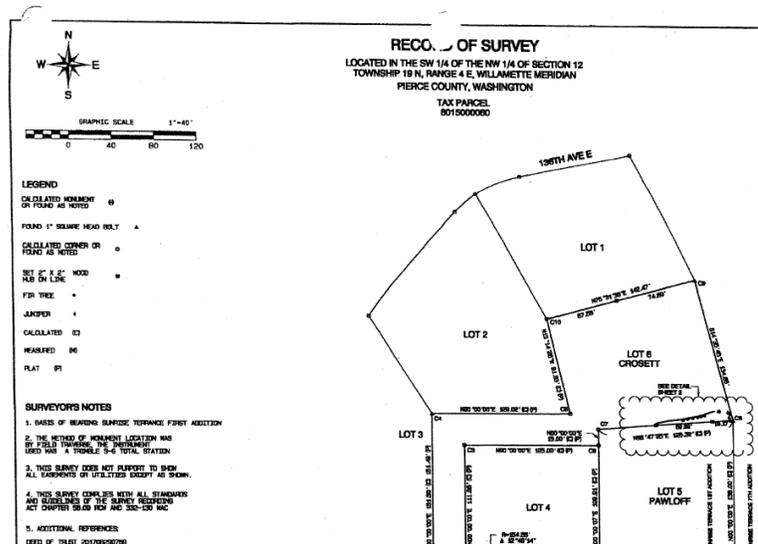
Furthermore, Pawloff's brief acknowledges Csuha testified he cleared the disputed area on three occasions and that he routinely "weed whacked" the disputed area three to four times a year. Resp. Br. at 8-9. Pawloff then tries to discredit Csuha's testimony by stating that there were no weeds to "weed-whack", but in the next sentence states that his mother weeded the *same* area:

Pawloff . . . later testified that Laszlo's statements about "weed-whacking" near the row of six evergreen trees was

not credible because the disputed area is under a mature tree canopy where it is very difficult for anything to grow— there would be nothing for Laszlo to “weed-whack”. VRP Vol. 3 48:4-14. **This was also the area where Pawloff’s mother, Heike Pawloff, weeded annually during her visits.**

Resp. Br. at 10 (emphasis added).

And without citing to the record, Pawloff asserts that the trail maintained by Csuha “could not have been located in the disputed area, which is south of the corner of the chain-link fence.” Resp. Br. at 9. This statement, in addition to being unsupported by a citation to the record, is contradicted by Exhibit 1, which shows the disputed area lying to the north of Pawloff’s boundary with his eastern neighbor:



Ex. 1 (excerpt).

In addition, Pawloff claims that his “adverse possession claim ripened into fee simple title” in 2008. Resp. Br. at 29.

There are two reasons why this claim fails. First, the assertion that his claim ripened in 2008 is not supported by a finding of fact or conclusion of law. Second, this assertion is defeated by Finding of Fact No. 14, which found that Csuha had first cleared the disputed area when he purchased the property in 2005. Finding of Fact No. 14 (CP 285). As discussed above, Csuha's thorough clearing of the disputed area, and his regular maintenance and "weed whacking" of the area, are acts of true ownership that defeat the exclusivity requirement for an adverse possession claim.

**B. 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 again while the statutory time clock is reset. *See Lingvall v. Bartmess*, 97 Wn. App. 245, 255-56, 982 P.2d 690 (1999). In addition, "sporadic acts on the land, without the placement of permanent improvements, will not satisfy the requirement of uninterrupted possession." *Stoebuck & Weaver*, § 8.17 at 537.

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.

In his response brief, Pawloff does not discuss each of the required elements of an adverse possession claim. Instead, he routinely lumps the exclusivity, continuous, open and notorious, and hostility elements together, with little differentiation. *See, e.g.*, Resp. Br. at 2, 27, 28, 29. This failure to discuss each element individually underscores the fact he cannot support all of the individual elements and the resultant lack of substantial evidence to support his adverse possession claim.

**C. Open and Notorious Use Is Not Supported by Substantial Evidence.**

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.*

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 in the Appellant's opening brief, 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 he planted six fir trees in the disputed area. 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 v. Hudak*, 80 Wn. App. 398, 399-400, 907 P.2d 305 (1995) (“[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.”).

Instead, to satisfy the open and notorious 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. 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.

Moreover, Pawloff did not plant the trees along the entire length of what he claims to be the property line in the disputed area. The six trees occupy just a small portion of the disputed area that Pawloff claims. Ex 1 & 1A. As such, they did not alert the Csuhas or the Crosettis, or anyone else, that Pawloff was claiming them 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 possession 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 Csuha’s 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 she observed 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.

In Pawloff's brief, he alleges "continuous, hostile, open and notorious" use of the disputed area going back to 1998. Resp. Br. at 6, 29. Pawloff even goes so far as to state that this use "was not contested at trial." Resp. Br. at 29.

This statement is incorrect, as demonstrated by the following cross-examination of Pawloff's mother:

Q. (By Mr. Krueger) I'm going to hand you three exhibits that you've just testified to, 104, 111, and 112, that have all been admitted into evidence. I'll just set them there. So let's look at -- first at 104, please. And am I correct in understanding your testimony is that you believe this photo was taken in 1998?

A. Yes.

Q. Okay. And that photo was taken standing in your son's yard; is that correct?

A. Yes

Q. And then that would have been taken pointed up the hill at the neighbor's house, my clients, Mr. and Mrs. Crosetti?

A. Correct.

Q. Okay. And do you agree with me that when you look at Exhibit 104, you don't see any line of rocks, do you?

A. I do not.

Q. And you don't see any wooden fence, do you?

A. I do not.

Testimony of Heike Pawloff, VRP Vol. 2 at 154:17-155:9; Ex. 4; see also VRP Vol 2 at 172:10-173:2.

Thus, Pawloff's claim that his open and notorious use of the disputed area dates back to 1998 is not supported by substantial evidence in the record.

**D. The Required Element of Hostility Is Lacking.**

To establish hostility, Pawloff must show that he treated "the land as his own as against the world throughout the statutory period." *Chaplin*, 100 Wn.2d at 860-61. 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. 80 Wn. App. at 404.

Here, substantial evidence did not establish that Pawloff used and possessed the disputed area as a true owner would have for the entire statutory period. Pawloff never told Csuha that the land Csuha was “weed-whacking” and maintaining belonged to Pawloff, nor did he ever rebuild the missing 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.

The Respondent’s brief does not separately address the required element of hostility.

**E. 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.

Indeed, Pawloff admitted at trial that he had no personal knowledge of what were Koranda's actions in the disputed area:

Q. ... Isn't it true that you really don't know who was the original person that put rocks between your two properties?

A. That is correct.

Q. Okay. And you don't know if it was K.J. Koranda, the person that you purchased the property from?

A. That is not correct, the -- what I was told --

Q. Now, I don't want any hearsay. I just want to know what you observed, what you are able to testify to here in court.

A. I was not physically there when the rocks were put there, if that's your question; I was not physically there.

Q. And you don't know when the rocks were first put there, do you?

A. Since I wasn't there, and you're not allowing any hearsay, then, yeah, I wasn't there, so I don't know.

Pawloff Testimony, VRP Vol. 3 at 127:21-128:10.

Moreover, Pawloff's brief essentially concedes this point, stating that the "issue of whether Koranda satisfied the elements of adverse possession is moot ...." Resp. Br. at 35.

With no evidence to support this Conclusion of Law No. 3, it should be disregarded by this Court.

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

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 (emphasis added). 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 his counterclaim, 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. VRP Vol 4 at 34:25-35:12. Thus, at trial, Pawloff increased the disputed area from approximately 25 feet to 71.8 feet long, nearly tripling the size of the disputed area.

Pawloff’s brief ignores this issue and does not address the discrepancy between his counterclaim and the relief awarded to him at trial. Nevertheless, the requirements to describe the claimed property with certainty are set forth in RCW 7.28.130. While Pawloff may choose to ignore this requirement, this Court should not. Pawloff’s failure to accurately describe the disputed area warrants dismissal of his quiet title counterclaim.

**G. The Trial Court Erred In Rejecting Crosettis’ Timber Trespass Claim.**

Liability for timber trespass occurs “[w]hensoever 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. 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, 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).

Circumstantial evidence may be used 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.”) In *Brommers*, the court held that the circumstantial evidence 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 supported the Crosetti’s 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.

Pawloff also admitted 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 admitted that the hazelnut tree was no longer interfering with his trees. VRP Vol. 4 at 23:14-24:14.

In his brief, Pawloff fails to acknowledge that timber trespass can be established by circumstantial evidence. *See* Resp. Br. at 36-39. Instead, Pawloff faults the Crosettis for not providing direct evidence of Pawloff cutting down the hazelnut tree: "Carrie Crosetti did not witness Pawloff cutting any ornamental or merchantable shrubs or trees." Resp. Br. at 38.

This argument, however, ignores the fact that Washington law allows circumstantial evidence to establish timber trespass and there is no requirement that the perpetrator be caught in the act of cutting down a tree.

Moreover, Pawloff's brief does not dispute that he went onto the Crosettis' property without permission to remove vegetation.

For these reasons, the superior court erred in dismissing the timber trespass claim and the Plaintiffs' request for treble damages, as provided for in RCW 64.12.030.

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

In their Complaint, the Crosettis asserted a claim for trespass in addition to their claim for timber trespass. CP 3 (¶ 5.3); 161-66. The trial court's findings of fact and conclusions of law did not address the Plaintiffs' claim for trespass. Similarly, the Respondent's brief also ignores the trespass claim.

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

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

As discussed in the Appellants' opening brief and for the reasons discussed above, the Crosettis should be awarded their attorneys' fees as the prevailing party in an action to quiet title through adverse possession.

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.

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.

### III. CONCLUSION

As discussed above and in the Appellants' opening brief, this Court should reverse the superior court's rulings quieting title to Pawloff and awarding Pawloff his attorneys' fees. In addition, 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 22<sup>nd</sup> day of April, 2020.

VANDEBERG JOHNSON &  
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By 

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## CERTIFICATE OF SERVICE

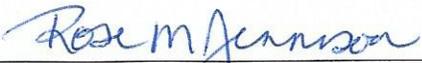
The undersigned makes the following declaration under penalty of perjury as permitted by RCW 9A.72.085.

I am a legal assistant for the firm of Vandenberg Johnson & Gandara. On the 22<sup>nd</sup> day of April, 2020, I caused to be served via email and first class mail a copy of the foregoing document to:

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

Dated this 22<sup>nd</sup> day of April, 2020, at Tacoma, Washington.

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

**VANDEBERG JOHNSON & GANDARA**

**April 22, 2020 - 9:15 AM**

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