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DIVISION III
STATE OF WASHINGTON
By _____

No. 306631

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

JAMES P. THOMAS and DELORES I. THOMAS, husband
and wife,

Respondents.

v.

ANGELO BRUNETTO and LINA BRUNETTO, husband
and wife,

Appellants,

AMENDED APPELLANTS' OPENING BRIEF

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I. INTRODUCTION

James and Delores Thomas brought this action for quiet title by mutual recognition and acquiescence and alternatively by adverse possession, to a portion of Angelo and Lina Brunetto's adjoining Deer Lake shoreline lot, in Stevens County.

Although the common boundary has been continuous grass and brush on the twenty-five foot area between the parties' respective cabins, and wide open areas above and below the cabins, the court granted relief to Thomases under both theories and set the boundary on one of two proposed "imaginary" and "theoretical" lines. Brunettos appeal.

II. STATEMENT OF ISSUES

A. Whether the Court erred in concluding that mutual recognition and acquiescence was established along the entire and continuous common boundary when there is no visible line on the ground; the decreed line is an "imaginary line" projected on a photograph and record of survey.

B. Whether the imaginary line decreed by the court was "certain, well defined and physically designated upon the ground."

C. Whether the Court erred in decreeing an imaginary line established by adverse possession when the use was not hostile or exclusive, e.g., by virtue of the claimant mowing and fertilizing the entire lawn from cabin to cabin as a “neighbor,” and unsupported by preponderance of evidence.

III. ASSIGNMENTS OF ERROR

Appellant Brunettos assign error to the trial court’s Findings of Fact Nos. 2.6, 2.7, 2.8, 2.11, 2.16, 2.19, 2.20, 2.21 and the inferences therefrom, and Conclusions of Law Nos. 3.2, 3.3, 3.4 and 3.5.

IV. STATEMENT OF THE CASE

On appeal, Brunettos argue that there is no well defined, let alone no discernible, physical line across the grass and through open areas of the Deer Lake lots, and the parties never mutually agreed or acquiesced in either of the imaginary lines. Adverse possession, as a separate claim, was not proven by a preponderance of the evidence.

After 20 years, James and Delores Thomas and Angelo and Lina Brunetto own adjoining lake front lots and cabins on Deer Lake, Washington. **CP 71**. About three years ago, James and

Delores Thomas surveyed their Deer Lake lot and discovered that a portion of their deck, a cover portion of their house structure, a patio slab and retaining wall, a concrete slab further to the shore, and some steps actually far encroached over the boundary actually line of neighbors Angelo and Lina Brunetto. **CP 70.** The cabins are about 25 feet apart. **CP 118.** The Brunettos conceded, prior to trial, that Thomases had acquired title to those described physical encroachments by adverse possession.

The *disputed* area was defined by the Thomas' and their surveyor as an "imaginary line" drawn by the surveyor and superimposed on a photograph, which ran through a long area of lawn commencing at a corner of a concrete slab at the lakeshore and terminating at the corner of a rock wall past the mid-point to the rear of the Thomases' property. **CP 92.**

One imaginary line was sought to be drawn under the theory of mutual recognition and acquiescence. **Id.** Another very closeby but different imaginary line was sought to be established by adverse possession. **Id.** Beginning in 1990 when the Brunettos purchased their primitive cabin, the area between the lots was overgrown with

wild brush and unkempt. CP 71, CP 77. In time, both parties cleared most of the area, but, Thomases claimed use was neither exclusive nor marked by any “line” through the lawn.

There was neither a visible line on the lawn, nor exclusive use by Thomas to a line of demarcation. Thomases mowed up to the Brunetto house at times; Thomas fertilized the lawn up to the Brunetto house at times. *RP, p. 210, ll. 7-20*. This was a neighborly act “like the house in town” *RP, p. 210, ll. 13-14*.

There was no agreement of boundary line location between Thomases and Brunettos because there was “no discussion about – Never. Never. – the property lines whatsoever.” *RP, p. 216, ll. 17-19*. Thomas never “verbally expressed” his thoughts about property line location. *RP, p. 216, l. 25 – p. 217, l. 1*. “We did not have an agreement” *RP, p. 207, l. 3*.

V. ARGUMENT

A. Two Site Drawings Essential.

1. At the outset, please see the site drawing marked Plaintiffs’ Exhibit No. 9, depicting the improvements and the boundaries legally described in the deeds of the respective parties.

This Exhibit No. 9 was drawn by the land Surveyor Van Jacobson, who testified and labeled it as “**Mutual Recognition and Acquiescence Site Plan.**” *RP, p. 10, l. 23 – p. 13, l. 16; RP, p. 14, l. 24 – p. 15, l. 2.*

The importance of this evidence is the lack of an actual defined line on the ground between the “rock wall” in the northeast corner of Thomases’ parcel and the “slab” at the gravel beach.

The “imaginary line” or “theoretical line” runs through the rocks at the east end of the “key wall.”

The highlighted triangle at the northwesterly corner of the Brunetto property is conceded by Plaintiffs Thomas to the Brunettos. *RP, p. 15, ll. 11-13; RP, p. 313, ll. 6-12.*

2. Just as necessarily, Exhibit 11 must also first be examined in order to understand the Report of Proceedings written transcript and the legal argument of the Brunettos on lack of visible elements of adverse possession.

Exhibit 11 is the identical record of survey as Exhibit 9, but labeled “**Adverse Possession Site Plan**” and shows two “imaginary lines” drawn: (1) running from the easterly corner of the rock wall

to the center of the slabs at the beach, and (2) a second line running from the easternmost edge of the slabs to a point on the east edge of the “key wall” and then on a course to the easterly end of the rock wall, but terminating at the deeded boundary line. Please also note that the imaginary line from the slabs to the key wall (bearing N31°28’07” W) is on a different location than the Exhibit 9 line, running easterly of the key wall (bearing N29°00’28” W). This is the “Adverse Possession Line.” *RP, p. 17, ll. 2-4.*

B. Imaginary Lines.

Plaintiffs’ Surveyor Jacobsen referenced a 1962 private survey and surveyed again the corners of the Thomas and Brunetto lots and found the existing corner monuments to be accurately placed. *RP, p. 8, ll. 14-22.* The site maps then depict the encroachments over the west line of the Thomas parcel. The Thomas’ house, side steps, slab and sea wall encroach to the east of Thomases’ and over Brunettos’ deeded legal description. *RP, p. 11, ll. 13-17.*

At *RP, page 18, lines 1-5*, the surveyor drew a line which he termed the “adverse possession line,” (a) from the slab toward the

end of a keystone wall, and (b) then at an angle to the end of the board fence. On cross-examination, he testified his lines were theoretical:

Q: Okay. And if we look at the area between the key wall and in the right hand slab on this drawing, what is in that area?

A: Lawn or grass.

Q: And is there from the key wall down here, any – in this grass are, any physical boundary indication?

A: I did not see any.
RP, p. 21, ll. 20-25.

Q: And if we go back over to exhibit number 11 again, same grass area?

A: Yes.

Q: And no physical indication of a boundary line?

A: No.
RP, p. 22, ll. 1-4.

Q: No? So is the grass an indication or not, I guess, of the boundary?

A: In my opinion a lawn area is not a distinct border or boundary.
RP, p. 22, ll. 18-19.

The Thomases actually presented two differently located “lines” – the “adverse possession line” and the “mutual recognition line.” *RP, p. 23, ll. 22-25.*

The surveyor testified that he drew a “*theoretical line*” between the edge of the slab at the waterfront and the end of the

concrete wall at the road – back roadside.” *RP*, p. 24, ll. 7-10.

Emphasis added.

“Imaginary line” *RP*, p. 118:

Q: This photograph shows a line in the grass. Has that line always been visible as far as you know?

A: Uh – I don’t think so.
RP, p. 121, ll. 3-5.

A: ...it’s always been that size, I – I couldn’t tell you why that line’s there, but -

Q: For – then, if its’ not been that green, isn’t it correct that most of the time this whole area’s kinda dry, and –

A: It – it depends on who’s watering it. Jimmy, Jimmy’s watered it for years and so has John and you know, I don’t know why or why not they would water it or why it turns dark some years in the summer, but it’s, it’s usually a nice piece of property right there.

Q: You’ve actually observed Jimmy watering the property?

A: Oh sure.

Q: And John watering the property?

A: Yes.

Q: And Brunettos watering the property?

A: And I’ve seen them watering the far – of this picture, the far right side. I can’t say I’ve seen ‘em watering all of that property.

RP, p. 121, ll. 7-20.

There were no “dividing lines” visible on the grassy areas.

RP, p. 237, ll. 19-23; *RP*, p. 239, ll. 16-19. *Defendants’ Exhibits*

114; *RP*, p. 240, ll. 14-23. *Exhibit D-102*; *RP*, p. 244, l. 20 – p. 244,

ll. 1-4.

C. Historical Use.

Mr. Thomas' mother testified that she and her husband purchased a lot with a 20' X 20' cabin and an adjoining lot in 1969. The area between the Thomases' cabin and the Brunettos' cabin was "really overgrown with a lot of underbrush, wife roses, there was an Oregon grape and some volunteer trees had come up – cotton wood and birch trees. It was really not taken care of." *RP, p. 34, ll. 16-19.*

Over the years, Thomas' parents cleaned up the area and that year (1969) built some steps on the east side of their cabin, with a poured concrete pad at the ground level. *RP, p. 36, ll. 6-25.* This is known as the "slab." *Exhibit 15.* They then cleared what they "felt was their half." *RP, p. 38, l. 15.*

A rock barbeque and patio have been replaced by raised garden beds. *RP, p. 48, ll. 7-13.*

In the 1970's or 1980's,. a deck was built by Thomas: Exhibit Photo 18.

The elder Thomases were divorced in 1987; Mr. Thomas was awarded the cabin; he deceased in 1988; the "new wife" sold to Jim Thomas in 1995.

The grass originally planted by the elder Thomas runs between the garden and the slab. *RP, p. 56, ll. 20-25.*

In 1995, Thomas acquired title to the cabin to the west and began cleaning the brush and cleaning “their side.” *RP, p. 59.* The dock was anchored, but moved all around. *RP, p. 63.*

The barbecue area, now raised beds, has been enlarged since 1995. *RP, pgs. 71-72.*

Thomases began residing on their lot full time in 2003. *RP, p. 133.* Brunettos moved in full time in about 2006. *RP, p. 134.*

Thomases’ use resulted in no recognizable line on the ground adjacent to the Brunettos’ tool shed:

Q: Okay, was there any way in this area with the brush to tell what was on the Thomases’ property and what was on your [Lina Brunetto’s] property?

A: What do you mean?

Q: Was there any clear line?

A: No.

Q: The brush looked the same on both sides.

A: Yes.

RP, p. 248, ll. 4-12.

Jim Thomas often mowed all the grass between the two cabins. *RP, p. 253, ll. 1-9.*

Q: Well then how did you [Lina Brunetto] know where his [Jim Thomas'] area started?

A: I – I didn't know where his area started
RP, p. 264, ll. 4-6.

Certain photographs (all subparts of Exhibit 14) elucidated the survey maps. Particularly, Exhibit 14-1 shows no physically marked line of demarcation on the gravel beach. Exhibit 14-2 shows no visible line through the shrubs, rocks and grass in the center of the photograph. The Brunettos' argument that under either theory of adverse possession or mutual recognition and acquiescence, there is no open and notorious or physically marked boundary, is glaringly proven by Exhibits 14-4 and 14-5 where the two imaginary lines are depicted only by orange ribbon. Please see also Exhibit 14-31.

And, Defendants' Exhibit 102 shows specifically the lack of exclusive use up to a visibly or notorious line through the grass and shrubs.

Defendants Exhibit 108 superimposes the imaginary lines across the grass, without which, no line would be discerned.

The early 1970's photographs admittedly show common and continuous brush and wild shrubs between the cabins. Exhibit 14-11 shows no visible demarcation after brush is cleared.

The alternative map is submitted "because of the discrepancy in the location of the key wall." *RP, p. 317, ll. 5-7.*

"We don't pick up a point at the key wall where it goes through the rocks, so to get there we have to go from the slab to the fence corner ... we eyeballed this. We put everything at about halfway. ... he (Van Jacobsen, surveyor) said he'd stick with a foot's difference between the mutual recognition line and the adverse possession line. But, we'll take either one" *RP, p. 318, l. 17 – p. 319, ll. 1-2.*

D. Mutual Recognition and Acquiescence.

The Brunettos contend that the trial court erred in concluding that the Thomases' claim for mutual recognition and acquiescence was supported by clear, cogent and evidence.

A plaintiff claiming ownership under the doctrine of mutual recognition and acquiescence must prove each of the following elements by clear, cogent, and convincing evidence:

(1) The line must be certain, well defined, and in some fashion physically designated upon the ground, e.g., by monuments, roadways, fence lines, etc.; (2) in the absence of an express agreement establishing the designated line as the boundary line, the adjoining landowners, as their predecessors in interest, must have in good faith manifested, by their acts, occupancy, and improvements with respect to their respective properties, a mutual recognition and acceptance of the designated line as the true boundary line; and (3) the requisite mutual recognition and acquiescence in the line must have continued for that period of time required to secure property by adverse possession.

Lamm v. McTighe, 72 Wn.2d 587, 598, 434 P.2d 565 (1967).

The trial court's Conclusion of Law No. 3.4 that the common boundary line between the lots is, and has been, defined by "certain, well defined and physically designated upon the ground" is not supported by the Findings of Fact or the record. The essential elements of a claim of mutual recognition and acquiescence cannot be established, as there are no monuments or discernible lines along

the imaginary boundary claimed by Thomases, except for a corner of a concrete slab at the shoreline, a patio which starts a distance upland and extends for a few feet and further distant upland, the corner of a rock wall.

In addition, the Brunettos contend that the trial court impermissibly justified its conclusions granting the Thomases' claim under mutual recognition and acquiescence or "in the alternative," a slightly different imaginary line. Brunettos maintain that there was no testimony by either party at trial as to any mutuality of express recognition in the boundaries between the lots, and no evidence to support the trial court's conclusion that a common boundary line had been mutually recognized for the 10-year period.

In sum, the Brunettos claim that the trial court's Findings of Fact are not supported by substantial evidence and the Findings do not support the Conclusions of Law, resulting in reversible error.

"When a court enters findings of fact and conclusions of law following a bench trial, our review is limited to determining whether substantial evidence supports the findings and, if so, whether they support the trial court's conclusions of law and judgment" *Saviano*

v. Westport Amusements, Inc., 144 Wn.App. 72, 78, 810 P.3d 874 (2008). Evidence is substantial if it is sufficient to persuade a fair-minded person that the declared premise is true. *Am. Nursery Prods., Inc. v. Indian Wells Orchards*, 115 Wn.2d 217, 222, 797 P.2d 477 (1990). Conclusions of Law are reviewed *de novo*. *Rasmussen v. Bendotti*, 107 Wn.App. 947, 954, 29 P.3d 56 (2001).

“In the absence of an agreement to the effect that a fence between the properties shall be taken as a true boundary line, mere acquiescence in its existence is not sufficient to establish a claim of title to a disputed strip of ground.” *Id.* at 592 (quoting *Thomas v. Harlan*, 27 Wn.2d 512, 518, 178 P.2d 965 (1947)). Rather, an acquiescence must consist in recognition of the fence as a true boundary line, and not mere acquiescence in the existence of a fence as a barrier. *Id.*

In 2008, Thomas and his surveyor met with Mr. Brunetto to disclose the boundary line issue which fomented this litigation:

Q: And prior to that had you reached any agreement? Prior to that ---

A: No.

Q: --- with Mr. Brunetto.

A: No.

RP, p. 301, ll. 10-13; RP, p. 20, l 25 – p. 21, l. 1.

“We admit ... that there’s no evidence of an express agreement.” *RP, p. 316, ll. 15-16.*

Here, the trial court had no evidence to enter Findings of Fact, stating that the “property line ... has been physically designated by virtue of improvements ... the line is well defined” Finding of Fact No. 2.21. The court also erred in concluding that “[t]he adjoining landowners, the Thomases and Brunettos, have in good faith, manifested by their acts and usage, a mutual recognition and acceptance of the *assumed line* as the true boundary line.” Finding of Fact No. 2.21; Conclusion of Law No. 3.4 (*emphasis added*).

This case involves shoreline lots on Deer Lake. In the same Stevens County, about 4.7 miles away is Loon Lake. The *Green v. Hooper* case has facts and specifically unconnected improvements along lake front lots’ common boundary that are near identical to the case at bar. *Green v. Hooper*, 149 Wn.App. 627, 205 P.3d 134 (2009). The *Green* court’s step by step analysis, its distinction between adverse possession and mutual recognition, fifty foot lot width, three improvements, and its basis for rejection of the same

theories are all remarkably applicable to this appeal, and are elucidated as follows:

1. Well Defined Line. The surveys of the parties' common boundary, prepared by Van E. Jacobsen and admitted at trial as Plaintiffs' Exhibits 9, 10 and 11, disprove the claim that any certain, well defined boundary line existed along the lawn. In order to establish the first element of mutual acquiescence, the purported boundary line "must be certain, well defined, and in some fashion physically designated upon the ground." *Lamm v. McTighe*, 72 Wn.2d 587, 593, 434 P.2d 565 (1967). As shown by the surveys, there are no monuments, or fence lines along the boundary claimed by the Thomases. Consistent with the survey, surveyor Jacobson testified at trial that there were no physical designations, improvements or encroachments entirely along the "imaginary or theoretical" boundary line between the lots. *Exhibit 9; Exhibit 11; Exhibit 12; RP, p. 12, ll. 3-4; RP, p. 21, ll. 23-25 and RP, p. 22, ll. 18-22.*

In addition, the evidence that there is no well defined line along the assumed boundary is further corroborated by the

photographs introduced at trial by both parties and Mr. Jacobson's testimony that the east edge of the monuments "don't line up." *RP*, p. 23, ll. 8-10.

2. Mutual Recognition and Acceptance. The Thomases failed to establish the second element by clear, cogent and convincing evidence. The testimony at trial was insufficient to show that, absent an express agreement, the Thomases and Brunettos, or their predecessors in interest, "in good faith manifested, by their acts, occupancy, and improvements with respect to their respective properties, a mutual recognition and acceptance of the designated line as the true boundary line." *Lamm*, at 593. Specifically, Mr. Thomas, who began coming to the property when his parents owned it over 35 years prior to conveying it to him, testified that there was "never" any agreement of the "projected" boundary line between his property and Brunettos'. *RP*, p. 216, ll. 18-21.

In finding mutual recognition, the trial court focused on the reasonable assumption that the boundary should be about halfway between the cabins, while the court found that "there was no

physical monumentation to mark the common boundary between the two (2) cabins.” Finding of Fact No. 2.3.

There is no evidence to show that the short privacy fence was ‘recognized by the parties as a true boundary and not just a barrier.’ *Lilly v. Lynch*, 88 Wn.App. 306, 316-17, 945 P.2d 727 (1997). Moreover, there is no evidence to indicate that the Brunettos intended to recognize a boundary line “projecting” from the privacy fence across the lawn to the water. Accordingly, the evidence before the trial court did not support the court’s conclusion that a mutual recognition and acceptance of the *projected line* as the true boundary line.

Neither party nor the court appears to have considered *Green v. Hooper*. The Thomases failed to sustain their burden of proving each essential element of their claim for mutual recognition and acquiescence. The evidence before the trial court did not rise to the level of clear, cogent and convincing evidence that a certain, well defined boundary line existed from the beach to the road which formed the parties’ common boundary. Moreover, there was

insufficient evidence that the Thomases and the Brunettos mutually recognized any such boundary.

E. Adverse Possession.

The court found that both parties enjoyed a friendly and neighborly relationship up to the time of the litigation. **CP 78.** Mr. Thomas sometimes mowed or fertilized the entire lawn from cabin to cabin. **CP 73 – 74.** There was no physical monumentation to mark the boundaries. **CP 71.** Rather, the Thomas' father "eyeballed" the properties and made the unspoken assumption that the boundary was approximately midpoint between the structures. **CP 71.** The docks in the water on Deer Lake floated all over. **CP 72.**

About three years ago, part of the patio area was converted to raised flower beds, replacing the wood retaining wall on the south with a "keystone brick" wall, but not extending as far toward Brunettos as the original wood wall. **CP 95.**

The existence of the elements necessary to create a title by adverse possession raise questions of fact. The burden of establishing those facts is upon the person claiming title by adverse possession. *Rognrust v. Seto*, 2 Wash.App. 215, 467 P.2d 204 (1970). In order for one to acquire title by adverse possession, the often stated rule is the possession must be 'actual and uninterrupted, open and notorious, hostile and exclusive, and under a claim of right made in good faith.' *Skansi v. Novak*, 84 Wash. 39, 45, 146 P. 160, 162 (1915). According to many cases, the claimant must be in possession as owner against the whole world and not in a manner subordinate to the interest or title of another, e.g., *Skansi v. Novak*, *supra*; *McNaught-Collins Imp. Co. v. May*, 52 Wash. 632, 101 P. 237 (1909); *Vick v. Berg*, 251 Ark. 573, 473 S.W.2d 858 (1971); *Wanex v. Hurst*, 188 Md. 520, 53 A.2d 38 (1947).

Use that is permissive at its inception remains permissive unless proof exists of (a) change in use beyond that permitted, providing notice of hostility to the true owner, or (b) the sale of the servient estate. *Miller v. Anderson*, 91 Wash.App. 822, 825, 964 P.2d 365 (1998).

In this case, there is a strong inference that both parties used the undemarcated lawn area as neighborly co-existence, Mr. Thomas, for example mowing the whole area for his friendly neighbor. Otherwise, "You know, I don't use a lot of use of it (*sic*)." *RP, p. 192, ll. 21-25*. There is no preponderance of evidence in the record that Thomas excluded Brunettos along either of the "imaginary" lines.

As to mowing of the grass, Thomas did not mow any defined line. Mr. Brunetto testified that when Brunettos mowed up to the cabin, Thomas "was mowing all the way up to the steps going up in our deck and we told him, more than once, that he didn't have to mow our portion of the grass, and he says, "We're good neighbors. It only takes me an extra five minutes, so I don't mind mowing all the way" *RP, p. 293, ll. 21-25*. Thomas also "watered the whole lawn." *RP, p. 298, l. 14*.

No presumption exists in favor of the adverse holder because "possession will be presumed to be in subordination to the title of the true owner." *Muench v. Oxley*, 90 Wash.2d 637, 642, 584 P.2d 939

(1978), overruled on other grounds in *Chaplin*, 100 Wash.2d at 861 n. 2, 676 P.2d 431.

Permission can be express or implied; an inference of permissive use arises when it is reasonable to assume "that the use was permitted by sufferance and acquiescence." *Granston*, 52 Wash.App. at 294, 759 P.2d 462.

Washington cases hold, however, that when use is permissive at the outset, an adverse claim cannot lie unless the true owner has some notice that an adverse claim is being made. *Granston*, 52 Wash.App. at 294, 759 P.2d 462 (citing *Roediger v. Cullen*, 26 Wash.2d 690, 707, 175 P.2d 669 (1946); *Crites v. Koch*, 49 Wash.App. 171, 177, 741 P.2d 1005 (1987)); see also *Northwest Cities*, 13 Wash.2d at 84, 123 P.2d 771. This rule both protects the expectations of the property owner who grants permission and encourages cooperation between neighboring landowners. See *Roediger*, 26 Wash.2d at 707-12, 175 P.2d 669.

The area was originally bare, open land with high brush. *RP*, p. 176, ll. 19-22; *RP*, p. 179, ll. 12-22; *RP*, p. 182, ll. 18-25 and *RP*, p.183, l. 1. As it was gradually cleared, usage was overlapping

without any clear definition. The grass gradually crept across the entire area. *RP*, p. 69, ll. 18-21; *RP*, p. 182, ll. 21-25. Thomas in one breath testifies that sometimes he “used” the property all the way to Brunettos’ cabin, but asks the court to validate his silent subjective assumption that the eyeballed line was about halfway between the cabins.

In addition, use of property, at its inception, is presumed to be permissive. *Petersen v. Port of Seattle*, *supra* 94 Wash.2d at 486, 618 P.2d 67.

Acquiescence, cooperation between neighbors and permissive use are themselves consistently similar, but all antithetical to a notorious and hostile claim of title.

In cases involving neighbors, the permission is often indeed a “neighborly accommodation” dependent not upon the user’s personal identity, but upon his status as a neighbor. *Miller*, *supra*, at 831.

Generally, shared occupancy of disputed property by the adverse possessor and the title owner precludes “exclusive” possession. *Cf. Scott v. Slater*, 42 Wash.2d 366, 369, 255 P.2d 377 (1953), overruled in part on other grounds, *Chaplin v. Sanders*,

supra; *Stoebuck*, The Law of Adverse Possession in Washington, 35 Wash.L.Rev. 53, 72 (1960); 3 Am.Jur.2d Adverse Possession § 78 (1986).

In these closely cramped lake cabins, families, recreating seasonally, share the middle ground out of neighborly courtesy to one another, on a practical basis. Access between the cabins to the beach is the type of use permitted by a community of seasonal lake cabins.

VI. CONCLUSION

The trial court erred by granting the Thomases' claim based on mutual recognition and acquiescence, and quieting title to a portion of the Brunettos' property "alternatively, by adverse possession, for lack of evidence of the elements of each separate theory in the Thomases.

There is no physically well defined line, defined by either adverse use or by recognition and acquiescence. There was no agreement between the parties. The three monuments were not boundary markers. The garden fence was just a barrier. The returning wall was replaced at a different width. The slab was not a

boundary marker, but rather a concrete surface for standing and sitting on the beach wall. The only basis for superimposing two alternate boundary lines on photos and maps is to connect two different sets of non-boundary points. The court's decision should be reversed.

Respectfully Submitted this 9th day of August, 2012.

MURPHY, BANTZ & BURY, PLLC

A handwritten signature in black ink, appearing to read "Timothy R. Fischer", with a long, sweeping horizontal stroke extending to the right.

Timothy R. Fischer, WSBA No. 40075
Attorney for Appellants
Angelo and Lina Brunetto

FILED

No. 306631

AUG 09 2012

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

JAMES P. THOMAS and DELORES I. THOMAS, husband and
wife,

Respondents.

v.

ANGELO BRUNETTO and LINA BRUNETTO, husband and wife,

Appellants,

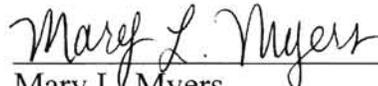
CERTIFICATE OF SERVICE

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ANGELO BRUNETTO and LINA BRUNETTO

I, Mary L. Myers, hereby declare under penalty of perjury under the laws of the State of Washington and the United States that: (1) I am a citizen of the United States of America and over the age of eighteen years and competent to be a witness; (2) I make this declaration based upon my personal knowledge and am competent to be a witness; and (3) I mailed a true and correct copy of the **Amended Appellants' Opening Brief**, postage pre-paid, regular first class mail on the 9th day of August, 2012, to the person(s) listed below:

Christ Montgomery, Esq., PO Box 269, Colville, WA 99114

SIGNED at Spokane, Washington, this 9th day of August, 2012.



Mary L. Myers