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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
BY \_\_\_\_\_

NO. 29269-0-III  
COURT OF APPEALS  
STATE OF WASHINGTON  
DIVISION III

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**ELMER SEGRAVES,**

Plaintiff/Respondent,

V.

**CARL C. FULTON,**

Defendant/Appellant.

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**REPLY BRIEF**

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## ARGUMENT

Elmer Segraves places primary reliance upon *Lamm v. McTighe*, 72 Wn. 2d 587, 434 P. 2d 565 (1967) in his argument requesting that the trial court's decision be affirmed.

The *Lamm* case is distinguishable. The adjoining property owners actually agreed to build a fence between their properties. They then treated that fence as the actual boundary. Each of the adjoining landowners exercised dominion up to the fence line. No claim was made by either landowner until a dispute arose between subsequent purchasers.

The only evidence adduced at trial concerning Mr. Segraves' use of Mr. Fulton's land is the small area where crops were actually grown. This area is next to the roadway and clearly observable.

The rest of the disputed area is covered with timber and heavy brush. Mr. Segraves made no known use of the property in this area.

The fact that neighbors cooperate in maintaining a fence does not mean that it becomes a boundary fence.

Moreover, Mr. Fulton's predecessor in interest, Mr. Hughes, and his son, James Hughes, were aware of survey markers beyond the fence.

Mr. Segraves brief implies that full use was made of the entire portion of the disputed property. The record is clear that this is not an established fact.

“In all cases, it is necessary that acquiescence must consist in recognition of the fence as a boundary line, and not mere acquiescence in the existence of a fence as a barrier. “ *Thomas v. Harlan*, 27 Wn. (2d) 512, 519, 178 P. 2d 965, 170 A.L.R. 1138 (1947); *see also: Merriman v. Cokely*, 152 Wn. App. 115, 129-30, 215 P. 3d 241 (2009); *Green v. Hooper*, 149 Wn. App. 627, 641-43, 205 P. 3d 134 (2009).

Testimony from various witnesses is clear:

1. Sherman Maynard testified that “I always **assumed** that it was the boundary between us and whoever above us.” (Supp. RP 9, ll. 15-21);
2. Kurt Segraves merely testified that it was **his understanding** the fence was the property line. (RP 77, ll. 1-6).
3. Jeanne Hughes Whitefeather **believed** the property line was beyond the existing fence. (RP 121, ll. 9-13);
4. Paul Gibbons, who is not one of the adjacent property owners, **believed** that the fence was the boundary. He did not indicate how he acquired that knowledge. (Supp. RP 40, ll. 1-9).

(Emphasis supplied.)

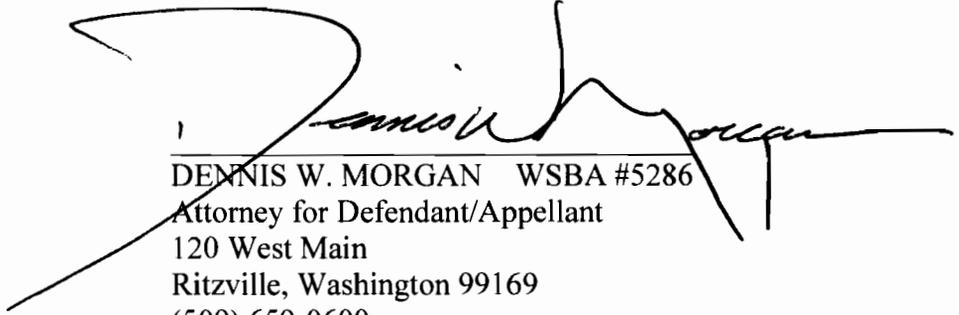
In the absence of direct testimony that there was an agreement between the adjoining land owners, or, alternatively that Mr. Segraves made

full use of the disputed property on one side of the fence, the trial court's conclusion that Mr. Segraves acquired title by adverse possession is erroneous.

Mr. Fulton otherwise relies upon his original brief.

DATED this 2<sup>d</sup> day of June, 2011.

Respectfully submitted,



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