

FILED
COURT OF APPEALS
DIVISION II
2020 MAR 25 PM 1:05
STATE OF WASHINGTON
BY *CR*

No. 53756-7-II

Pierce County Superior Court Case No. 18-2-07593-4

IN THE COURT OF APPEALS
STATE OF WASHINGTON

DIVISION II

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

Plaintiffs/Appellants,

v.

ALEXANDER PAWLOFF and JANE DOE PAWLOFF,
husband and wife
Defendant/Respondent

BRIEF OF RESPONDENT

Elizabeth C. Thompson, WSBA #32222
Law Office of
Elizabeth Thompson PLLC
Attorneys for Respondent
Alexander Pawloff
P.O. Box 1652
Milton, WA 98354
Telephone: 253.329.1656

TABLE OF CONTENTS

I.	INTRODUCTION	.....	1
II.	ISSUES PERTAINING TO DECISION	.....	6
III.	STATEMENT OF FACTS	.....	7
	A. Factual Summary	.....	7
	B. Heike Pawloff's Testimony	.....	11
	C. Alexander Pawloff's Testimony	.....	14
	i. Stone Wall	.....	15
	ii. Planting of Bamboo in the Disputed Area	.....	16
	iii. Row of Six Evergreen Trees	.....	17
	iv. Other Activity in the Disputed Area by Pawloff	.....	17
	D. Laszlo's Credibility: Response to Laszlo Csuha's testimony	.....	19
	E. Crosettis' Timber Trespass Claim	.....	20
IV.	ARGUMENT	.....	22
	A. Standard of Review: Substantial Evidence	.....	22
	i. Factual Findings: Substantial Evidence	.....	23
	ii. Witness Credibility	.....	25
	B. Standard for Adverse Possession Claim and Burden of Proof	.....	26
	C. The trial court's findings and conclusions of law concerning Pawloff's adverse possession claim were supported by substantial evidence and determined by the trial court's weighing of credibility of testifying witnesses	.....	26

D.	The trial court's findings and conclusions of law concerning the Crosettis' timber trespass claim were supported by substantial evidence	.....	36
V.	CONCLUSION	.....	40

TABLE OF CONTENTS

CASES

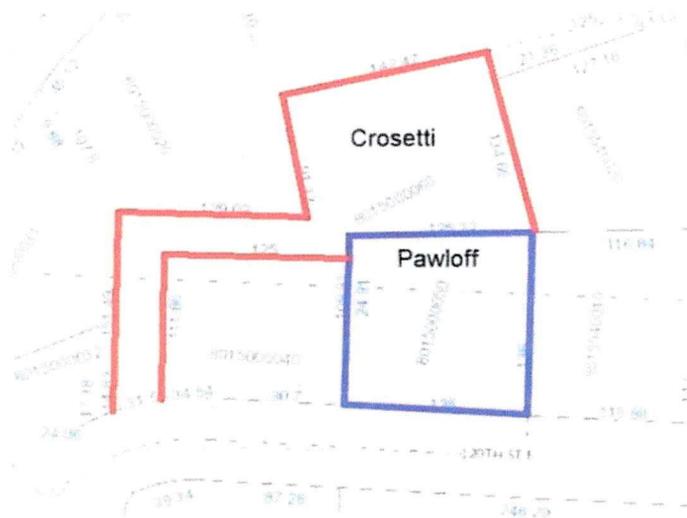
<u>Anderson v. Hudak</u> , 80 Wn.App. 398, 907 P.2d 305 (1995)	33, 34
<u>Broughton Lumber Co. v. BNSF Ry. Co.</u> , 174 Wn.2d 619, 625, 278 P.3d 173 (2012)	37
<u>Bryant v. Palmer Coking Coal Co.</u> , 86 Wn.App. 204, 212-13, 936 P.2d 1163 (1997)	27
<u>Chaplin v. Sanders</u> , 100 Wn.2d 853, 857, 676 P.2d 431 (1984)	26, 31
<u>Chatwood v. Chatwood</u> , 44 Wn.2d 233, 266 P.2d 782 (1954)	25
<u>Crites v. Koch</u> , 49 Wn.App. 171, 174, 741 P.2d 1005 (1987)	31
<u>Danner v. Bartel</u> , 21 Wn.App. 213, 584 P.2d 463 (1978)	31, 32
<u>Harris v. Urell</u> , 1333 Wn.App. 130, 136, 135 P.2d 530 (2006)	26, 32
<u>Hegwine v. Longview Fibre Co., Inc.</u> , 132 Wn.App. 546, 555, 132 P.3d 789 (2006)	24
<u>In re Estate of Jones</u> , 152 Wn.2d 1, 8, 93 P.3d 147 (2004)	24
<u>In re Marriage of Chandola</u> , 180 Wn.2d 632, 327 P.3d 644 (2014)	25
<u>In re Marriage of Katare</u> , 175 Wn.2d 23, 35, 283 P.3d 546 (2012)	23-24
<u>In re Marriage of Neha Vyas Chandola</u> , 180 Wn.2d 632, 642, 327 P.3d 644 (2014)	24

<u><i>In re Marriage of Rideout</i></u> , 150 Wn.2d 337, 350-51, 77 P.3d 1174 (2003)	25
<u><i>In re Marriage of Woffinden</i></u> , 33 Wn.App. 326, 330, 654 P.2d 1219 (1982)	25
<u><i>ITT Rayonier, Inc. v. Bell</i></u> , 112 Wn.2d 754, 774 P.2d 6 (1989)	26
<u><i>Keever & Assocs. V. Randall</i></u> , 129 Wn.App. 733, 737, 119 P.3d 926 (2005)	24
<u><i>Kittitas County v. Allphin</i></u> , 2 Wn.App. 782, 793, 413 P.3d 22 (2018)	24
<u><i>Lilly v. Lynch</i></u> , 88 Wn.App. 306, 313, 945 P.2d 727 (Div. 2 1997)	26, 32
<u><i>Lloyd v. Montecucco</i></u> , 83 Wn.App. 846, 854, 924 P.2d 927 (1996)	27
<u><i>O'Connor v. Dep't of Soc. & Health Servs.</i></u> , 143 Wn.2d 895, 904, 25 P.3d 426 (2001)	24
<u><i>Pendergrast v. Matichuk</i></u> , 186 Wn.2d 556, 567, 379 P.3d 96 (2016)	37
<u><i>Peterson v. Port of Seattle</i></u> , 94 Wn.2d 479, 485, 618 P.2d 67 (1980)	23
<u><i>Ridgeview Props. v. Starbuck</i></u> , 96 Wn.2d 716, 719, 638 P.2d 1231 (1982)	23
<u><i>Skoog v. Seymour</i></u> , 29 Wn.2d 355, 364, 187 P.2d 304 (1947)	27
<u><i>State v. Garza</i></u> , 150 Wn.2d 360, 366, 77 P.3d 347 (2003)	25
<u><i>State v. Hill</i></u> , 123 Wn.2d 641, 644, 870 P.2d 314 (1994)	24
<u><i>State v. Poling</i></u> , 128 Wn.App. 659, 667, 116 P.3d 1054 (2005)	25

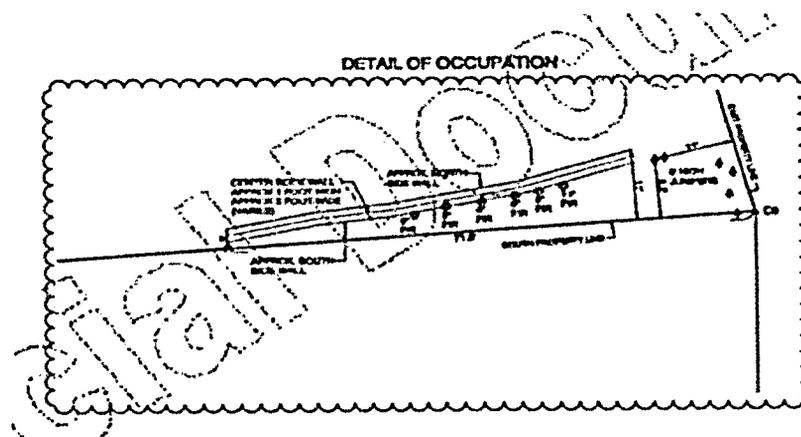
<i>Weyerhaeuser v. Tacoma-Pierce County Health Dep't</i> , 123 <i>Wn.App.</i> 59, 65, 96 <i>P.3d</i> 460 (2004)	24
<i>Workman v. Klinkenburg</i> , 6 <i>Wn.App.2d</i> 291, 308-309, 430 <i>P.3d</i> 716 (2018)	40
<i>Zink v. City of Mesa</i> , 140 <i>Wn.App.</i> 328, 336, 166 <i>P.3d</i> 738 (2007)	24
STATUTES	
4.16.020	26
7.28.083(3)	6, 39, 40
RULES	
<i>RAP</i> 18.1	40, 42
TREATISES	
3 <i>Am. Jur.</i> 2d § 78	31
<i>Laws of 1869</i> , ch. 48 § 556	37

I. INTRODUCTION

Respondent Alexander Pawloff (“Pawloff”) is the owner of a single-family residence located at 13619 120th Street E, Puyallup, Washington (“Pawloff Parcel”). He has owned the Pawloff Parcel for more than 20 years, since April 1, 1998. Since he purchased the property more than 20 years ago, Pawloff has continuously and openly maintained, landscaped and improved a portion of land that a survey disclosed belonged to Pawloff’s neighbor, as the true owner. This area is now considered to be disputed. In June 2017, the Appellants Steven and Carrie Crosetti (the “Crosettis”) purchased the property located at 13611 Military Road E, Puyallup, WA (“Crosetti Parcel”) which is adjacent and to the north of the Pawloff Property. The two parcels are situated as follows:



Soon after purchasing the Crosetti Parcel and in anticipation of constructing a fence between the two properties, the Crosettis had the Crosetti Parcel surveyed by Azure Green Consultants. The survey disclosed that that portion of the area that Pawloff had been maintaining continuously for more than 20 years was within the surveyed boundary of the Crosetti Parcel. The disputed area is prominently included in the survey as a detail entitled “Detail of Occupation”:



The Crosettis sued Pawloff based upon this encroachment, and Pawloff countered with an adverse possession claim based upon his open, notorious, exclusive, continuous and hostile occupation and use of the disputed area for a period exceeding ten years.

From 2005 to 2017, the Crosetti Parcel was owned by Laszlo Csuha (“Csuha”) and his wife. By the time the Cshas purchased the Crosetti Parcel, Pawloff had already owned the Pawloff Parcel for seven years,

during which time he had been exclusively maintaining, landscaping, planting and improving the disputed area. His adverse possession ownership of the disputed area ripened into fee simple title in April 2008, ten years after his purchase. Accordingly, the Crosettis' allegation that Pawloff failed to ripen his adverse possession claim is dependent on the Csuhas' recollection of the use of the disputed area during a brief three-year period, between 2005 and 2008. Only with consistent, credible testimony from the Csuhas could the Crosettis defeat Pawloff's adverse possession claim to the disputed area.

A bench trial was held before Pierce County Superior Court Judge Helen Whitener, who heard testimony from the parties and from numerous additional fact witnesses. After the conclusion of the trial, Judge Whitener entered her Findings of Facts and Conclusions of Law. In summary, Judge Whitener found that Pawloff met his burden concerning the elements of adverse possession with regard to the disputed area and she denied the Crosetti's claims, including the timber trespass claim. She further found that, as a matter of law, Pawloff owned the disputed area (the "Detail of Occupation" in the survey) in fee simple. Judge Whitener further found that Pawloff was the prevailing party and awarded him his attorneys' fees and costs.

Among other things, Judge Whitener found the following facts:

- The 2017 survey showed that a portion of land described in the Crosetti's deed was occupied by Defendant Pawloff ("Detail of Occupation") (Finding of Fact #6);

- 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 (Finding of Fact #7);

- Pawloff maintained and used the Detail or Occupation as his own property since the date he purchased (Finding of Fact #10);

- Pawloff's mother, Heike Pawloff, weeded and documented through photographs the work she and Pawloff 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 (Finding of Fact #12);

- During Cshuas' occupancy Pawloff weeded, maintained and cultivated the Detail of Occupation area up to the rock wall (Finding of Fact #15);

- During Cshuas' occupancy the area to the north of the rock wall was overgrown with bushes and not maintained (Finding of Fact #15);

- Laszlo Csuha knew where the boundary line was located on the Crosetti Property and he was aware of Pawloff's use of the Detail of Occupation area during Csuha's occupancy (Finding of Fact #16);

- Carrie Crosetti did not observe Pawloff cut or remove any trees planted and the Crosettis never communicated any concerns to Pawloff regarding the alleged timber trespass (Finding of Fact #17)

Among other things, Judge Whitener made the following conclusions of law:

- The 2017 survey accurately depicts the boundaries of the Crosetti and Pawloff properties and the Detail of Occupation area (Conclusion of Law #1);

- The Detail of Occupation area accurately describes the location of a rock wall, six fir trees and 6 feet tall junipers (Conclusion of Law #2);

- Pawloff during his ownership of the Pawloff Parcel possessed and occupied 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 (Conclusion of Law #4);

- Pawloff proved his claim of adverse possession of the Detail of Occupation area on the Crosetti's Property (Conclusion of Law #5);

- The Csuhas had actual and constructive notice that Pawloff was possessing and using exclusively the Detail of Occupation area in a way that would lead a reasonable person to assume that he (i.e., Pawloff) was the owner (Conclusion of Law #8);

- Pawloff is granted quiet title in the Detail of Occupation area identified in the survey completed by Azure Green Consultants, Inc. (Conclusion of Law #14);
- Pursuant to RCW 7.28.083(3) Pawloff is the prevailing party and is awarded reasonable attorneys' fees and costs (Conclusion of Law #16); and
- The Crosettis failed to prove their timber trespass claim which is dismissed with prejudice (Conclusion of Law #17).

II. ISSUES PERTAINING TO DECISION

Were the trial court's findings of fact and conclusions of law pertaining to Pawloff's claim of adverse possession of the disputed area through more than 20 years' of continuous, hostile, open and notorious use of said area supported by substantial evidence?

Was there substantial evidence to support the trial court's determination that Pawloff's claim ripened into fee simple ownership through adverse possession?

Was there substantial evidence to support the trial court's determination that Pawloff did not commit timber trespass?

Was the trial court within its discretion to award to Pawloff attorneys' fees and costs, pursuant to 7.28.083(3)?

III. STATEMENT OF FACTS

A. Factual Summary

Pawloff purchased the Pawloff Parcel on April 1, 1998 from its prior owner, K.J. Koranda. At that time, a split-rail and stone wall served as the demarcation between the Pawloff Parcel and the Crosetti Parcel. The stone wall was constructed by K.J. Koranda and it bordered a flat planting bed on the Pawloff side of the stone wall. Pawloff has owned and resided at the Pawloff Parcel continuously since he purchased it.

From the time Pawloff purchased his property, he maintained the area on his side of the stone wall that he recognized as the boundary between his property and the Crosetti Parcel. Over the years, Pawloff continued the landscape development of that area, clearing vegetation and planting bamboo, a row of six evergreen trees along the boundary and repairing the stone wall. Pawloff and his mother, who visited regularly and stayed at the residence, weeded, cleared and maintained the area up to the stone wall from 1998 to the present day.

In April 2005, Mr. and Mrs. Csuha (the "Csuhas") purchased the Crosetti Parcel. They owned the parcel for 12 years and sold it to the Crosettis in June 2017. Laszlo Csuha ("Laszlo") testified at the trial. He conceded that during the time the Csuhas owned the Crosetti Parcel, they never planted anything in the disputed area. *VRP Vol. 1A at 148:8-15*. The

Csuhas never surveyed their property. *VRP Vol. 1A at 144:15-20*. To determine the boundary line with the Pawloff Parcel, Laszlo “eye-balled” the property line from his driveway looking westerly to a chain-link fence at the westerly end of the property. *VRP Vol. 2 at 8:8-25; 10:1-25*. When looking down what he thought was his property line, Laszlo noticed the six evergreen trees planted in a row by Pawloff. *VRP Vol. 2 at 10:24-25; 11:1-11*. Yet, he testified that he never confronted Pawloff concerning any encroachment. *VRP Vol. 2 at 13:5-10*.

Laszlo testified that, as early as 2005, he noticed the bamboo planted by Pawloff, he acknowledged that bamboo was not a native plant and that it was planted as a privacy screen. *VRP Vol. 1A at 148:19-25; VRP Vol. 1A at 149:1; 149:11-21*. Laszlo testified that, although he thought the bamboo was on his property, he never confronted Pawloff about the encroachment. *VRP Vol. 2 at 13:5-10; 12:19-22*. Laszlo also noticed the wood portions of the stone wall as early as 2005. *VRP Vol. 1A at 149:25; 150:1-3*. This was the same timeframe that he noticed the row of six evergreen trees, and also noticed that all the trees were approximately the same age. *VRP Vol. 2 at 11:14-16; VRP Vol. 1A at 150:23-25; 151:1; 152:25; 153:1-6*.

Laszlo testified that he rarely cleared or did any work on the sloped area of the Crosetti Parcel, just north of the disputed area. *VRP Vol. 2 at 20:2-5*. The extent of his yard work over the 12 years he owned the property

consisted of clearing the property three times (once when he bought the property and then when he sold it, and once in-between) and some “weed-whacking” that he did three or four times a year, allegedly in the disputed area. However, Laszlo never “weed-whacked” the bamboo or the row of evergreen trees – these he left alone. *VRP Vol. 2 at 20:18-20*. Admittedly he never pruned, planted, barked, mulched, water, fertilized, gardened or otherwise maintained anything in the disputed area. *VRP Vol. 2 at 21:1-3; 21:20-25; 22:1-15*.

Laszlo testified that, near the sloped portion of his yard, he created a trail for his children to visit neighbors. *VRP Vol. 2 at 24:24-25; 25:1*. However, according to Laszlo’s own testimony, the trail was located on that portion of the Crosetti Parcel that was covered in brush, shrubs and blackberries, not the disputed area, which was covered by a mature tree canopy where little vegetation grew. *VRP Vol. 2 at 25:2-7*. Laszlo testified that the trail ran north of the corner of the chain-link fence that defines the boundary between the Pawloff Parcel and its easterly neighbor. *VRP Vol. 2 at 25:21-25; 26:1-4*. As such, the trail could not have been located in the disputed area, which is south of the corner of the chain-link fence.

In June 2017, the Csuhás sold the Crosetti Parcel to the Crosettis. The Csuhás provided the Crosettis with a Seller’s Disclosure (Form 17), which requires the disclosure of any known encroachment or boundary

disputes. *VRP Vol. 1A at 143:21-25; 144:1-6*. Despite allegedly being aware that Pawloff was encroaching on his property (*VRP Vol. 2 at 11:14-16*), Laszlo never disclosed to the Crosettis any encroachment issue with Pawloff, including in the Seller's Disclosure Form. *See id.* Laszlo conceded that he never commented on the "shocking" encroachment by Pawloff until after the Crosettis filed a civil action (and no doubt after the Crosettis tendered the claim to the Csuhas under the Statutory Warranty Deed conveyance). *VRP Vol. 1A at 155:4-7*.

In summary, during the 12 years the Csuhas owned the Crosetti Parcel, Laszlo admitted under oath that they barely maintained the yard, only "weed-whacking" three or four times a year and clearing the sloped area three times in twelve years (only the first of which is relevant to Pawloff's adverse possession claim). Pawloff, who witnessed Laszlo's testimony, 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. Also stretching credulity, Laszlo alleged he knew that Pawloff encroached on his property as early as 2006-2007, yet

he never said anything to Pawloff about the encroachment and failed to disclose any encroachment to the purchasers.

Pawloff's mother, Heike Pawloff ("Heike"), testified at trial. She visited Pawloff at the Pawloff Parcel annually for two to three weeks at a time, every year between 1998 and 2012, staying at the house. *VRP Vol. 2 at 99:15-18; 101:1-3; 102:7-16; 110:24-25; 111:1; 119:7012; 120: 24-25; 121:1-2; 141:4-12; 142:5-7; 142: 22-24; 144:15-16; 144:17-18; 145:17-20*. Both Pawloff and Heike testified extensively at trial, going into detail of the work Pawloff did in the disputed area between 1998 and 2018. Their detailed and extensive testimony was accompanied by numerous photographs taken by them documenting the work done in this part of the yard. Pawloff's and Heike's testimony regarding the work done in the disputed area by Pawloff over a period of 20 years was not contested by admissible evidence at trial.

B. Heike Pawloff's Testimony

Pawloff was very close to his parents, who came to visit him nearly every year after he purchased the Pawloff Parcel. His mother, Heike, continued the annual visits after his father passed away. An avid gardener, Heike took more than a passing interest in the development of the property's yard over the years, including the disputed area.

Heike initially visited the Pawloff Parcel in the summer of 1998 when she stayed at the property for two weeks. *VRP Vol. 2 at 102:7-16; 109:1-7*. Heike noticed the stone and split-rail wall, which she said was intact at that time. *See id.* During her second visit in April 1999, when she stayed for three weeks, she observed the bamboo plant that Pawloff had planted in the disputed area, very close to the stone wall. *VRP Vol. 2 at 111:15-19; 111:20-21; 116:13-20*. She noticed that her son had begun to clear out the disputed area, which she referred to as a jungle. *VRP Vol. 2 at 115:4-10*. Heike documented the work on the Pawloff Parcel yard through photographs that she kept in scrapbooks. *VRP Vol. 2 at 125:10-13*.

Heike testified that, in 1999 and 2000, Pawloff planted a row of six evenly spaced evergreen trees and additional bamboo in the disputed area. *VRP Vol. 2 at 130:18-21; 131:1-2; 132:14-16; 133:11-12; 133:20-25; 134:1-5*. The new bamboo was planted in the disputed area. In 2000, Heike photographed the stone wall and split-rail fence which she said looked the same as it did in 1998. *VRP Vol. 2 at 135:14-19*. In her following annual visits, Heike noticed that Pawloff continued to clear out the area and was maintaining and keeping the disputed area neat. *VRP Vol. 2 at 141:17-25; 142:5-7; 143:2-12*. She testified that in 2006 the six evergreen trees were more mature and the bamboo plants were still in place. *VRP Vol. 2 at 143:24-25; 144:1-12*.

Heike continued to make annual visits, staying with Pawloff, until an interruption in 2012 due to her husband's health. *VRP Vol. 2 at 144:15-18; 145:17-20; VRP Vol. 2 at 146:16-19*. Her next visit was in 2016, when she visited and stayed with Pawloff on two occasions. *VRP Vol. 2 at 146:20-25*. She noticed that Pawloff had put a retaining wall/terrace in the backyard near the stone wall and had added beauty bark in the disputed area. *VRP Vol. 2 at 147:15-19; 148:9-18*. He had also completely cleared out the disputed area and placed a weed barrier under the beauty bark. *See id.* Although the wood pieces of the wall had deteriorated, the stone wall was in place. *VRP Vol. 2 at 149:1-5*.

Heike visited next in 2017, staying with Pawloff for three weeks. *VRP Vol. 2 at 149:10-11*. During her visits in 2016 and 2017, she continued to weed (to the extent any weeding was necessary), and she would turn over the beauty bark to get the deep brown color on top. *VRP Vol. 2 at 149:12-21*. She visited for three weeks in 2018, and testified that the disputed area, under Pawloff's maintenance, looked clean and well cared for. *VRP Vol. 2 at 150:14-25*. She confirmed, in her testimony, that as of her visit in 2018, the bamboo, the row of six evergreen trees, and the stone wall were all clearly visible in the disputed area. *VRP Vol. 2 at 151:3-13*. She noted that the stone wall appeared more solid, with more rocks on it. *VRP Vol. 2 at 151:14-18*.

C. Alexander Pawloff's Testimony

Pawloff testified at trial about his 20-plus years at the Pawloff Parcel and his extensive use of the disputed area. *VRP Vol. 3 at 9:4-9*. He purchased the property from K.J. Koranda in 1998, who he personally met. *VRP Vol. 3 at 13:9-11*. He began taking photographs of the house and yard in 1998, to record the work he was doing and share with his East Coast parents. *VRP Vol. 3 at 17:22-25; 18:1-6*. Pawloff testified that he believed the boundary of his property and the Crosetti Parcel was defined by an existing stone and split-rail wall that traveled in an east-west direction almost the full length of the property, creating a boundary between the lots. *VRP Vol. 3 at 21:3-24*. He had never surveyed his property. *VRP Vol. 3 at 21:25; 22:1-2*.

Pawloff began maintaining and working in the disputed area in 1998. *VRP Vol. 3 at 27:12-25; 28:1-19*. At that time, the Crosetti Parcel was owned by Mr. and Mrs. Lenfesty and, according to Pawloff, they never challenged his use of the disputed area. *VRP Vol. 3 at 23:2-7*. The Lenfestys (barely) maintained the area north of the stone wall and Pawloff maintained the area south of the wall. *VRP Vol. 3 at 23:7-9*. Over the course of his ownership, and certainly by 2006, Pawloff had enhanced the existing features (i.e., the stone wall) and added new features that came to define the disputed area (i.e., bamboo plants, row of evergreen trees, irrigation system

and beauty bark). The testimony concerning his involvement in the disputed area was supported by photographic evidence and was uncontested. Those features are discussed more fully below.

i. Stone Wall

Pawloff testified that when he purchased the Pawloff property in 1998, there was a stone wall topped by the remains of a deteriorating split-rail wood fence that ran in an east-west direction. The stone wall was slightly flattened out, with stones having been dislodged and the wood was in poor shape. *VRP Vol. 3 at 20:3-18*. The wall had been constructed by K.J. Koranda, the previous owner of the property. *VRP Vol. 3 at 20:23-25, 21:1-2*. Beginning in 1998 and continuing through the years, Pawloff took the rocks near the stone wall, gathered them and reassembled the wall, placing the stones back on the wall. *VRP Vol. 3 at 20:3-18*.

Pawloff testified that in 1998 the stone wall was located exactly where the Crosetti's survey crew measured it in 2017; however, he had added approximately 8-10 additional feet to the wall, in a westerly direction. *VRP Vol. 3 at 24:1-16; 25:17-21*. He did this by placing rocks he found in and around the disputed area evenly across the stone wall, rebuilding it and cleaning it up. *VRP Vol. 3 at 74:21-25; 75:1-17*. Exhibit 116 depicts the condition of the stone wall and wood fence at the time that the Csuhas bought the Crosetti Parcel in 2005; when Laszlo alleged there was no stone

wall. *VRP Vol. 3 at 48:21-24*. The photographic evidence contradicted Laszlo's testimony. Pawloff testified that Exhibit 123 accurately depicts the stone wall with the additional stones he had placed on it. *VRP Vol. 3 at 76:2-10*.

The evidence at trial established that in 1998 there was a stone wall and remnants of a split-rail wood fence that had been on top of the wall. The wall was in disrepair; however, it provided a clear visual barrier between the Pawloff and Crosetti parcels. During the next 20 years, Pawloff cleared the area of loose rocks, placing those back on the wall and also extending the wall an additional 8-10 feet to the west.

ii. Planting of Bamboo in the Disputed Area

As part of Pawloff's cultivation of the disputed area, he planted bamboo in 1998. *VRP Vol. 3 at 31:8-25; 32:1-3; 33:5-6*. He watered and fertilized the bamboo. *VRP Vol. 3 at 32:7-15*. In 2000, he planted another bamboo, which he believed would grow more quickly to create a visual barrier. *VRP Vol. 3 at 32:16-19; 33:9-16*. His mother, Heike, testified extensively about seeing the bamboo from 1999 to the present. *VRP Vol. 2 111:20-21; 114:3-5; 116:13-20; 117:20-25; 118:1-2; 133:11-12; 133:20-25; 134:1-5; 134:11-15; 151:3-13*. The bamboo was also clearly visible in numerous photographs taken over a 20-year period. *See, e.g., Ex. 19, 21, 111, 112, 116*. Laszlo testified that he noticed the bamboo in the disputed

area as early as 2005. *VRP Vol. 1A at 148:19-25; VRP Vol. 1A at 149:1; 149:11-21.*

iii. Row of Six Evergreen Trees

As part of his effort to create a barrier and visual screen between his backyard and the Crosetti Parcel, Pawloff planted a row of six evenly spaced evergreen trees on his side of the stone wall and in the disputed area. *VRP Vol. 3 at 29:6-24, Exhibit 114 and 116.* He planted the trees to create a visual barrier, and he gave them enough room to grow, but be close enough together to be a wall of green. *VRP Vol. 3 at 30:6-11.* He cleared out vegetation and debris in the disputed area before planting the six trees. *VRP Vol. 3 at 40:1-5, Exhibit 119, 121.* He added a sprinkler system in the disputed area, to water the trees. *VRP Vol. 3 at 40:8-12.* Pawloff testified that by 2014, the six evergreen trees had reached 30-40 feet in height. *VRP Vol. 3 at 63:12-22. See also Exhibit 122, 123, 130.*

Pawloff heard Laszlo's testimony about "weed-whacking" around the six evergreen trees and found that testimony less than credible. Pawloff testified that to do so, Laszlo would have had to step over the stone wall and would have, by necessity, noticed the wall. *VRP Vol. 3 at 48:25; 49:1-20.*

iv. Other Activity in the Disputed Area by Pawloff

Pawloff testified as to other activities he conducted in the disputed area during his 20 years at the Pawloff Parcel. Pawloff added an irrigation

system in the disputed area and, when grass began to grow in the area, he mowed the grass. *VRP Vol. 3 at 40:10-14*. In 2000, he removed an extremely large tree stump located in the disputed area. *VRP Vol. 3 at 40:15-22; 42:4-11; 42:19-20*. See also *Exhibit 115*. He kept the area underneath the mature trees in the disputed area cleaned of debris, cutting down growth and mowing. *VRP Vol. 3 at 82:3-21*. See *Exhibits 120, 121, 122 and 123*.

Pawloff added a weed barrier, beauty bark, and decorative elements, including a retaining wall, in the area. *VRP Vol. 3 at 57:13-25; 58:12-24; 69:8-15*. See *Exhibits 120, 121, 122 and 123*. In 2012, he stopped watering the area because it was difficult to get anything to grow under the mature canopy; however, he continued to maintain, mow and prune the area, and his mother would weed during her visits. *VRP Vol. 3 at 58:12-24; 59:3-20*. His mother also freshened the beauty bark by turning it to reveal the dark brown color. Pawloff pruned wild vegetation north of the stone wall that was growing into his property since no one was doing maintenance on the Crosetti Parcel. *VRP Vol. 3 at 104:7-24*.

By 2016, the beauty bark placed by Pawloff had been in place for some time, however, no one ever confronted Pawloff about it. *VRP Vol. 3 at 72:1-11*. Around 2014-2016, Pawloff planted arborvitae plants as part of the visual barrier he was creating along what he believed was the property line. *VRP Vol. 3 at 73:12-25; 74:1-16*.

D. Laszlo's Credibility: Response to Laszlo Csuha's testimony

Pawloff was present during Laszlo's testimony at trial, and Pawloff testified regarding certain disparities in Laszlo's testimony. As mentioned above, Pawloff noted that, had Laszlo actually "weed-whacked" around the row of six evergreen trees, he would have had to step over the stone wall and, as such, would have noticed it, which Laszlo denies seeing until after he sold the property to the Crosettis. *VRP Vol. 3 at 48:25; 49:1-20.*

Additionally, Pawloff noted that had Laszlo "weed-whacked" by the row of trees, Pawloff would most certainly have seen Laszlo and would have confronted him. *See id.* Pawloff testified that he works from home, and that his office area faces the disputed area through windows. *VRP Vol. 3 at 49:21-25; 50:1-25; 51:1-15.* The windows are about 30 feet from the disputed area. *VRP Vol. 3 at 55:17-20.* Pawloff was at the house 24/7 and yet never saw Laszlo "weed-whacking" in the disputed area. *VRP Vol. 3 at 60:11-12; 111:24-25; 112:1-10.*

Pawloff testified that, from the time he purchased the house through 2012, he hardly saw any maintenance done at all on the Crosetti Parcel. *VRP Vol. 3 at 59:21-25; 60:1-4.* Exhibit 119, a photograph taken by Pawloff in 2014, shows the distinction between the land to the north of the stone wall (i.e., the Crosetti Parcel) and the land south of the stone wall (the Pawloff Parcel) in terms of maintenance. *VRP Vol. 3 at 65:15-25. See also Exhibit*

119. The stone wall, bamboo, and row of trees stand out as a clear demarcation between the land treated by Pawloff as his own and the land belonging to the owners of the Crosetti Parcel.

E. Crosettis' Timber Trespass Claim

The Crosettis' timber trespass claim, alleging that Pawloff cut down a large, ornamental hazelnut tree with a 24-foot canopy, was based solely on the personal knowledge of Carrie Crosetti. She saw Pawloff on the Crosetti Parcel carrying branches. However, she did not even know that there was a hazelnut tree in the area, or that it was missing, until she later spoke with her husband, who noticed it was gone.

Carrie Crosetti and Pawloff – the only two with personal knowledge concerning the alleged timber trespass incident – both testified at trial. Pawloff testified that he was clearing branches of a shrub or plant that he believed was dead when the Crosettis' granddaughter asked if she could help him. *VRP Vol. 3 at 105:3-25; 106:1-3*. He was north of the wall (i.e., on the Crosetti Parcel), however, he did not remove any ornamental plant or hazelnut tree. *VRP Vol. 3 at 106:11-25; 107:9-11; 108:1-8*. The vegetation he removed was thin, with branches engulfed in blackberry bushes and was not a hazelnut or ornamental tree. *VRP Vol. 3 at 56:4-14*. The plant was not manicured or cultivated and Pawloff thought he was doing the Crosettis a favor by removing vegetation that had no value. *VRP*

Vol. 3 at 57:11-14. He removed the plant because the overgrowth from the Crosetti Parcel would encroach into his property.

Carrie Crosetti conceded that she did not see Pawloff cut down anything. *VRP Vol. 2 at 71:23-25; 72:1-2.* She did not see Pawloff with a cutting tool of any kind or hear any tools such as saws being operated. *VRP Vol. 2 at 72:9-11.* She also conceded that when she saw Pawloff, she did not know whether he was on her property or not. *VRP Vol. 2 at 72:23-25; 73:1-25; 74:1-15.* At the time, she was more concerned about who was talking with her granddaughter.

Carrie Crosetti further testified that she did not notice any ornamental tree missing until her husband noticed the missing tree and that she was speculating, after the fact, as to whether the branches Pawloff had were from the hazelnut tree at all. *VRP Vol. 2 at 82:11-16.* She also admitted that she did not confront Pawloff at the time about the trespass and admitted the Crosettis had not had an arborist or expert come out to confirm that the tree was actually a hazelnut. *VRP Vol. 2 at 77:25; 78:1-7; 79:24-25; 80:1-3; 83:19-21.*

Ultimately, Pawloff testified that during the twenty years he has lived at the Pawloff Parcel and maintained the disputed area, no one else has ever maintained the disputed area. *VRP Vol. 3 at 110:23-25; 111:1.* He testified that the prior owners, the Lenfestys and Csuhas, never did anything

to make him doubt that the disputed area was his property. *VRP Vol. 3 at 111:9-14*. Carrie Crosetti testified that she and her husband never used the disputed area during the time they owned the Crosetti Parcel. *VRP Vol. 2, 89:2-8*. Notably, Laszlo conceded that he never spoke with Pawloff about any encroachment and never disclosed any encroachment to the Crosettis. *VRP Vol. 3 at 112:11-16; VRP Vol. 3 at 29:6-24*.

IV. ARGUMENT

A. Standard of Review: Substantial Evidence

The Crosettis allege the following errors by the trial court:

Error Cited	Errors Alleged by Appellant
FF No. 4	No evidence that K.J. Koranda owned the Pawloff Property from March 1990 through 1998
FF N. 6	Exhibits 1 and 1A do not show that Pawloff “occupied” the Detail of Occupation Area
FF Nos. 9, 10, 11, 15 & 16	Findings not supported by substantial evidence
FF No. 17	Finding omits alleged fact that Carrie Crosetti observed Pawloff dragging branches away
(no citation)	Court failed to find that Laszlo Csuha weeded the Detail of Occupation area at least three times a year from 2005 until he sold the property to Crosettis in 2017
CL No. 4 & 8	Conclusions of law are not supported by Findings of Fact No. 14
CL Nos. 3, 4, 5, 6, 7, 8, 9, 10 & 11	Neither Pawloff nor Koranda satisfied the elements of an adverse possession claim

Error Cited	Errors Alleged by Appellant
CL No. 14	Court erred in quieting title in the Detail of Occupation area to Pawloff
CL No. 15	Court erred in granting injunction prohibiting Crosettis from entering Detail of Occupation area
CL No. 16	Court erred in concluding Pawloff is prevailing party
CL No. 17	Court erred in concluding Crosettis failed to prove timber trespass claim
(no citation)	Court erred by ignoring Crosetti's trespass claim
(no citation)	Court erred in entering August 21, 2019 order denying Plaintiffs' motion to amend findings of fact and conclusions of law
(no citation)	Court erred in granting attorneys' fees and costs to Pawloff
(no citation)	Court erred in entering Judgment and Order Granting Fee Simple Title to Pawloff

The trial court's findings on the elements of adverse possession are mixed questions of law and fact. *Peterson v. Port of Seattle*, 94 Wn.2d 479, 485, 618 P.2d 67 (1980). The appellate court reviews whether substantial evidence supports the trial court's challenged findings and, if so, whether the findings in turn support the trial court's conclusions of law and judgment. *Ridgeview Props. v. Starbuck*, 96 Wn.2d 716, 719, 638 P.2d 1231 (1982).

i. Factual Findings: Substantial Evidence

The trial court's findings of fact are treated as verities on appeal, as long as they are supported by substantial evidence. *In re Marriage of*

Katare, 175 Wn.2d 23, 35, 283 P.3d 546 (2012); In re Marriage of Neha Vyas Chandola, 180 Wn.2d 632, 642, 327 P.3d 644 (2014); Keever & Assocs. V. Randall, 129 Wn.App. 733, 737, 119 P.3d 926 (2005); Hegwine v. Longview Fibre Co., Inc., 132 Wn.App. 546, 555, 132 P.3d 789 (2006).

Appellate review of a trial court's findings and conclusions of law where there has been testimony is one of substantial evidence. Zink v. City of Mesa, 140 Wn.App. 328, 336, 166 P.3d 738 (2007) (citing O'Connor v. Dep't of Soc. & Health Servs., 143 Wn.2d 895, 904, 25 P.3d 426 (2001)); Kittitas County v. Allphin, 2 Wn.App. 782, 793, 413 P.3d 22 (2018). Substantial evidence exists when there is a sufficient quantity of evidence to persuade a fair-minded, rational person that a finding is true. In re Estate of Jones, 152 Wn.2d 1, 8, 93 P.3d 147 (2004). The appellate court reviews only those findings to which appellants assign error; unchallenged findings are verities on appeal. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 314 (1994).

The appellate court views the evidence in the light most favorable to the prevailing party and defers to the trial court regarding witness credibility and conflicting testimony. Weyerhaeuser v. Tacoma-Pierce County Health Dep't, 123 Wn.App. 59, 65, 96 P.3d 460 (2004). Where the trial court proceeding turned on credibility and a factual finding, even where a trial court's decision is based on affidavits and other documentary

evidence, the appropriate standard of review is substantial evidence. *In re Marriage of Rideout*, 150 Wn.2d 337, 350-51, 77 P.3d 1174 (2003).

ii. Witness Credibility

The appellate court rarely reevaluates the trial court's decision concerning the credibility of witnesses. *Chatwood v. Chatwood*, 44 Wn.2d 233, 266 P.2d 782 (1954) (cited by *In re Marriage of Chandola*, 180 Wn.2d 632, 327 P.3d 644 (2014)), as corrected, (Sept. 9, 2014). The appellate court defers to the trial court on issues of witness credibility, conflicting testimony and persuasiveness of the evidence. *State v. Poling*, 128 Wn.App. 659, 667, 116 P.3d 1054 (2005). The appellate court defers to the trial court's credibility determination "because of a trial court's unique opportunity to observe the parties to determine their credibility and to sort out conflicting evidence." *In re Marriage of Woffinden*, 33 Wn.App. 326, 330, 654 P.2d 1219 (1982).

As explained in *State v. Garza*:

[T]he *de novo* standard is better applied when the appellate court is in the same position as the trial court and may make a determination as a matter of law. The abuse of discretion standard is appropriate when a trial court is in the best position to make a factual determination.

State v. Garza, 150 Wn.2d 360, 366, 77 P.3d 347 (2003).

B. Standard for Adverse Possession Claim and Burden of Proof

To establish adverse possession, “a party must show that [his or her] possession of the claimed property was (1) for 10 years, (2) exclusive, (3) actual and uninterrupted, (4) open and notorious, and (5) hostile.” *Harris v. Urell*, 1333 Wn.App. 130, 136, 135 P.2d 530 (2006) (citing *Chaplin v. Sanders*, 100 Wn.2d 853, 857, 676 P.2d 431 (1984)); RCW 4.16.020. These elements must exist concurrently for at least 10 years. RCW 4.16.020; *ITT Rayonier, Inc. v. Bell*, 112 Wn.2d 754, 774 P.2d 6 (1989).

“The ultimate test is the exercise of dominion over the land in a manner consistent with actions a true owner would take.” *Lilly v. Lynch*, 88 Wn.App. 306, 313, 945 P.2d 727 (Div. 2 1997) quoting *ITT Rayonier, Inc. v. Bell*, 112 Wn.2d 754, 774 P.2d 6. 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 adverse possession. *ITT Rayonier*, 112 Wn.2d 754, 774 P.2d 6. In this case, Pawloff had the burden of proof with regard to his adverse possession claim.

C. The trial court’s findings and conclusions of law concerning Pawloff’s adverse possession claim were supported by substantial evidence and determined by the trial court’s weighing of credibility of testifying witnesses.

The majority of the errors alleged by the Crosettis are based upon the trial court’s findings and conclusions related to the counterclaim by

Pawloff that for a period of more than ten continuous years, he used the disputed area (defined by the "Detail of Occupation" in the 2017 survey) in an open, hostile, exclusive, notorious manner and as a true owner would use the property. The Crosettis challenge whether the area of the adverse possession claim is sufficiently defined; however, substantial evidence supports the trial court's finding of fact (No. 6) that the disputed area and, hence, the area adversely possessed by Pawloff was identical to the area detailed in Exhibits 1 and 1A, the "Detail of Occupation" surveyed by Azure Green Consultants. The testimony of Pawloff and Heike, as outlined above, detailed the extensive and exclusive use by Pawloff of that specific area. An adverse possessor need not enclose the claimed parcel. *Skoog v. Seymour*, 29 Wn.2d 355, 364, 187 P.2d 304 (1947). Furthermore, the trial court need not "find a blazed or manicured trail along the path of the disputed boundary; it is reasonable and logical to project a line between objects when the extent of the adverse possessor's claim is open and notorious as the character of the land and its use requires and permits." *Lloyd v. Montecucco*, 83 Wn.App. 846, 854, 924 P.2d 927 (1996). A boundary may be defined by the use of the property itself. See *id.* at 853-54. See also *Bryant v. Palmer Coking Coal Co.*, 86 Wn.App. 204, 212-13, 936 P.2d 1163 (1997).

The trial court's findings and conclusions regarding adverse possession by Pawloff were supported by substantial evidence, through

testimony and photographs, by Pawloff and his mother, Heike Pawloff, detailing twenty years of exclusive, open, notorious and continuous use of the disputed area just as a true owner would use this property. Pawloff's use of the disputed area included clearing, weeding, maintenance, planting non-native ornamental plants and native plants, repairing and extending the existing stone wall, adding irrigation and watering, mowing, clearing stumps and debris, and pruning. *See, e.g., VRP Vol. 3 at 74:21-25; 75:1-17; VRP Vol. 3 at 24:1-16; 25:17-21; VRP Vol. 3 at 31:8-25; 32:1-3; 33:5-6; VRP Vol. 3 at 32:7-15; VRP Vol. 3 at 29:6-24; VRP Vol. 3 at 40:1-5; VRP Vol. 3 at 40:8-12; VRP Vol. 3 at 40:10-14; VRP Vol. 3 at 40:15-22; 42:4-11; 42:19-20; VRP Vol. 3 at 82:3-21; VRP Vol. 3 at 57:13-25; 58:12-24; 69:8-15.*

Pawloff's use of the disputed area was that of a true owner. Over the years and solely through his efforts, the disputed area became a landscaped, manicured yard with distinct and obvious signs of occupation – none of which were ever challenged by the true owners, including Laszlo during the crucial period from 2005 to 2008. Pawloff's testimony was corroborated by photographs taken by him and his mother over the years of the disputed area, depicting the work done by Pawloff and the transformation of the area into a manicured landscape that contrasted starkly

with the Crosetti Parcel, to the north. *See, e.g., Exhibit 119, 120, 121 and 122.*

The primary thrust of the Crosetti's argument that the court erred in finding that Pawloff met his burden of proof for adverse possession is based upon Laszlo's alleged "use" of the disputed area, as the true owner. The Crosettis argue that, if credible, Laszlo's testimony defeats the element of exclusive use. It is undisputed that, by the time the Csuhas purchased the Crosetti Property, Pawloff had been using the disputed area in an exclusive, hostile, open and notorious manner from 1998 through 2005 – a period of seven years. This was not contested at trial. Therefore, only Laszlo's use of the disputed area between 2005 and 2008 has any relevance as to whether Pawloff's adverse possession claim ripened into fee simple title. The only evidence presented at trial that could adversely impact Pawloff's claim is Laszlo's testimony – and that testimony was not credible.

Laszlo's use of the disputed area was admittedly extremely limited. He testified that he never pruned, planted, barked, mulched, water, fertilized, gardened or otherwise maintained anything in the disputed area. *VRP Vol. 2 at 21:1-3; 21:20-25; 22:1-15.* He testified that he cleared the Crosetti Property three times during the 12 years he owned it – once when he purchased the property, once when he listed it for sale, and once in-

between. The only relevant use would be any clearing Laszlo did when he purchased the property in 2005, so this would be the initial alleged clearing.

Laszlo also testified that he “weed-whacked” in the disputed area three or four times a year. Notably, Laszlo never “weed-whacked” or otherwise removed or touched the bamboo plants or the row of evenly spaced evergreen trees – these he left in place. *VRP Vol. 2 at 20:18-20.*

The credibility of Laszlo’s testimony was called into question by the testimony of Pawloff. Pawloff testified that, had Laszlo actually “weed-whacked” near or around the row of evergreen trees, he would have necessarily had to step over the stone wall, evidenced in contemporaneous photographs and testified to by Pawloff and his mother. *VRP Vol. 3 at 48:25; 49:1-20.* Yet, Laszlo alleged that he never saw the stone wall. *VRP Vol. 1A at 20:7-14.* Additionally, had Laszlo “weed-whacked” in the disputed area, which was only 30 feet from where Pawloff worked each day and in an area visible from the house, Pawloff would have seen him and confronted him. *VRP Vol. 3 at 49:21-25; 50:1-25; 51:1-15; VRP Vol. 3 at 49:21-25; 50:1-25; 51:1-15; VRP Vol. 3 at 55:17-20.* Also challenging Laszlo’s credibility is the fact that the area where Laszlo allegedly “weed-whacked” is under a mature canopy, where little vegetation grows. *VRP Vol. 3 at 48:4-14.*

However, even if Laszlo's testimony is found to be credible, his use of the disputed area between 2005 and 2008 does not destroy Pawloff's adverse possession claim. It is well established under Washington law that in order to be exclusive for the purposes of adverse possession, the claimant's possession need not be absolutely exclusive. Crites v. Koch, 49 Wn.App. 171, 174, 741 P.2d 1005 (1987). Rather, the possession must be of a type that would be expected of an owner under the circumstances. See id. Important to a consideration of what use an owner would make are the nature and location of the land. See Chaplin v. Sanders, 100 Wn.2d 853, 863, 676 P.2d 431 (1984).

In Crites v. Koch, the Plaintiffs sought to challenge the trial court's finding that the Defendant's use of a portion of property was exclusive. Crites v. Koch, 49 Wn.App. 171, 172, 741 P.2d 1005. The Plaintiffs used the property as a shortcut to reach nearby fields and as a place to park equipment occasionally for short periods. See id. The Defendant testified, without contradiction, that he had continuously farmed the property for at least 15 years, planting, cultivating and harvesting. See id. at 174-75. The appellate court found that the Plaintiffs' use of the property was "very, very slight." See id. at 175. The court stated that "[t]rifling encroachments by an owner on land held adversely do not render the claimant's use nonexclusive." See id. (citing 3 Am. Jur. 2d § 78, at 175; cf. Danner v.

Bartel, 21 Wn.App. 213, 584 P.2d 463 (1978)) (title owner's exercise of nonpossessory right of entry by maintaining drainage ditch not inconsistent with finding that adverse possessor had "exclusive" possession)(emphasis added). An occasional, transitory use by the true owner will not prevent ownership transfer by adverse possession. *Lilly v. Lynch*, 88 Wn.App. 306, 313, 945 P.2d 727 (1997). For example, the felling of a tree is such an occasional, transitory use. *Harris v. Urell*, 133 Wn.App. 130, 138, 135 P.3d 530 (2006).

Lazslo's admittedly limited use of the disputed area was occasional and transitory in nature and insufficient to interrupt Pawloff's exclusive use of the area, even if Laszlo's use actually occurred. It is likely, however, that the trial court simply found Laszlo's testimony regarding his use of the disputed area to lack credibility and to be inconsistent with the features on the ground. For example, Laszlo testified that near the sloped portion of his yard he created a trail for his children to visit neighbors. *VRP Vol. 2 at 24:24-25; 25:1*. However, according to his own testimony, the trail was located on that portion of the Crosetti Parcel that was covered in brush, shrubs and blackberries, not the disputed area, which was covered by a mature tree canopy where little vegetation grew. *VRP Vol. 2 at 25:2-7*. Laszlo testified that the trail ran north of the corner of the chain-link fence that defines the boundary between the Pawloff Parcel and its easterly

neighbor. *VRP Vol. 2 at 25:21-25; 26:1-4*. As such, the trail could not have been located in the disputed area, which is south of the corner of the chain-link fence.

There was substantial credible evidence offered at trial to support the trial court's findings and conclusions regarding Pawloff's adverse possession claim. The Crosettis rely upon *Anderson v. Hudak*, 80 Wn.App. 398, 907 P.2d 305 (1995), for the proposition that Pawloff failed to meet the open and notorious and exclusive elements of adverse possession. In *Anderson*, the only activity by the claimant was the planting of a row of trees thirty years in the past. *Anderson*, 80 Wn.App. at 399. Although the trial court granted the adverse possession claim, the appellate court found that there was no evidence showing that the claimant and her family ever conducted any activities on the trees beyond planting them. *See id.* at 401. There was no evidence that the claimant or her family ever watered, pruned, trimmed or cared for the trees. *See id.* at 402-403. The court of appeals reversed the trial court's decision on adverse possession. *See id.* at 405. The facts in *Anderson* could not be more different from the evidence presented regarding Pawloff's use of the disputed area over a period of 20 years, as is outlined in detail above. In stark contrast to the facts in *Anderson*, Pawloff not only planted a row of trees, he irrigated, fertilized, cultivated, pruned, cleared, mowed and otherwise occupied the area for 20 years. *Anderson*

does not support a reversal of the trial court's decision regarding Pawloff's claim.

In summary, the chart below identifies the alleged errors with regard to the trial court's findings and conclusions regarding Pawloff's adverse possession claim and the response:

Error Cited	Errors Alleged by Appellant
FF No. 4	<p><u>Alleged Error:</u> No evidence that K.J. Koranda owned the Pawloff Property from March 1990 through 1998</p> <p><u>Response:</u> Pawloff testified about Koranda's prior ownership of the property and construction of the wall</p>
FF N. 6	<p><u>Alleged Error:</u> Exhibits 1 and 1A do not show that Pawloff "occupied" the Detail of Occupation Area</p> <p><u>Response:</u> Substantial evidence through testimony and photographs to support the "Detail of Occupation" as the area adversely possessed</p>
FF Nos. 9, 10, 11, 15 & 16	<p><u>Alleged Error:</u> Findings not supported by substantial evidence</p> <p><u>Response:</u> Substantial evidence of Pawloff's exclusive use and development of disputed area; substantial evidence of Laszlo's knowledge of occupation features and failure to challenge the encroachment</p>
(no citation)	<p><u>Alleged Error:</u> Court failed to find that Laszlo Csuha weeded the Detail of Occupation area at least three times a year from 2005 until he sold the property to Crosettis in 2017</p> <p><u>Response:</u> Laszlo's testimony was disputed by Pawloff and photographs and was not credible;</p>

Error Cited	Errors Alleged by Appellant
	weeding was only dispositive through 2008; weeding was only a transitory use that did not disrupt Pawloff's exclusive use
CL No. 4 & 8	<p><u>Alleged Error:</u> Conclusions of law are not supported by Findings of Fact No. 14</p> <p><u>Response:</u> 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>
CL Nos. 3, 4, 5, 6, 7, 8,9, 10 & 11	<p><u>Alleged Error:</u> Neither Pawloff nor Koranda satisfied the elements of an adverse possession claim</p> <p><u>Response:</u> Conclusions were supported by substantial evidence of Pawloff's use of the disputed area, including testimony of Pawloff and his mother and photographs; issue of whether Koranda satisfied the elements of adverse possession is moot in that Pawloff clearly did</p>
CL No. 14	<p><u>Alleged Error:</u> Court erred in quieting title in the Detail of Occupation area to Pawloff</p> <p><u>Response:</u> Conclusion was supported by substantial evidence of Pawloff's use of the disputed area, including testimony of Pawloff and his mother and photographs</p>
CL No. 15	<p><u>Alleged Error:</u> Court erred in granting injunction prohibiting Crosettis from entering Detail of Occupation area</p> <p><u>Response:</u> Conclusion was supported by substantial evidence of Pawloff's right to fee simple title, which would support an injunction against the Crosettis</p>

Error Cited	Errors Alleged by Appellant
CL No. 16	<p><u>Alleged Error:</u> Court erred in concluding Pawloff is prevailing party</p> <p><u>Response:</u> Conclusion was supported by substantial evidence of Pawloff's use of the disputed area for 20 plus years; Crosettis failed to establish substantial evidence to refuse Pawloff's counterclaim; there was substantial evidence to support the conclusion that Pawloff was the prevailing party</p>
(no citation)	<p><u>Alleged Error:</u> Court erred in granting attorneys' fees and costs to Pawloff</p> <p><u>Response:</u> Trial Court's discretionary decision to award attorneys' fees to Pawloff as the prevailing party was supported by substantial evidence, through photographs and testimony, of his exclusive use of the disputed area for more than 20 years</p>
(no citation)	<p><u>Alleged Error:</u> Court erred in entering Judgment and Order Granting Fee Simple Title to Pawloff</p> <p><u>Response:</u> Trial Court's decision to grant fee simple title to Pawloff was supported by substantial evidence of Pawloff's exclusive, open, notorious and continuous use of the disputed area, which use continued for more than 20 years and which use was that of a true owner</p>

D. The trial court's findings and conclusions of law concerning the Crosettis' timber trespass claim were supported by substantial evidence.

The Crosettis allege error associated with the trial court's conclusion of law that the Appellants failed to prove their timber trespass claim and its dismissal by the court with prejudice (Conclusion of Law No. 17). The Crosettis further allege error stating that the trial court erred by ignoring the

Crosettis' trespass claim; however, the trial court's Conclusion of Law No. 17 demonstrates that the trial court did not ignore the timber trespass claim.

The purpose of the timber trespass statute is to discourage persons from carelessly or intentionally removing another's merchantable shrubs or trees. *Broughton Lumber Co. v. BNSF Ry. Co.*, 174 Wn.2d 619, 625, 278 P.3d 173 (2012)(quoting *Laws of 1869, ch. 48 § 556*); *Pendergrast v. Matichuk*, 186 Wn.2d 556, 567, 379 P.3d 96 (2016). The evidence presented at trial did not support the Crosettis' timber trespass claim. Testimony was offered that (1) Carrie Crosetti, the alleged eye witness, did not witness Pawloff cut down a hazelnut tree (*VRP Vol. 2 at 71:23-25; 72:1-2*); (2) Carrie Crosetti was speculating that the branches she saw Pawloff carrying were even from the hazelnut tree (*VRP Vol. 2 at 82:11-16*); (3) that in July 2017, the Crosettis had people come out and clear their property of small trees and blackberry bushes in the area where the hazelnut tree allegedly stood (*VRP Vol. 2 at 62:21-25; 63:1-3*); (4) that the clearing of the property included "taller stuff" on the sloped area (*VRP Vol. 2 at 64:1-2*); (5) that Steve Crosetti noticed the hazelnut tree was missing, after the slope had been cleared of "taller stuff" (*VRP Vol. 2 at 80:5-16*); (6) no expert confirmed that the tree was actually an ornamental hazelnut tree (*VRP Vol. 2 at 83:19-21; Vol. 1A at 60:15-22*); and (7) the Crosettis never confronted

Pawloff about the alleged trespass (*VRP Vol. 2 at 77:25; 78:1-7; 79:24-25; 80:1-3*).

The evidence supports a finding that the hazelnut tree was just as likely to have been cut down during the clearing of the lot in 2017 as by Pawloff. Additionally, the Crosettis failed to provide credible evidence that the tree was, in fact, an ornamental tree with value (i.e., a merchantable tree or shrub). The fact that they did not confront Pawloff about the trespass until filing the civil action months later also goes to the credibility of the claim. There was substantial evidence to support the trial court's decision concerning the timber trespass claim.

To summarize, the alleged errors listed below and identified by the Crosettis, are not found in the record reviewed by the trial court:

Error Cited	Errors Alleged by Appellant
FF No. 17	<p><u>Alleged Error:</u> Finding omits alleged fact that Carrie Crosetti observed Pawloff dragging branches away</p> <p><u>Response:</u> Substantial evidence showed that Carrie Crosetti did not witness Pawloff cutting any ornamental or merchantable shrubs or trees; Carrie Crosetti did not confront Pawloff about the alleged trespass; no expert testimony to confirm the tree/shrub was an ornamental/merchantable tree or shrub</p>
CL No. 17	<p><u>Alleged Error:</u> Court erred in concluding Crosettis failed to prove timber trespass claim</p> <p><u>Response:</u> Substantial evidence showed that Carrie Crosetti did not witness Pawloff cutting any</p>

Error Cited	Errors Alleged by Appellant
	ornamental or merchantable shrubs or trees; Carrie Crosetti did not confront Pawloff about the alleged trespass; no expert testimony to confirm the tree/shrub was an ornamental/merchantable tree or shrub
(no citation)	<p><u>Alleged Error:</u> Court erred by ignoring Crosetti's trespass claim</p> <p><u>Response:</u> The trial court made conclusion of law No. 17, which concludes the Crosettis failed to prove their timber trespass claim</p>

E. The trial court's determination that Pawloff was the prevailing party and award of attorneys' fees and costs to Pawloff was supported by substantial evidence.

The trial court's award of attorneys' fees and costs to Pawloff, as the prevailing party, is within the court's discretion, pursuant to RCW 7.28.083(3):

The prevailing party in an action asserting title to real property by adverse possession may request the court to 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).

The trial court's award of fees and costs to Pawloff was supported by substantial evidence of his 20 years' exclusive use of the disputed area. There is no basis, in the evidence, to overturn the trial court's award and award fees and costs to the Crosettis as prevailing parties. As discussed

above, Pawloff established through admissible evidence every element of the adverse possession claim. The trial court's decision concerning the award of fees and costs should be affirmed.

Under the rules of appellate procedure, an award of attorneys' fees may be granted when authorized by a contract, a statute or a recognized ground of equity. *RAP 18.1; Workman v. Klinkenburg, 6 Wn.App.2d 291, 308-309, 430 P.3d 716 (2018)(citations omitted)*. RCW 7.28.083(3) provides a basis for an award of attorney fees on appeal under RAP 18.1. *Workman, 6 Wn.App.2d at 309*. As the prevailing party pursuant to RCW 7.28.083(3), Pawloff should be awarded his attorneys' fees on appeal.

V. CONCLUSION

The trial court's findings of fact and conclusions of law pertaining to the Pawloff adverse possession claim and the Crosettis' timber trespass claim were supported universally with substantial evidence such that a fair-minded, rational person would find that they were true. Pawloff's testimony that he cleared, planted, pruned, manicured, landscaped, beauty-barked and irrigated the disputed area was detailed and compelling and was punctuated with photographs that spanned the twenty-year period. His testimony was corroborated by the testimony of his mother, Heike Pawloff, who made nearly annual visits and worked in the disputed area herself.

The only challenges to Pawloff's claim to adverse possession was the testimony of Laszlo, the prior owner of the Crosetti Parcel, who alleged that he cleared the Crosetti Parcel (including the disputed area) three times during the 12 years he owned it, and occasionally "weed-whacked" in the disputed area. Only Laszlo's use between 2005 and 2008 is relevant to the issue of Pawloff's adverse possession claim.

Even if Laszlo's testimony were credible (which it was not), it does not explain why he noticed the stone wall, portions of the split-rail fence, the bamboo plants and the row of evenly planted evergreen trees yet never confronted Pawloff about the increasing encroachments. Also, even if it occurred as Laszlo says, his transitory and incidental clearing of areas in the disputed zone are not sufficient to interrupt the ripening of Pawloff's adverse possession claim into fee simple. As demonstrated by photographs and testimony, by 2005 Pawloff had cleared the disputed area of any weeds and underbrush, so there was nothing for Laszlo to clear in the disputed area. Laszlo's alleged "weed-whacking" in the disputed area was limited and respectful of the features that Pawloff had created, including the bamboo and row of trees. The "weed-whacking" was likely not in the disputed area because that area was kept clear and manicured by Pawloff and was under a mature canopy of trees, which largely prevented the growth of weeds and vegetation.

Laszlo's testimony concerning a trail he built for his children to use established that the trail was in the area where there was growth of brush and blackberries, not in the disputed area. The overwhelming conclusion based on evidence at the trial was that Pawloff's claim of adverse possession ripened into fee simple title ten years after he purchased the property, or in 2008.

The Crosettis failed to prove their timber trespass claim with substantial evidence. In fact, the evidence showed that Pawloff cut down a weed or brush in the sloped area, which weed or brush appeared dead and had no value. There was no admissible evidence to establish that what he removed was an ornamental or merchantable tree. There was no witness to the alleged cutting of a hazelnut tree and no expert testimony as to the value of the plant he allegedly removed. Notably, the Crosettis did not confront Pawloff at the time of the alleged trespass. The trial court's findings related to the Appellants' timber trespass claim were supported by the evidence presented at trial.

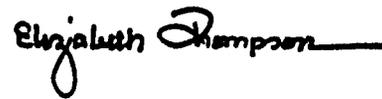
The Court should uphold the trial court's findings of fact and conclusions of law, as well as the entry of an Order granting fee simple title of the Detail of Occupation in Pawloff. The Court should uphold the trial court's entry of a judgment for attorneys' fees and costs against the

Appellant and in favor of Pawloff as the prevailing party. The Court should further award Pawloff his attorneys' fees on appeal pursuant to RAP 18.1.

DATED this 23rd day of March, 2020.

Respectfully submitted,

LAW OFFICE OF
ELIZABETH THOMPSON

A handwritten signature in black ink that reads "Elizabeth Thompson" with a horizontal line extending to the right.

Elizabeth Thompson,
WSBA No. 32222
Attorneys for Respondent
Alexander Pawloff

FILED
COURT OF APPEALS
2020 MAR 25 PM 1:05
STATE OF WASHINGTON
BY _____

CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the state of Washington that the following is true and correct:

I am an attorney and owner of the Law Office of Elizabeth Thompson, PLLC.

At all times hereinafter mentioned, I was and am a citizen of the United States of America, a resident of the state of Washington, over the age of eighteen (18) years, not a party to the above entitled action, and competent to be a witness herein.

On the 23rd day of March, 2020, I served in the manner noted the document(s) entitled: on the following person(s):

Daniel C. Montopoli, WSBA No. 26217	<input checked="" type="checkbox"/> U.S. Mail
James A. Krueger, WSBA No. 3408	<input type="checkbox"/> Facsimile
Erica A. Doctor, WSBA No. 43208	<input type="checkbox"/> Messenger
Vandenberg Johnson & Gandara, LLP	<input checked="" type="checkbox"/> E-Mail
1201 Pacific Avenue, Suite 1900	
P.O. Box 1315	
Tacoma, WA 98401-1315	
Telephone: 253.383.3791	
dmontopoli@vjglaw.com	
jkreger@vjglaw.com	
edoctor@vjglaw.com	

DATED this 23rd day of March, 2020 at Milton, Washington.

LAW OFFICE OF
ELIZABETH THOMPSON PLLC



Elizabeth Thompson