

No. 373177-III

FILED

JUN 23 2020

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON

DAVID L SNYDER and MARY B. SNYDER,
Respondents,

vs.

LANCE CAMPBELL and BRIDGET CAMPBELL,
Appellants.

APPELLANTS' REPLY BRIEF

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ARGUMENT

1. Appellants Are Not Required to Present Direct Evidence to Establish Their Claims at Summary Judgment or at Trial.

The Snyders argue that Campbells cannot establish ownership of any portion of the disputed property because they do not have direct knowledge of the use of the property prior to purchasing it. The Snyders also argue that, because Wade McClure states in his declaration that he did not understand the fence and line of junipers to establish the true boundary line, the evidence concerning prior use of the disputed property is not disputed. The Snyders are wrong.

Evidence can be either direct or circumstantial. Direct evidence is not more valuable or of greater weight than circumstantial evidence. WPI 1.03. This case presents a classic case of direct evidence that is in conflict with the circumstantial evidence. That conflict creates material questions of fact that can only be resolved by the trier of fact at trial.

Wade McClure's claim that he recognized the boundary line as established by the survey done in 2015 as the true boundary line throughout his ownership of the Campbell property is in direct conflict the reasonable inferences to be drawn from the known facts and circumstances. First, McClure provides no explanation as to how either he or the Snyders knew where the true boundary line as established by survey

was when the survey itself was not completed until after McClure no longer owned the property. Without a survey, what did the Snyders and McClure rely upon to establish the true boundary line? It is reasonable to infer that the chain link fence and the row of junipers were accepted and recognized as the true boundary line because there were no other visible characteristics, markers or monuments of any kind to inform the owners of either property that the boundary line was somewhere else.

Second, McClure's claim that the Snyders used and maintained all of the disputed area north of the chain link fence is in direct conflict with the condition of the property as observed by the Campbells when they purchased the house. The fact that the back yard was entirely enclosed leads to a reasonable inference that for some period of time the Snyders were excluded from having any access to or use of that area. The chain link fence erected by the Snyders constituted the south side of the enclosure. That fence was erected in 1997. (Declaration of David Snyder, p. 3, lns. 3-4) Thus, it is reasonable to infer that for some period of time, and potentially as far back as 1997, McClure and his predecessors in interest treated the area north of the chain link fence as their property and believed the chain link fence and row of junipers established the true boundary line.

The Snyders argue that the Campbells cannot prove adverse possession or mutual recognition of a boundary line for a period of at least 10 years. However, that remains to be seen. There is nothing in the record that would preclude the Campbells from establishing the facts needed to support their claims through circumstantial evidence and/or the direct testimony of David Snyder, Wade McClure, McClure's predecessors in interest, or other potential witnesses, such as Mary Snyder, who did not submit a declaration in support of the Snyder's motion for summary judgment. At trial, Mrs. Snyder may provide testimony different from that of her husband and different from that of Wade McClure.

Based on the record before this Court, questions of fact remain as to whether McClure and previous owners of the Campbell property adversely possessed all or part of the disputed property and whether the Snyders, McClure and previous owners recognized and accepted the chain link fence and row of junipers as establishing the true boundary line for a period of at least 10 years. The trial court erred by granting summary judgment.

2. Appellant's Did Not Waive Objection to the Trial Court's Award of Attorneys Fees and Costs.

The Snyders argue that Campbells have waived any objection to the award of attorney fees and costs because they did not insist that the

trial court enter appropriate findings of fact to support an award of fees and costs under RCW 7.28.083(3). That argument is completely without merit. In essence, the Snyders argue that a party must advocate for the position of the opposing party and insure that a proper record is created to support an order contrary to the party's own interest or else be forever barred from challenging the order.

The Campbells objected to the Snyders' request for attorneys fees and argued that an award of fees under RCW 7.28.083(3) was not warranted under the facts of this case. They were not required to do anything more to preserve their right of appeal. RAP 2.5(a). They were certainly not required to ensure that the trial court entered findings of fact favorable to the Snyders and adequate to support an award of fees and costs. There was no waiver of the right to appeal.

3. The Trial Court Did Not Comply With the Requirements of RCW 7.28.083(3).

The Snyders argue that the trial court considered the specific facts of this case and found that an award of fees and costs was both equitable and just. The record establishes otherwise. The trial court stated:

But here, it appears that there was a good faith attempt to settle before coming to court. That didn't occur. It was filed and the plaintiffs were the prevailing party. It is just and equitable for them to receive the entirety of that time for the simple reason that they did prevail on this issue. They've attempted to assert their

lawful right to that property since the very beginning and it escalated to this point to find that they were legally entitled to that property, and to make them pay pretty much half their attorney fees to have that right affirmed wouldn't be just.

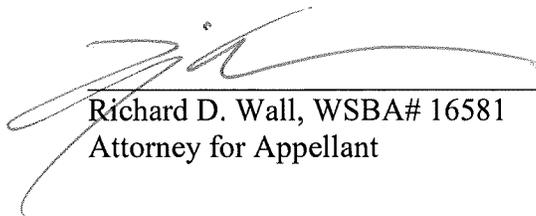
RP at 5. (emphasis added)

The trial court could not have made it any clearer that it believed the fact that the Snyder had prevailed, by itself, entitled them to an award of fees and costs. That statement is in direct conflict with RCW 7.28.083(3), which allows for an award of fees and costs to a prevailing party only if the court finds that such an award is both equitable and just "after considering all the facts," not just the fact that the party had prevailed. RCW 7.28.083(3). Here, the only fact relied upon by the trial court was that the Snyders had prevailed on their claim. The trial court clearly erred.

CONCLUSION

For the foregoing reasons, this Court should reverse the decision of the trial court and remand this case for trial.

Respectfully submitted this 22nd day of June, 2020.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _____ day of June 2020, a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF was sent via email messenger to:

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