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COURT OF APPEALS, STATE OF WASHINGTON
DIVISION III

No. 37317-7-III

DAVID L. SNYDER and MARY B. SNYDER,

Respondents,

v.

LANCE CAMPBELL and BRIDGET CAMPBELL,

Appellants.

BRIEF OF RESPONDENTS SNYDER

Paul S. Stewart, WSBA # 45469
Paine Hamblen LLP
717 West Sprague Avenue, Suite 1200
Spokane, Washington 99201-3505
(509) 455-6000

Attorneys for Respondents Snyder

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I. INTRODUCTION

The Snyders and Campbells are neighbors in Spokane's Hillyard neighborhood. The Snyder family has lived on their property since 1945. The Campbells moved into the home next door to the Snyders in 2015. Soon after they moved in, the Campbells began encroaching on the Snyders' property by erecting structures on and over the Snyder-Campbell boundary line. The Campbells' personal property also spread over the boundary line onto the Snyders' property. When the Snyders asked the Campbells to respect the boundary line and sought to defend their property, the Campbells asserted that they were the true owners of a 4x135-foot swath of the Snyders' property. After negotiations with the Campbells were unsuccessful, the Snyders filed suit to, inter alia, quiet title and eject the Campbells from the Snyders' property. The Campbells counterclaimed, similarly alleging claims of quiet title and ejectment.

The trial court granted summary judgment in favor of the Snyders on their claims of quiet title and ejectment (and dismissing the same claims asserted by the Campbells). The trial court also awarded the Snyders' their reasonable attorneys' fees incurred in their legal efforts to defend their property rights as permitted by RCW 7.28.083(3).

The Snyders respectfully request that this Court affirm the trial court's grant of summary judgment and affirm the trial court's award of attorneys' fees.

II. STATEMENT OF FACTS

A. The orientation of the Snyders' and Campbells' properties.

The Snyders live in a home located at 5017 N. Altamont St., Spokane, WA 99217. CP at 97, ¶ 2. The Campbells live at 5021 N. Altamont St., immediately north of, and adjacent to, the Snyders. *Id.* The Snyders' and Campbells' properties are situated as follows:



CP at 97-98, ¶ 3, 108.

The Hillyard neighborhood where the Snyders and Campbells reside was platted and developed circa 1910. CP at 98, ¶ 4; *see also* CP at 293, ¶ 1. The south side of the Campbells' house and eave of their house

encroaches on the northern part of Snyders' property. CP at 98, ¶ 4. (This situation is repeated down the block on Altamont Street, i.e., the southern part of the Snyders' home encroaches on the northern part of their neighbor's property to the south. *Id.*)

The Snyders do not take issue with the fact that the Campbells' south eave encroaches over their property. CP at 98, ¶ 5. The Snyder family has always granted permission to the residents of the 5021 property to access the southern side of their house (which requires entering the Snyders' property). *Id.*

B. The Snyders' (and their predecessors') use of the 5017 property.

David Snyder's parents purchased the 5017 house in 1945. CP at 98, ¶ 6. Mr. Snyder grew up in the 5017 house. *Id.* The Snyder family continuously treated their north side yard, up to the south side of the 5021 house, as their own. *Id.* They watered and mowed the lawn and planted bushes, flowers, and shrubs just to the south of the 5021 house. *Id.* They used the side yard for entertaining, gardening, and playing with their grandchildren and pets. *Id.*; *see also* CP at 108-28 (photographs reproduced, in color, at Exhibit A to this Brief). When Mr. Snyder's mother passed away in 1991, he inherited the 5017 property from his mother's estate. CP at 98, ¶ 7. Fee simple title to the property was passed

to Mr. Snyder via a Quit Claim Deed. *Id.*; CP at 130. After renting the 5017 property between 1991 and 1996, the Snyders moved into the house in 1996. CP at 98, ¶ 8. The Snyders, like Mr. Snyder's parents, continued to maintain and use their north side yard up to the south side of the 5021 house. *Id.*

Between 1997 and 2015, the Snyders maintained a fenced enclosure in their backyard to contain their dog, and, on occasion, their grandchildren, who would play within the fenced area. CP at 99, ¶ 9. In 2015, when the parties' issues started, the Snyders' enclosure fence was situated as depicted below in red (at that time, the Snyders did not use the back yard for parking their vehicles as depicted in this picture):



CP at 99, ¶ 9.

The Snyders did not place the north fence of the enclosure on the boundary line between the 5017 and 5021 properties because there was a

fragile plant on the boundary line (planted by Sherry Lee Marie Schmidt, who owned the 5021 property at the time the enclosure was built). CP at 99, ¶ 10. When the Snyders installed the enclosure, Mr. Snyder told Ms. Schmidt that the north enclosure fence was not on the boundary line but was rather completely on the Snyders' property and not meant to change the boundary line between the properties. *Id.* The Snyders continued to use and maintain the strip of property between the enclosure and the boundary line. CP at 100, ¶ 11. Mrs. Snyder would weed whack the strip of lawn north of the enclosure fence about once a month up until the autumn of 2014. *Id.*

C. The Campbells' (and their predecessors') use of the 5021 property.

Ms. Schmidt, who had lived in the 5021 property since approximately 1995, sold the property to Wade McClure (formerly Wade Petersen) in 2006. CP at 99, ¶ 10; CP at 308, ¶ 2. McClure lived at the 5021 home from March 2006 to December 2014. CP at 308, ¶ 2. McClure understood that the Snyders' fenced enclosure "did not represent a delineation of the property line between the Campbell Property and the Snyder Property, but rather was installed completely on the Snyder Property for the purpose of containing the Snyders' grandchildren and their dog." CP at 309-10, ¶ 7.

The Campbells purchased the 5021 property in February 2015 from Fannie Mae aka Federal National Mortgage Association. CP at 60-64. The Campbells moved into the 5021 property soon after. CP at 100, ¶ 12. When the Campbells moved in, Mr. Snyder informed Mr. Campbell about the location of the boundary line between their properties. *Id.* Mr. Snyder also expressly told Mr. Campbell that the north side of the Snyders' dog enclosure was not on the property line and was not intended to mark the boundary line. *Id.* Mr. Campbell acknowledged that he understood. *Id.*; *see also* CP at 309-10, ¶ 7.

D. The Campbells encroach onto the Snyders' property.

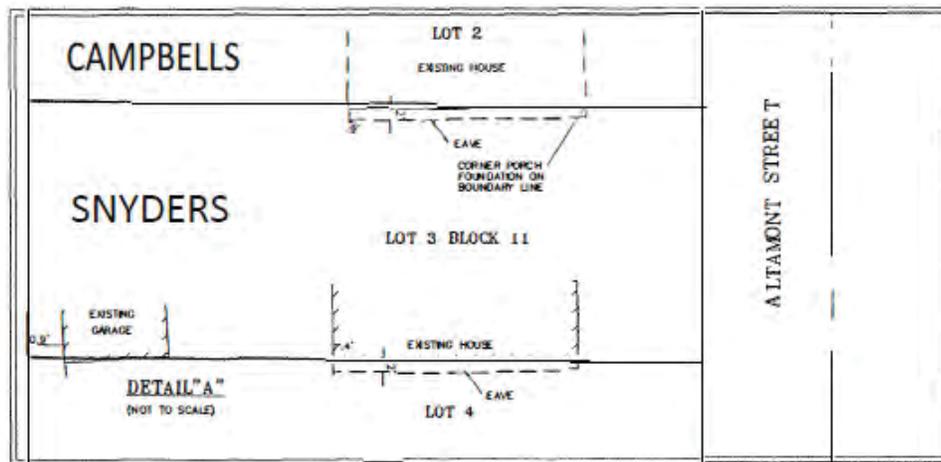
Soon after the Campbells moved into their property in February 2015, they began accumulating personal property in their backyard, including wood, tires, and derelict vehicles. CP at 100, ¶ 13. The Campbells' personal property spilled over onto the Snyders' property, right up against their dog enclosure fence. *Id.*

In July 2015, the Campbells installed a plywood structure to cover a window on the south side of their home. CP at 100, ¶ 14; CP at 132 (reproduced in color as Exhibit B to this Brief). The Campbells' plywood structure is located under the Campbells' eave, but extends past the eave onto the Snyders' property without the Snyders' permission. CP at 100, ¶

14 The Snyders asked the Campbells to take down the plywood structure to eliminate the encroachment, but the Campbells refused. *Id.*

E. Snyders commission survey of properties.

In light of the disputed boundary line, the Snyders commissioned RFK Surveying, Inc. to survey their property and north boundary line. CP at 101, ¶ 16. Surveyor Rudy Kitzan performed the survey on July 8, 2015. CP at 44, ¶ 3. The survey depicts the Snyders' property, the property lines, and the Campbells' house encroachment, as follows:



CP at 52 (“Campbells” and “Snyders” labels added). This survey is based on measurements taken from multiple surveying monuments located in the vicinity of the Snyders' property, including monuments Kitzan placed at the four corners of the Snyders' lot. CP at 45, ¶ 4. The survey definitively shows that the southern portion of the Campbells' home and eave encroaches on the Snyders' property. *Id.*, ¶ 6. The survey is consistent

with the Snyders' (and McClure's) understanding of the position and orientation of the boundary line. CP at 101, ¶ 16; CP at 309, ¶ 5.

The Campbells refused to accept the survey and instead asserted that they were entitled to a four foot "set back" south of their home. CP at 102-03, ¶ 21.

F. Snyders construct chain link fences in their front and back yards.

In August 2015, to prevent the spread of the Campbells' encroachments and to protect their property rights, the Snyders built chain link fences in their front and back yards. CP at 101, ¶ 17.

In the front yard, the Snyders constructed a fence that runs east to west parallel to the Snyder-Campbell boundary line but is several inches south of the boundary line (on the Snyders' side of the boundary line). CP at 101, ¶ 18. The Snyders did not place the front yard fence on the actual boundary line because a large blue spruce tree grows on the boundary line.
Id.

In the backyard, the Snyders built a fence that runs east to west parallel to the Snyder-Campbell boundary line about eight to 12 inches south of the boundary line (on the Snyders' side of the boundary line). CP at 101, ¶ 19. Because of the position of the Campbells' sheds and the amount of wood, tires, and other personal property in the Campbells'

backyard that laid on, or spilled over, the boundary line, the Snyders could not install the fence on the actual boundary line. CP at 101-02, ¶ 19.

G. The Snyders seek a compromise with the Campbells.

After their own efforts at trying to convince the Campbells that they were encroaching on the Snyders' property were unsuccessful, the Snyders sought assistance from attorneys Kathryn McKinley and Tricia Usab. Ms. Usab took the lead in investigating the facts and the parties' legal positions, as well as attempting to negotiate a compromise between the Snyders and the Campbells. *See* CP at 170-72; 220-30. In negotiations between Ms. Usab and the Campbells' attorney, Joe Carroll, Ms. Usab drafted and proposed several different non-exclusive easements that the Snyders would have been willing to grant the Campbells to allow the Campbells to access the south side of their home and run water and sewer lines on the Snyders' property. CP at 171, ¶ 4; CP at 179-98. Ms. Usab also expressed the Snyders' offer to put up a privacy fence on the boundary line in the front and back yards of the properties (with a gate at the southwest side of the Campbells' home to allow Campbells access to the south side of their home). CP at 171, ¶ 4. The Snyders also offered to purchase the Campbells' property, CP at 103, and Ms. Usab prepared a purchase and sale agreement to facilitate that transaction. *See* CP at 221, ¶ 8, 227-28.

The Campbells rejected the Snyders' proposals and instead demanded an exclusive easement. CP at 171-72, ¶¶ 5-6. The Snyders, unwilling to give up their property, did not agree to grant the Campbells an exclusive easement. CP at 172, ¶ 6. Furthermore, the Campbells never offered to move their backyard sheds and personal property north of the boundary line; never offered to remove their plywood structure that extended from under their south eave; and, never expressed willingness to resolve the parties' dispute short of exclusively possessing some of the Snyders' property. CP at 170-72, ¶¶ 3, 7.

III. PROCEDURAL HISTORY

The Snyders filed suit to, inter alia, quiet title to their property and eject the Campbells from the Snyders' property. *See* CP at 3-11. The Campbells answered the Snyders' Complaint, and asserted counterclaims, including, inter alia, claims for quiet title and ejectment. CP at 285-306. The Campbells alleged that they had superior title to a swath of property extending four feet south from the current backyard fence line and running east and west along the northern part of the Snyders' property. *See, e.g.*, CP at 292-93, ¶ 42 ("The Campbells assert ownership and maintained continued possession until July 21, 2015 of the strip of land which measures 4 feet by 135 feet and lies South of the Campbell home, and runs East to West."). The Campbells alleged that they had superior title to the

swath of land extending approximately four feet¹ to the south of their southern property line because (1) the existence of underground water and sewer lines servicing the Campbells' house, but allegedly running under the Snyders' property, CP at 289, ¶ 23, CP at 295 ¶¶ 4-9;² and, (2) the fact that the Snyders' fenced dog enclosure, existing from 1997 to 2015 established a new boundary line, CP at 289, ¶ 22; CP at 296, ¶¶ 14-15.

The Snyders filed a motion for summary judgment requesting that the court enter judgment in their favor on their claims of quiet title and ejectment (and for dismissal of the Campbells' counter claims for quiet title and ejectment). The trial court heard oral argument on the Snyders' motion on September 20, 2019. VRP, Vol., 1 at 1-8. After argument, the trial court orally granted the Snyders' motion and awarded the Snyders their reasonable attorneys' fees. The court directed that an order be presented on October 4, 2019. *Id.* at 6:11-12.

At the scheduled presentment hearing, the trial court entered its Order Granting Snyders' Motion for Summary Judgment to Quiet Title

¹On appeal, the Campbells now seem to argue that they adversely possessed 1½ to 2 feet of the northern edge of the Snyders' property. App. Br. at 10.

²The Campbells subsequently took the position that they did "not assert ownership of any property by adverse possession based solely on the location of water and sewer lines," CP at 153, and do not pursue this argument on appeal.

and for Ejectment. CP at 208-11. The Campbells' counsel did not attend the presentment hearing. CP at 211.

The Snyders filed a Motion for Order of Judgment re: Attorneys' Fees and Costs. CP at 212-19; *see also* 220-44 (supporting declarations). The Snyders requested a judgment in the amount of \$38,238.38, which included legal fees incurred prior to the Snyders filing suit (including factual and legal investigation, efforts to negotiate with the Campbells and their counsel, and preparation of initial pleadings) as well as fees incurred after the Snyders filed suit. The trial court heard argument on the motion for attorneys' fees on October 25, 2019. *See* VRP, Vol. 2 at 8-13. After hearing argument, the trial court entered an Order of Judgment re: Attorneys' Fees and Costs in favor of the Snyders in the amount of \$36,695.38.³ CP at 265-69.

On January 6, 2020, the parties stipulated to the dismissal of their remaining claims and counterclaims. CP at 270-273. The Campbells filed a notice of appeal on January 9, 2020. CP at 274-75.

³The Snyders sought to recover the cost of Kitzan's survey (\$1,543.00), CP at 234, 244, but the Court ruled that it would not award that cost as part of the judgment, *see* VRP at 11:6-16.

IV. COUNTERSTATEMENT OF ISSUES

A. Whether the Snyders are entitled to judgment as a matter of law on their claims of quiet title and ejectment when they put forth admissible evidence that the Campbells could not establish the elements of adverse possession for a continuous period of 10 years, and, in opposition, the Campbells offered only hypothetical and speculative assertions?

B. Whether the trial court abused its discretion in awarding the Snyders their reasonable attorneys' fees and costs under RCW 7.28.083(3) when (1) the trial court was not required to enter written findings of fact, (2) the trial court provided oral rulings supporting why it found an award of attorneys' fees "equitable and just," and (3) the Campbells did not object to the wording of the proposed Order of Judgment re: Attorney Fees and Costs?

C. Whether the trial court abused its discretion by awarding the Snyders their reasonable attorneys' fees incurred, prior to filing suit, in the Snyders' efforts to resolve the boundary line dispute with the Campbells and avoid litigation when such award was necessary to grant full and complete relief to the Snyders?

V. STANDARD OF REVIEW

This Court reviews a trial court's grant of summary judgment de novo. *Scrivener v. Clark Coll.*, 181 Wn.2d 439, 444, 334 P.3d 541 (2014).

Summary judgment is proper if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56(c). When reasonable minds can reach but one conclusion, questions of fact may be determined as a matter of law. *Ruff v. King County*, 125 Wn.2d 697, 704, 887 P.2d 886 (1995). The purpose of summary judgment is to avoid a useless trial. *Balise v. Underwood*, 62 Wn.2d 195, 199, 381 P.2d 966 (1963).

When attorneys’ fees are authorized by statute, the appellate court will uphold an attorney fee award unless it finds the trial court manifestly abused its discretion. *Workman v. Klinkenberg*, 6 Wn. App.2d 291, 305, 430 P.3d 716 (2018). “The trial court abuses its discretion when its exercise of discretion is manifestly unreasonable or based on untenable grounds or reasons.” *Id.*

VI. ARGUMENT

The trial court properly granted summary judgment in favor of the Snyders on the parties’ competing claims of quiet title and ejectment. The Snyders put forth evidence that they had continuously used the disputed property for decades. The Snyders also offered the declaration of the Campbells’ predecessor, Wade McClure, who corroborated that the

Snyders used all of their property up to the boundary line and testified that he did not seek to adversely possess the disputed property during the time he owned the 5021 property between 2006 and 2015.

The Campbells, on the other hand, offered only the testimony of Mrs. Campbell who could establish nothing more than the condition of the Campbells' property when they moved to the property in February 2015. Mrs. Campbell improperly inferred that, because certain conditions of the parties' properties existed in February 2015, that those conditions had existed for at least 10 years. The Campbells also failed to rebut McClure's sworn statements. Because the Campbells failed to meet their burden to create a genuine issue of material fact that they and their predecessors met the elements of adverse possession for a continuous 10-year period, a trial of this matter was useless and the trial court properly granted summary judgment.

The trial court did not abuse its discretion in awarding the Snyders their attorneys' fees incurred in defending their property rights against the Campbells, including fees incurred in the Snyders' reasonable efforts to compromise with the Campbells and avoid litigation. RCW 7.28.083(3) grants courts broad discretion to award attorneys' fees to a prevailing party in the interests of justice and equity. Equity seeks to afford an injured party a full and complete remedy. Here, the trial court's decision

awarding the Snyders the full amount of their requested fees was necessary to make the Snyders whole in light of the Campbells' taking baseless positions to possess the Snyders' property. In the unique circumstances presented in this case, the trial court's attorneys' fee award was manifestly reasonable and was based on tenable grounds and reasons.

Accordingly, the Snyders respectfully request that this Court affirm the trial court in all respects.

A. The trial court properly granted summary judgment in favor of the Snyders on the parties' competing claims of quiet title and ejectment.

The Campbells argue that the trial court erred in granting summary judgment in favor of the Snyders on the parties competing claims of quiet title and ejectment. App. Br. at 10-17. The Campbells contend that they created a genuine issue of material fact as to whether they acquired title to the Snyders' property (1½ to 2 feet south of the boundary line) by adverse possession or mutual recognition and acquiescence. App. Br. at 10. The trial court did not err in granting summary judgment and there are no genuine issues of material fact.

To establish adverse possession, a person must establish that his or her use of the property was (1) exclusive; (2) actual and uninterrupted for a period of 10 years (RCW 4.16.020); (3) open and notorious; and (4) hostile. *Chaplin v. Sanders*, 100 Wn.2d 853, 857, 676 P.2d 431 (1984).

Likewise, to establish a boundary line by recognition and acquiescence, the elements of that cause of action must “have continued for [10 years].” *Lamm v. McTighe*, 72 Wn.2d 587, 593, 434 P.2d 565 (1967). The party claiming the adverse possession has the burden of proof. *ITT Rayoneir, Inc. v. Bell*, 112 Wn.2d 754, 757, 774 P.2d 6 (1989). There is no presumption in favor of an adverse holder because possession is presumed to be subordinate to the true owner’s title. *Herrin v. O’Hern*, 168 Wn. App. 305, 275 P.3d 1231 (2012).

The Campbells fail to create a genuine issue of material fact that they and their predecessors openly, notoriously, and hostilely possessed the Snyders’ property for a continuous period of 10 years. The Campbells moved into the 5021 property in February 2015. CP at 156, ¶ 2. The Snyders took definitive action to assert their ownership of the disputed property sometime between June and August 2015. CP at 158, ¶ 8; CP at 101, ¶ 17; *see also* CP at 100, ¶ 12 (Mr. Snyder testifying that he told Mr. Campbell when they moved in, that the Snyders’ dog enclosure fence was not on the boundary line). To establish a claim of adverse possession (or a claim of title by mutual recognition and acquiescence), the Campbells must establish the elements of their claims for the period between 2005 and 2015. The Campbells, based on their own personal knowledge, however, could not establish how *any* of their predecessors

used the disputed property over the course of that period. The Campbells' personal knowledge was limited to the condition of the properties at the time they moved in (February 2015).

The Campbells' predecessor, Wade McClure, cut the legs out from under the Campbells' claim to the Snyders' property. McClure lived at the 5021 property from March 2006 to December 2014. CP at 308, ¶ 2. McClure's testimony, which the Campbells could not (and did not attempt to) dispute, established that (1) he shared the Snyders' understanding of the location of the boundary line between the 5017 and 5021 properties (i.e., that the boundary line ran east to west in line with the south edge of the 5021 home as depicted in Kitzen's survey), CP at 309, ¶ 5; (2) the Snyders used and maintained their property up to the boundary line, *id.* at ¶ 6; and, (3) he understood the north fence of the Snyders' pet enclosure was not on the boundary line, *id.* at ¶ 7. Accordingly, undisputed evidence established that, at least between 2006 and 2015, the owners of the 5021 property did not openly, notoriously, and hostilely possess any portion of the Snyders' property.

The Campbells make a number of arguments on appeal trying to create a question of fact, but none of their arguments overcome the undisputed, admissible evidence establishing the lack of a 10-year

continuous period of adverse possession. The Snyders address each argument in turn.

The Snyders did not explain how they knew where the boundary line was prior to 2015 survey. App. Br. at 11, 14. This fact is immaterial as, regardless of whether the Snyders knew where the boundary line was, they used all of their property up to the boundary line as later established in Kitzan's survey. CP at 98-100, ¶¶ 6, 8, 11; *see also* Exhibit A, attached (photographs). There is also evidence that the Snyders understood the position of the boundary line (without a survey) from (1) the course of Mr. Snyder's family's 60 year habitation on the property, CP at 98, ¶¶ 4-6, and (2) the fact that the south side of the Snyders' own home sits on their southern boundary line, so the southern boundary line is the line coming off the Snyders' home's foundation, *id.* at 98, ¶ 4. If the Campbells had reason to question Mr. Snyder's pre-survey understanding of the boundary line, they were entitled to depose him, but they didn't.

McClure's declaration did not explain McClure's understanding of boundary line or "describe any conduct on the part of the Snyders." App. Br. at 11, 15. Topics that McClure did not discuss in his declaration are not material to the issue raised by the Snyders on summary judgment. Even if McClure, at the time he lived in the 5021 property, did not know the precise position of the boundary line, when he was later presented with

Kitzan's survey, he testified that his previous understanding of the boundary line was "in accordance" with Kitzan's survey. CP at 309, ¶ 5. McClure further testified that the Snyders used all of the property up to the south side of the 5021 house (and the line coming off the south part of the home's foundation). CP at 309, ¶ 6.

If the Campbells had reason to doubt McClure's testimony or wanted additional details about either McClure's or the Snyders' use of the disputed property, the Campbells should have taken McClure's deposition or had him sign another declaration. *See* VRP at 4:5-10 (trial court noting that the Campbells could have, but did not, depose McClure or seek a CR 56(f) continuance of the summary judgment hearing). Moreover, even if McClure did not "describe any conduct on the part of the Snyders that would constitute[] use and maintenance of the disputed strip of land," App. Br. at 11, Mr. Snyder provided this evidence, *see* CP at 98-100, ¶¶ 6, 8, 11. The Campbells lacked personal knowledge (and did not obtain any declarations of other people with knowledge) to create an issue of fact that the Snyders did not use their property as described by Mr. Snyder and corroborated by McClure.

Mrs. Campbell's declaration describes the condition of the Campbells' property when they moved in in February 2015, and these conditions could be inferred to have existed historically. App. Br. at 12-15

(citing CP at 156-57). Mrs. Campbell's declaration describes how, when the Campbells moved into the 5021 house, their backyard was enclosed by a wood alley fence⁴ (to the west) and the north side of the Snyders' dog enclosure (both fences placed 1½ to 2 feet south of the boundary line (on the Snyders' property)) and that there were several shrubs 1½ to 2 feet south of the 5021 home (in line with the north dog enclosure fence)⁵. CP at 156-57. The Campbells argue that Mrs. Campbell's declaration creates "an inference that the chain link fence and the row of junipers was mutually recognized as establishing the boundary line between the two properties." App. Br. 15. But Mrs. Campbell's declaration does not create a genuine issue of material fact that the Campbells and their predecessors adversely possessed the Snyders' property (or mutually recognized a new boundary line) for *a continuous 10-year period*. The inference the

⁴To the extent the wood alley fence extended onto the Snyders' property, the Campbells could not dispute Mr. Snyder's testimony that McClure installed this fence in October or November 2014. CP at 101, ¶ 15. The position of the wood fence on the Snyders' property does not help the Campbells establish a 10-year continuous possession of the disputed property.

⁵It is not reasonable to infer that shrubs placed 1½ to 2 feet south of the 5021 home established a mutual recognition of a new boundary line. Cf. App. Br. at 16. The Snyders are entitled to plant shrubs on their property for their privacy or for the aesthetics. It would not make sense for the Snyders to plant shrubs any closer to the 5021 home as the plants and roots could potentially interfere with the home.

Campbells draw is this: Because their property was in a certain condition when they moved in (backyard enclosed over the Snyders' property line, shrubs growing south of the 5021 home), these conditions must have existed for at least 10 years and their predecessors satisfied the elements of adverse possession. These are not reasonable inferences, it is speculation. Speculation and hypothetical scenarios are not sufficient to defeat summary judgment. *See Strauss v. Premera Blue Cross*, 194 Wn. 2d 296, 301, 449 P.3d 640 (2019) (“[S]peculation and conclusory statements will not preclude summary judgment.”); *Ferguson v. RTS Pac., Inc.*, No. 76273-7, 2018 WL 4697268, at *2 (Wash. Ct. App. Oct. 1, 2018), (“While CR 12(b)(6) permits courts to consider hypothetical facts . . . CR 56 does not.”) (citation omitted).

In sum, the Snyders' evidence establishes that the Campbells cannot prove an essential element of their adverse possession claim (10 years' continuous possession). The burden thus shifts to the Campbells who failed to establish a genuine issue of material fact requiring trial. This Court should affirm the grant of summary judgment in favor of the Snyders.

B. The trial court did not abuse its discretion by awarding the Snyders their reasonable attorneys' fees and costs incurred in defending their property rights against, and trying to avoid litigation with, the Campbells.

The Campbells argue that the trial court erred in awarding the Snyders their attorneys' fees because the trial court failed to make requisite findings and did not appreciate certain facts. App. Br. at 17-21. The Campbells further argue that, assuming the Snyders are entitled to attorneys' fees, the trial court erred in awarding the Snyders their attorneys' fees incurred in pre-litigation negotiations and attempts avoid litigation. App. Br. at 21-23. The Campbells' arguments fail.

2. *The trial court was not required to enter written findings of fact, the trial court's oral rulings explains its reasons for awarding attorneys' fees to the Snyders, and the Campbells did not object to the form of the Order of Judgment re: Attorneys' Fees and Costs.*

The Campbells argue that the trial court erred in awarding the Snyders' their reasonable attorneys' fees because (1) the trial court's order "contains no finding that the award of attorneys' fees and costs is equitable and just," (2) certain remarks of the trial court suggest that the trial court considered the Snyders "entitled" to fees as a matter of right, and (3) the trial court did not consider "all of the facts of the case to determine whether an award of attorneys' fees and costs was appropriate in this particular case." App. Br. at 19-20. Each of these arguments fail.

- a. The trial court was not required to enter written findings of fact and the Campbells waived review of this issue by failing to object or assert this position to the trial court.

RCW 7.28.083(3) does not expressly require that an award of attorneys' fees be supported by findings of fact and conclusions of law. As such, written findings of fact and conclusions of law were not required. See CR 52(a)(2)(C) (“[F]indings and conclusions are required . . . [i]n connection with any other decision where findings and conclusions are specifically required by statute, by another rule, or by a local rule of the superior court.”).⁶ The trial court’s oral rulings (at the September 20, 2019 summary judgment hearing and at the October 25, 2019 attorneys’ fees hearing) explain the trial court’s reasoning concerning its attorneys’ fees and costs award to the Snyders, see VRP at 5⁷, 8-13⁸, which fulfilled

⁶In appellate decisions addressing RCW 7.28.083(3), it appears that trial courts are not consistent in entering written findings of fact supporting an award of attorneys’ fees. Compare *Berschauer v. State Dep’t of Gen. Admin.*, No. 35502-1-III, 2017 WL 6343652, at *9 (Wash. Ct. App. Dec. 12, 2017) (affirming award of attorneys’ fees under RCW 7.28.083(3) based on trial court’s oral findings) with *Workman*, 6 Wn. App.2d at 306 (trial court entered “thorough” written findings of fact and conclusions of law).

⁷There’s a discussion here about negotiations that were entered into to try and resolve this matter before it came to this. The Court can consider these negotiations as either good faith or bad faith of the parties in trying to resolve this matter or warranting attorney fees. The statute allows, that being RCW 7.28.083, the prevailing party an award of attorney fees.

any obligation on the part of the trial court to provide a factual basis for its decision.

Additionally, the Campbells waived the inclusion of express findings in the Order of Judgment re: Attorneys' Fees and Costs by not objecting or raising this argument to the trial court. *See* RAP 2.5(a) ("The appellate court may refuse to review any claim of error which was not raised in the trial court."); 2A Wash. Prac., Rules Practice RAP 2.5 (8th ed.) (noting that the rule stated in RAP 2.5(a) is premised on the concept that "the trial court should be given an opportunity to correct errors and

Here, it is clear where the boundary line is located, as shown in the survey, and the claim by the Campbells for adverse possession is incredibly weak given that they didn't possess the property for ten years and had no evidence to show that Mr. McClure ever adversely possessed it. The Court finds it is equitable to enter an award of attorney fees in favor of the Snyders.

VRP at 5.

⁸But 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 then make them pay pretty much half their attorney fees to have that right affirmed wouldn't be just.

VRP at 12:9-19.

omissions at the trial level, and that it was the obligation of the parties to draw the trial court's attention to errors, issues, and theories, or be foreclosed from relying upon them on appeal."'). The Snyders served the Campbells with a proposed Order of Judgment re: Attorneys' Fees and Costs prior to the October 25, 2019 hearing. CP at 254-56. The Campbells did not object to the proposed order in writing, and, at the October 25, 2019 hearing, the Campbells' counsel did not argue that the trial court should enter written findings of fact. Finally, when the Court entered the Order after the October 25, 2019 hearing, the Campbells' counsel signed that he agreed to the form of the Order. CP at 268. If the Campbells wanted the Court's oral ruling memorialized in written findings and conclusions, the Campbells should have raised this issue at the trial court level.

- b. The trial court understood that an award of attorneys' fees under RCW 7.28.083(3) was discretionary.

The trial court's reference to the Snyders as the "prevailing party" and its statement that the Snyders were "entitled" to their attorneys' fees and costs, *e.g.*, VRP at 11:18-19, does not suggest that the trial court considered that the Snyders had a right to attorneys' fees by virtue of their position as the "prevailing party." *Cf.* App. Br. at 19. The trial court's oral rulings indicate that it was well aware that an award of fees under

RCW 7.28.083(3) was discretionary. *E.g.*, VRP at 9:13-16 (distinguishing RCW 49.48 from RCW 7.28.083(3) by observing that an award of attorneys' fees under the former was "mandatory"); VRP at 9:13-14 ("The prevailing party was the plaintiffs, and by statute [(RCW 7.28.083(3))], the Court **may** award attorney fees and costs." (Emphasis added)); *id.* at 10:9-11 ("This is an action in which the plaintiffs prevailed on the issue of adverse possession and the Court, **in its discretion**, may award both fees and costs." (Emphasis added)). The trial court did not somehow err by failing to appreciate the discretionary nature of awarding fees under RCW 7.28.083(3).

- c. The trial court considered the entire factual record prior to awarding the Snyders their attorneys' fees.

Contrary to the Campbells' arguments, App. Br. at 19-20, the record reflects that the trial court evaluated the unique circumstances of this case prior to finding that an award of attorneys' fees and costs to the Snyders would be equitable and just. The trial court was apprised of all the relevant facts and arguments made by the parties in the summary judgment briefing and declarations. *See* VRP at 2:2-3 ("I've reviewed everything that's been supplied in regard to this motion."). The trial court also considered the merits (or lack thereof) of the Campbells' position, especially the Campbells' failure to dispute McClure's declaration. VRP at

4; *see also* VRP at 5:14-18 (“[T]he claim by the Campbells for adverse possession is incredibly weak given that they didn’t possess the property for ten years and had no evidence to show that Mr. McClure ever adversely possessed it.”). Further, the trial court considered the parties’ pre-suit negotiations. VRP at 5:6-12; *see also* CP at 102-03 (Decl. of D. Snyder) (describing negotiations with Campbells); *id.* at 170-207 (Decl. of T. Usab) (describing the Snyders’ counsel’s efforts to settle with the Campbells pre-suit). Finally, the trial court found that the hourly rates and time spent by the Snyders’ attorneys were reasonable. VRP at 10:14-15.⁹ Again, if the Campbells desired the trial court to explain itself any further, the Campbells could have, and should have, requested that the trial court enter findings of fact and conclusions of law.

In sum, the trial court did not abuse its discretion in concluding that, as a matter of justice and equity, the Snyders were entitled to an award of attorneys’ fees and costs under RCW 7.28.083(3).

⁹The Campbells have not challenged (either before the trial court or this Court) that the Snyders’ counsels’ hourly rates were unreasonable or that any time spent by the Snyders’ counsel after filing suit was not reasonable and necessary to achieve the Snyders’ result. *See, e.g.*, VRP at 10:14-15 (“In reviewing all these documents, I don’t know that it’s disputed that the time spent post-filing was reasonable. I didn’t hear anything about that time being unreasonable, just the time prior to filing. Also, I don’t recall seeing anything about the attorneys’ rates being unreasonable.”).

3. *The trial court did not abuse its discretion in awarding the Snyders their reasonable attorneys' fees incurred in trying to compromise with the Campbells prior to the Snyders filing suit.*

The Campbells argue that the trial court erred in awarding the Snyders their pre-suit legal fees incurred for counsels' advocacy on behalf of the Snyders in seeking a compromise with the Campbells. App. Br. at 21-23. This argument fails because RCW 7.28.083(3) grants courts broad discretion to fashion a fee award that is "just and equitable," and does not limit the award to fees relating only to litigation of an "action."

- a. The structure and plain language of RCW 7.28.083(3) does not prohibit a court from awarding pre-suit attorneys' fees incurred in settlement negotiations.

RCW 7.28.083(3) provides:

The prevailing party in an action asserting title to real property by adverse possession may request the court to award costs and reasonable attorneys' fees. The court may 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) is a "unique fee statute." *Berschauer v. State Dep't of Gen. Admin.*, No. 35502-1-III, 2017 WL 6343652, at *9 (Wash. Ct. App. Dec. 12, 2017).

No Washington appellate decision has analyzed whether RCW 7.28.083, which was enacted in 2011, prohibits a trial court from

awarding attorneys' fees incurred in pre-suit negotiations. But the statute is not ambiguous, and the structure and plain language of the statute strongly suggest that a court has discretion to award such fees.

The first sentence of RCW 7.28.083(3) uses the word "action," which the Washington Supreme Court has determined, in the context of RCW 49.48.030¹⁰, to mean "proceedings of a judicial nature." *Dice v. City of Montesano*, 131 Wn. App. 675, 691, 128 P.3d 1253 (2006). But the first sentence of RCW 7.28.083(3) does not state that the prevailing party is only limited to fees incurred in prosecution or defense of an "action"; it merely uses the word "action" in the context of how the court is to determine the "prevailing party." The second sentence of RCW 7.28.083 uses the word "equity." "Equity" is defined as the "body of principles constituting what is fair and right; natural law." BLACK'S LAW DICTIONARY (10th ed. 2014). "The purpose of equity is to afford to the complainant a full, complete, and adequate remedy." *J. L. Cooper & Co. v. Anchor Sec. Co.*, 9 Wn.2d 45, 72, 113 P.2d 845 (1941). The plain language of RCW 7.28.083(3), particularly its "equitable and just"

¹⁰"In any action in which any person is successful in recovering judgment for wages or salary owed to him or her, reasonable attorney's fees, in an amount to be determined by the court, shall be assessed against said employer or former employer." RCW 49.48.030.

standard, does not prohibit a court from awarding pre-suit attorneys' fees incurred in settlement negotiations where the court finds that the circumstances of the case call for such an award.

RCW 49.48.030 (as interpreted by *Dice*), relied upon by the Campbells, is distinguishable from RCW 7.28.083(3).

First, RCW 49.48.030 does not contain RCW 7.28.083(3)'s "equitable and just" standard. RCW 7.28.083(3) grants the trial court broad power to do equity in adverse possession cases. RCW 49.48.030 is more black and white: if a claimant successfully recovers a judgement of wages or salary owed to him, the court "shall" award the claimant his or her attorneys' fees. RCW 49.48.030 leaves little room for the court to take equity into account when awarding fees.

Second, *Dice* does not compel a rule that, even under RCW 49.48.030, awarding claimants pre-suit attorneys' fees incurred in settlement negotiations is prohibited in all cases. In *Dice*, the trial court concluded that the plaintiff was entitled to fees for some pre-suit legal work (i.e., factual investigation, drafting pleadings), but not for settlement negotiations because settlement negotiations "do not carry the same judicial nature." *Id.* at 692. However, the Court of Appeals concluded only that "the trial court did not **abuse its discretion** when it failed to award *Dice* fees incurred during pre-filing negotiations." *Id.* (emphasis added).

Under the deferential standard of review, the Court of Appeals left open the possibility that, in another case, the trial court might have reason to award pre-suit settlement negotiation fees and doing so would also be within the trial court's discretion. If such a result could conceivably be within the court's discretion under RCW 49.48.030 than it is surely within the court's broad equitable power under RCW 7.28.083(3).

- b. Canons of construction and legislative history support that RCW 7.28.083(3) does not prohibit a court from awarding pre-suit attorneys' fees incurred in settlement negotiations.

Although RCW 7.28.083(3) is not ambiguous, and statutory interpretation is not required, canons of construction and legislative history further support that RCW 7.28.083(3) does not prohibit a court from awarding pre-suit attorneys' fees incurred in settlement negotiations.

Canons of statutory construction provide that (1) related provisions of a statute should be read in harmony, and (2) statutes should be construed so as to render no part meaningless or superfluous. *See C.J.C. v. Corp. of Catholic Bishop of Yakima*, 138 Wn.2d 699, 708, 985 P.2d 262 (1999) ("Related statutory provisions are interpreted in relation to each other and all provisions harmonized."); *Rivard v. State*, 168 Wn.2d 775, 783, 231 P.3d 186 (2010) ("[W]e interpret a statute to give effect to all language, so as to render no portion meaningless or superfluous."). Under

these canons, the first sentence of RCW 7.28.083(3) should not be read in isolation, but in a way that is consistent with the second sentence. Accepting the Campbells' argument that the Snyders' fee award is limited to fees related to an "action" creates disharmony between the first and second sentences of RCW 7.28.083(3), and begs the question: What if the complainant is not fully, fairly, and equitably compensated through an award of only fees relating to prosecution or defense of an "action"? Accepting the Campbells' position would significantly limit the court from making an equitable determination and render the second sentence of RCW 7.28.083(3) superfluous.

Finally, the legislative history of RCW 7.28.083 sheds some light on the intent behind RCW 7.28.083(3)'s "equitable and just" standard:

Claims of adverse possession can be costly to defend, financially devastate a defending title holder, and turn neighborhoods into battlefields. The bill would make it so adverse possessors no longer can force settlements by exposing the defending title holder to steep legal costs.

House Bill Rpt., HB 1026 at pg. 4 *available at* <http://lawfilesexternal.wa.gov/biennium/2011-12/Pdf/Bill%20Reports/House/1026%20HBR%20JUDI%2011.pdf?q=20200518144250> (last visited May 18, 2020).

People have a reasonable expectation to believe that they have legal title to what they purchase. However, people abuse the law and continue to take something for nothing. .

. . Title insurance companies will not pay for claims of adverse possession. Adverse possession laws allow your neighbors to hold you ransom. The current state of adverse possession destroys neighborhoods. . . . This is a loss of land. Giving judges flexibility to award fees is fair.

Senate Bill Report, ESHB 1026 at pg. 3, *available at* <http://lawfilesexternal.wa.gov/biennium/2011-12/Pdf/Bill%20Reports/Senate/1026-S.E%20SBA%20JUD%2011.pdf?q=20200518144250> (last visited May 18, 2020).

This history suggests that the legislature intended RCW 7.28.083(3) to protect, through a fee shifting mechanism, landowners whose neighbors sought to hold them “ransom” and take their property “for nothing.” The legislature recognized that the cost of defending such claims could “financially devastate a defending title holder”; thus, it was necessary to give judges “flexibility” in awarding fees. These considerations underlie the trial court’s fee award in this case.

- c. In this case, the trial court did not abuse its discretion in awarding the Snyders' attorneys' fees for pre-suit settlement negotiations when such an award was necessary to fully and fairly compensate the Snyders for defending against the Campbells' baseless claim.

In this case, the trial court did not abuse its discretion in awarding the Snyders their pre-suit legal fees incurred in trying to compromise with the Campbells prior to resorting to litigation. An award of such fees was necessary to make the Snyders whole for their extensive, but ultimately futile, efforts to appease the Campbells without a lawsuit.

Prior to filing suit, the Snyders' counsel advocated a plan that would give the Campbells' privacy and the legal right to enter the Snyders' property to maintain the south side of their house, and offered to buy the Campbells' property. *See* CP at 170-72; 220-30; *see also* pg. 9-10 § G, *supra*. Despite seemingly addressing all the Campbells' grievances, the Campbells persisted in their claim of ownership of the Snyders' property (without factual or legal justification). *Id.* Only after negotiations failed did the Snyders file suit. CP at 3-11. Presented with the evidence of the parties' pre-suit negotiations, as well as its knowledge of the merits and ultimate resolution of the parties' dispute, the trial court determined that it was "equitable and just" to award the Snyders their pre-suit

attorneys' fees, including fees incurred in settlement negotiations. *See generally* VRP at 4-5, 10-12.

The trial court's decision to award pre-suit fees incurred in settlement negotiation in this case was manifestly reasonable and based on tenable grounds and reasons. The trial court found that the Snyders incurred significant legal fees pre-suit in investigating the dispute and good faith efforts to settle outside of court. Denying such fees to the Snyders, who were actively trying to avoid litigation, would be the opposite of an "equitable" result. The trial court seemed to recognize that the Campbells' argument would fail had the Snyders filed suit prior to engaging in settlement negotiations. RCW 7.28.083(3)'s equitable standard allowed the trial court to look beyond technical timing issues of when the Snyders filed suit and when they engaged in settlement negotiations to reach a result that was fair in the circumstances of this case.

In sum, the structure and plain language of RCW 7.28.083(3), as well as canons of construction and legislative history, compel rejecting the Campbells' bright line rule that attorneys' fees incurred (pre-filing) in trying to settle an adverse possession property dispute are not recoverable under RCW 7.28.083(3). Instead, RCW 7.28.083(3) vests the court with broad discretion to fashion an award of fees to "the prevailing party in an

action” that fully and completely compensates the party. Such an award was appropriate in this case and not an abuse of discretion.

C. **The Snyders request an award of attorneys’ fees and costs incurred on appeal.**

“RAP 18.1 permits recovery of reasonable attorney fees or expenses on review if applicable law grants that right.” *In re of Rapid Settlements, Ltd's*, 189 Wn. App. 584, 617, 359 P.3d 823 (2015). RCW 7.28.083(3) provides that a party successfully defending against a claim of adverse possession may be awarded fees and costs when “equitable and just.” Where the trial court awards a prevailing party fees under RCW 7.28.083(3), and the same party prevails on appeal, the Court of Appeals has awarded fees to the prevailing party. *See, e.g., Workman, Berschauer, supra*.

Here, based on the circumstances on this case described above, the trial court found that the Snyders were entitled to all of their attorneys’ fees from the time the Snyders were first required to hire an attorney through the time the Snyders prevailed on summary judgment. The Campbells’ instant appeal perpetuates the baseless adverse possession claim that the Campbells have asserted since 2015. The Campbells continue to hold the Snyders “ransom,” forcing the Snyders to incur additional fees and costs on appeal to defend their property rights and the

fee award that made the Snyders monetarily whole for their efforts to thwart the Campbells and regain their yard. If they prevail on all or any aspects of this appeal, the Snyders respectfully request that this Court award them their fees and costs on appeal pursuant to RCW 7.28.083(3) and RAP 18.1.

VII. CONCLUSION

For the foregoing reasons, this court should affirm the trial court's orders granting (1) granting summary judgment in favor of the Snyders on the parties' competing claims of quiet title and ejectment, and (2) awarding the Snyders their reasonable attorneys' fees and costs. The Snyders also respectfully request their fees and costs incurred on appeal.

RESPECTFULLY SUBMITTED this 26th day of May, 2020.

PAINE HAMBLÉN LLP

By: Paul S. Stewart
Paul S. Stewart, WSBA #45469
Paine Hamblen LLP
717 West Sprague Avenue, Suite 1200
Spokane, Washington 99201-3505
(509) 455-6000

Attorneys for Respondents Snyder

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that a true and accurate copy of the document to which this declaration is affixed was filed and served, on this day, electronically through the Court of Appeals' online Portal and by email.

Richard D. Wall, P.S.
Attorney at Law
1604 W. Dean
Spokane, WA 99201
Attorneys for Appellants

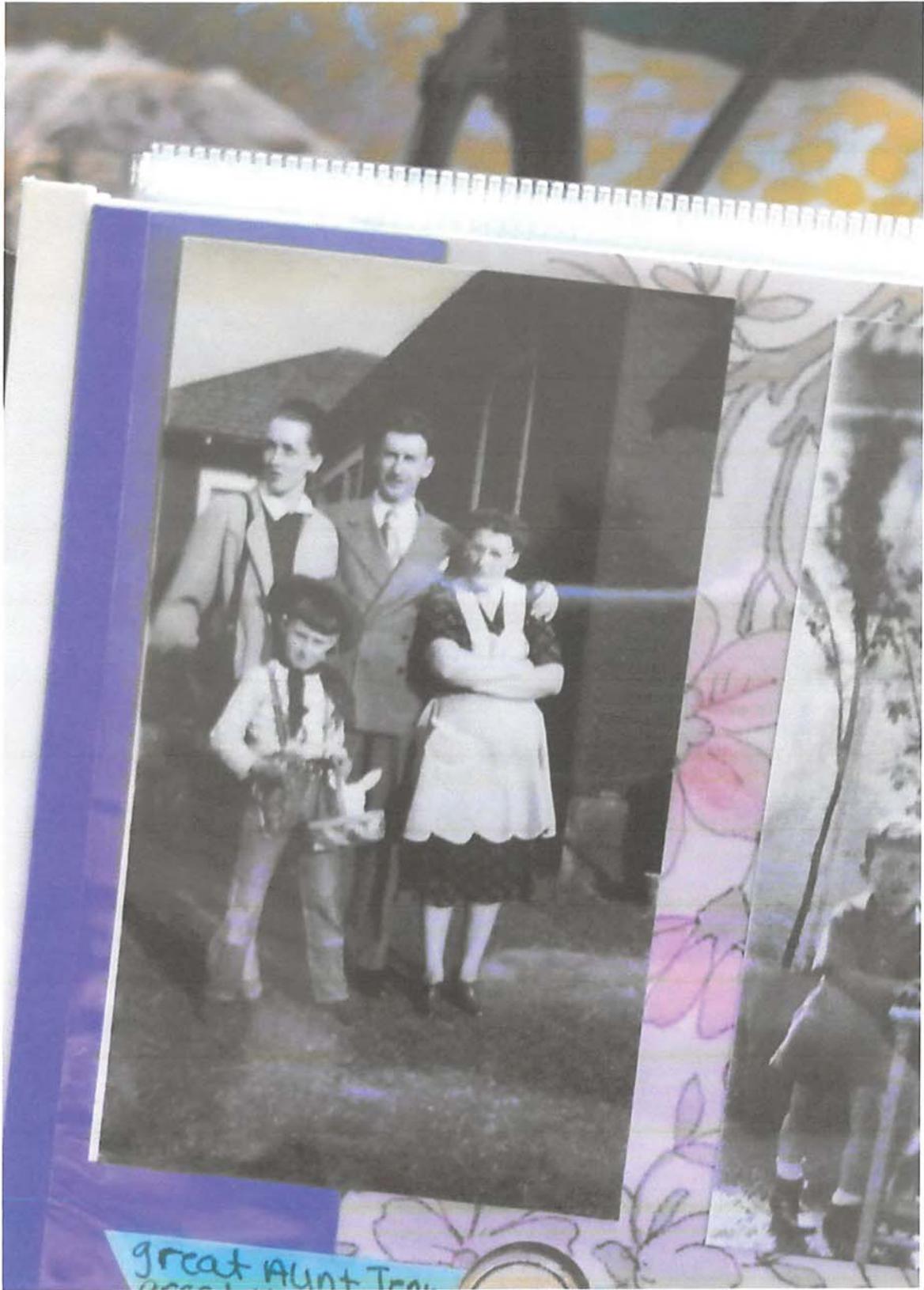
Sean Boutz
Evans, Craven & Lackie, P.S.
818 W. Riverside, Suite 250
Spokane, WA 99201

Dated this 26th day of May, 2020, at Spokane, Washington.

Paul S. Stewart

Paul S. Stewart

EXHIBIT A



Elizabeth
(great grandma
Snyder)

David Jr.
(grandpa
Snyder)





Spring 1954 Side yard of 5017 N Altamont Street -
Campbello
Plants etc. - Looking towards - what is now the
place -



Campbell's
place
in the back
ground.

Summer
of
1954
as I
was
going
into
Scouts -
Plants
along
Campbell's
place -
Has always
been
care of
for by
our family



← Campbell
Place
currently

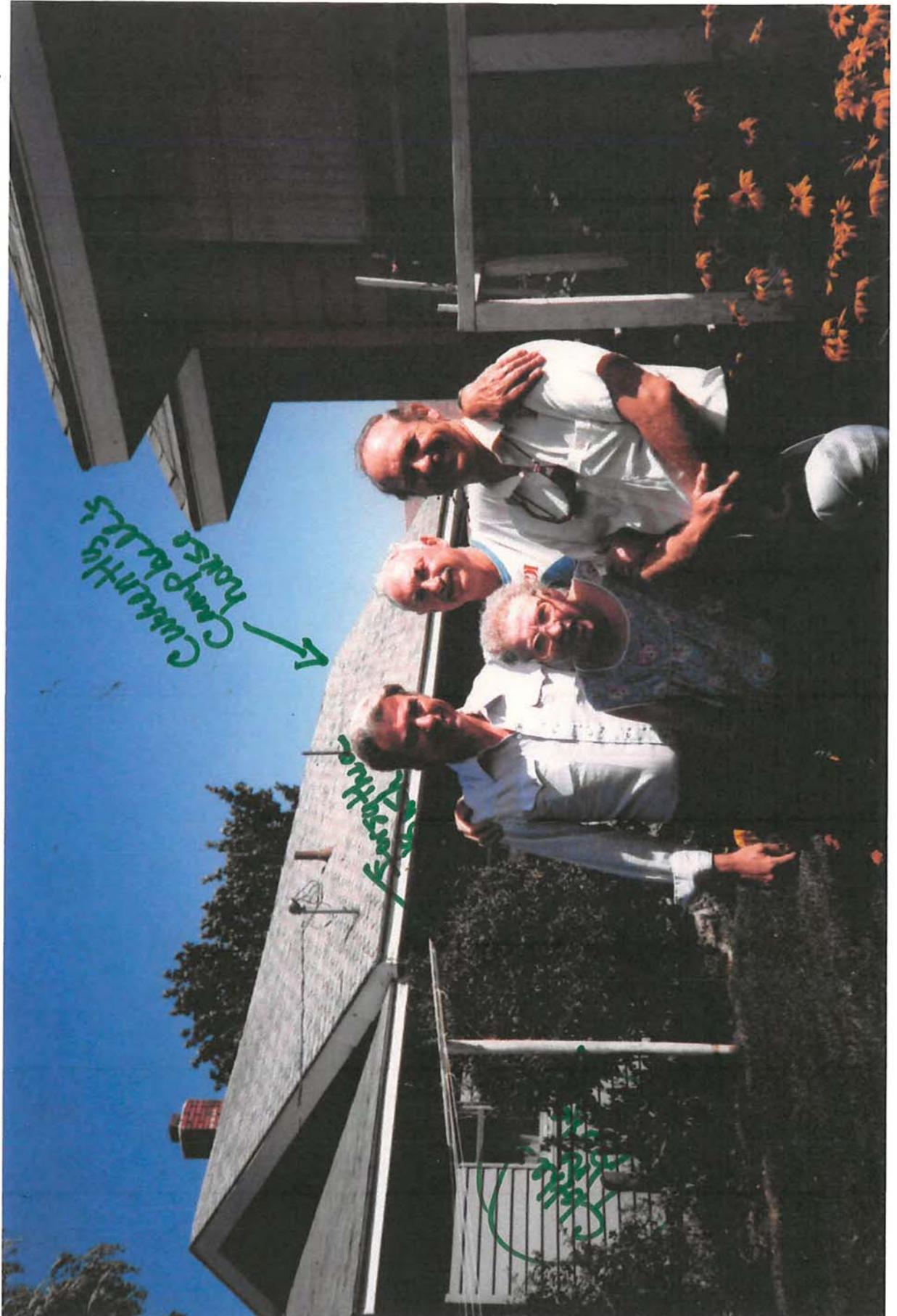
• 1957

JUN Clothes
line
• are ours

ST Plants
were
mom's

Always
been
our
responsi-
bility

This picture is also around 1986 - The clothes line was on the side yard - also belonging to David's Mother - The clothes line pole still exist - the Forsythia bush just beyond the clothes line pole existed till about 15 years ago - the other plants by the side of white house are also Mom Snyder's -



This picture is David's Mother w/ brother & several Nephews - As you can see - the white house to the left is what is now the Campbell house - Believe this was around 1986 over on the side yard over by the white house are many plants belonging to Mom Snyder - Moved & Kept up by her -





Davinia Kopplin shared a photo with you



This is part
of a garden
I planted a
few years
ago -
The Campbell's
house is the
house that you
see here -
side yard -



Campbell's house

our BBQ.

Campbell's house
struck me down

Before the house became the Campbell's - also before the survey + the front fence had to be put up -



The house pictured is the Campbell house now -



These two pictures were taken when our grandson was quite young - He just turned 15 years old recently - It also was taken when the temporary fences were still up for the dog containment - The dog was a Samoyed weighing around 85 pounds. -



The house to the @ is the Campbells and the yard
the plants are mine planted about 2 years ago
maybe 3 years ago - Can't remember for sure -

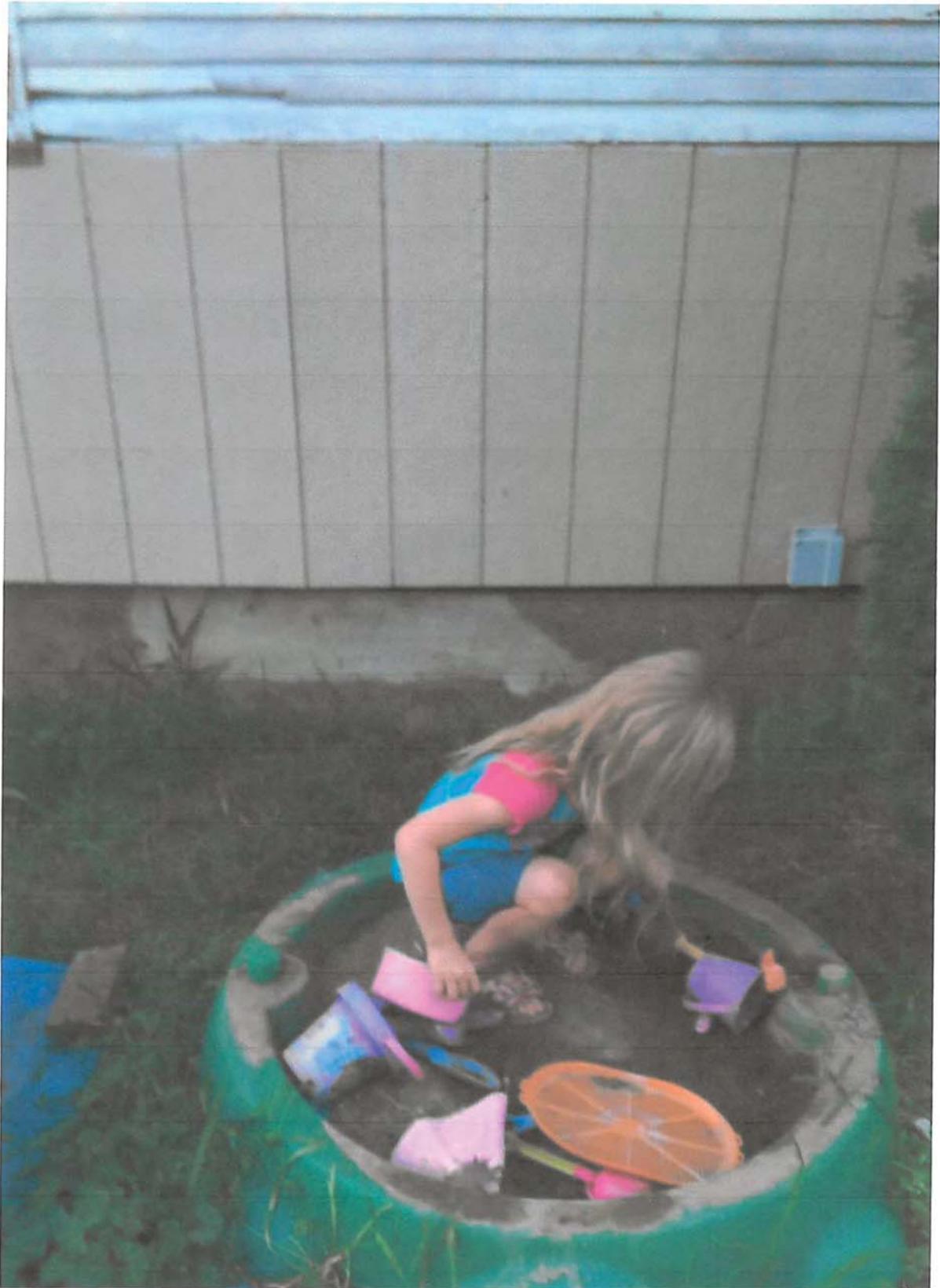


Campbell's place is on the (R) - however they had not yet bought the place - Children playing on slip and slide - the Shrub that is on the back - has been there for many years - we planted it 20 or more years ago -



This picture was
taken long before
the house became
the Campbell's -

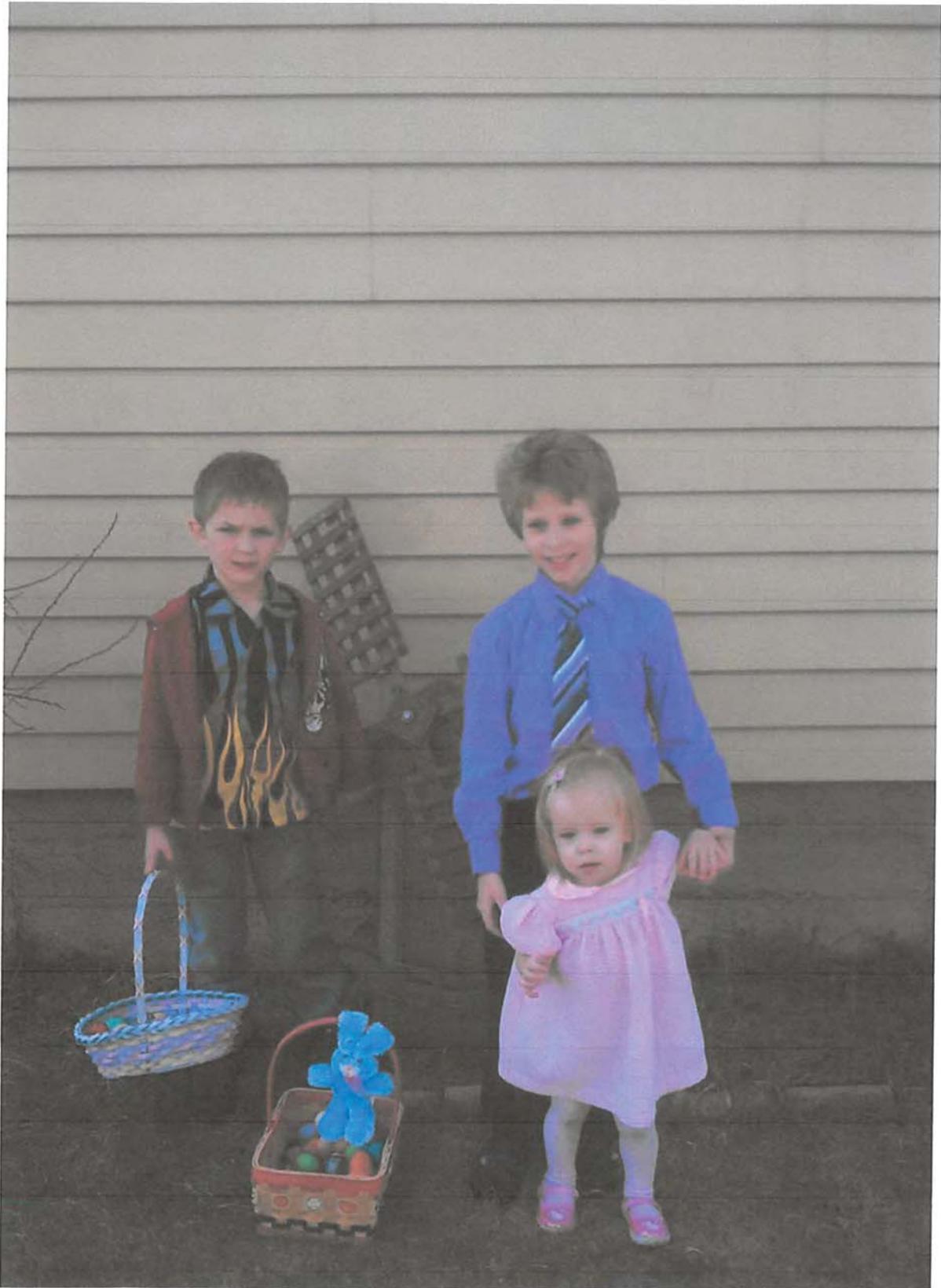
Summer activities in the side yard with grand
children and family gatherings - Approximately
6 to 8 years ago - Campbell's house is to the left
you can barely see the corner of the porch - The
popup in the front is ours -



This picture was taken when Zai was around 4 maybe 5 - playing in her Sand box - the house behind her is now the Campbells house -



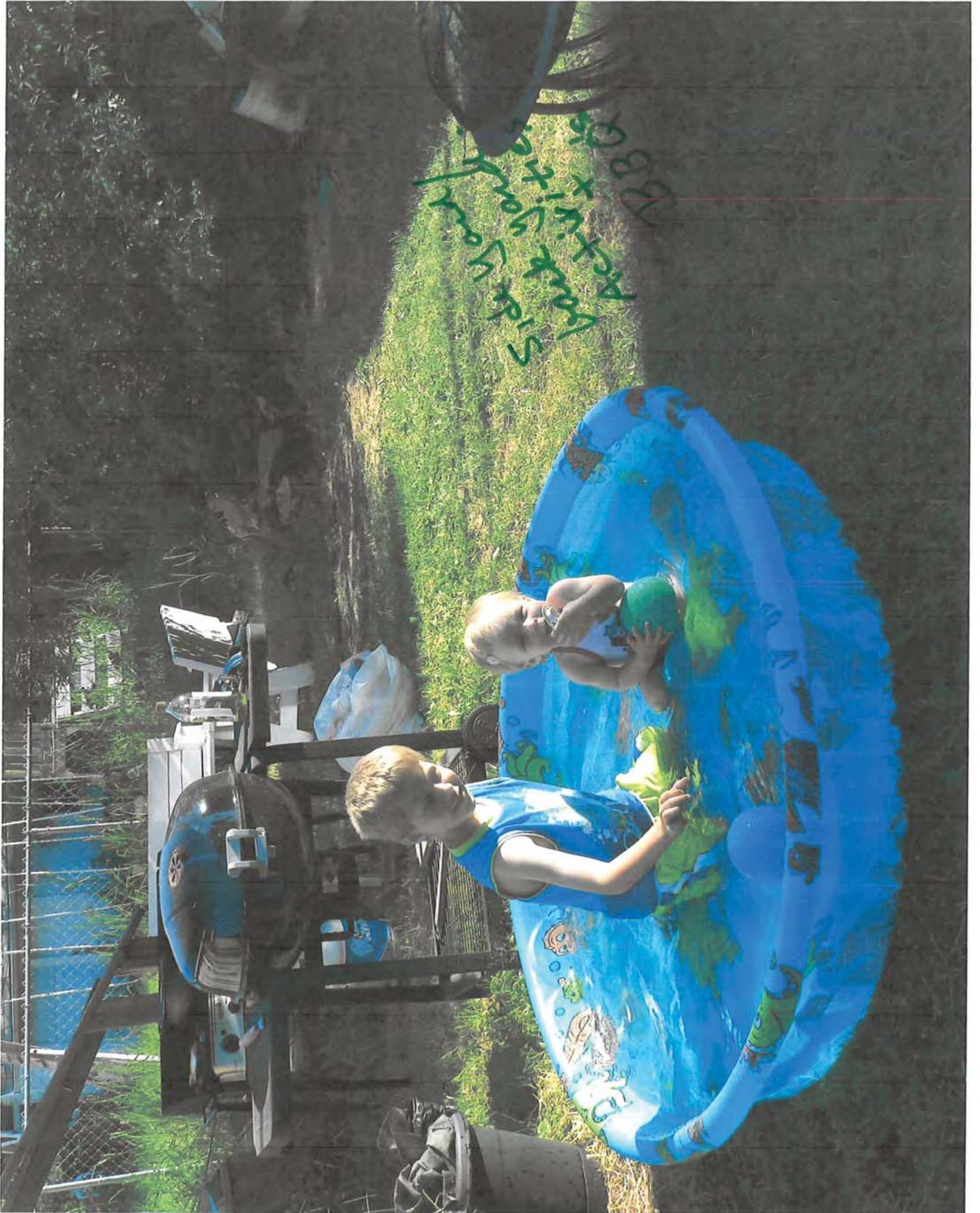
Zoe is hunting Easter Eggs - 2012 I think - house in front of her is the Campbell house - We use it for all occasions - pot lucks - BBQ's - family gatherings -



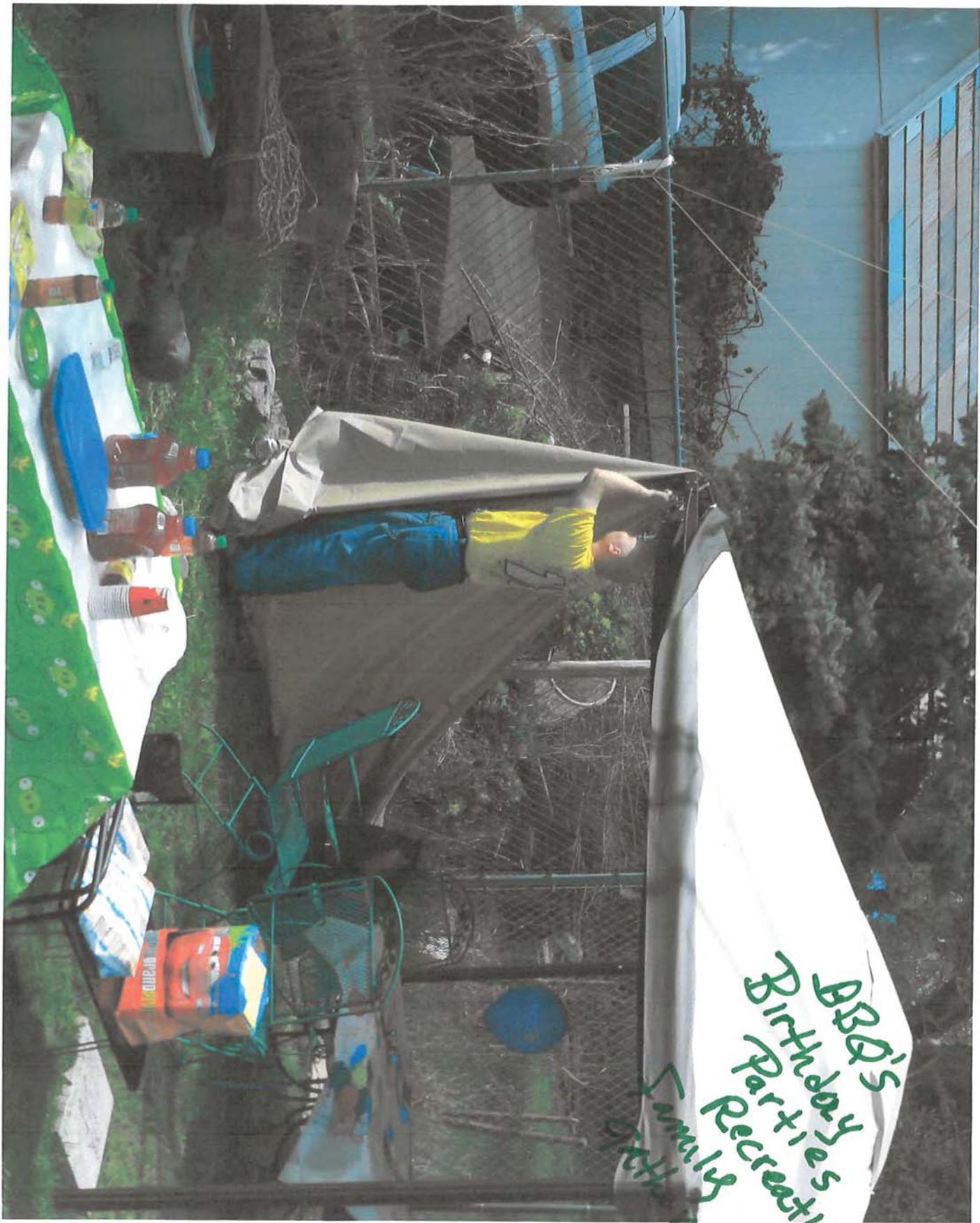
This picture also was taken after an Easter egg hunt in which the whole yard including side yard (where picture is taken) was also used - around - 2012 -



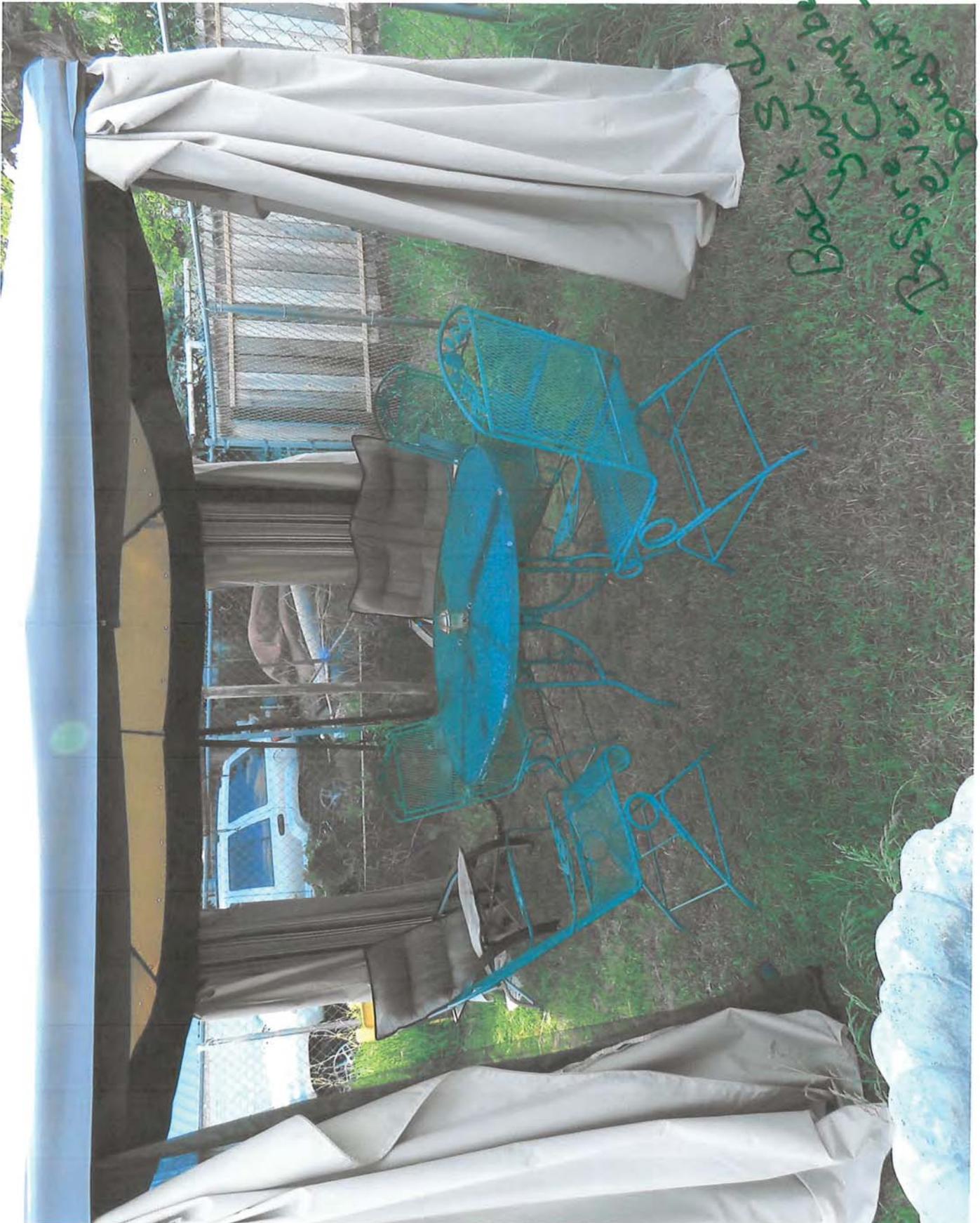
Zoe (grand daughter) had just planted her little flower bed before the Campbell's decided to put up their structure over our property (awning is what they call it) and when they did it covered most of her little flower bed -



BBQ
Frank's
Sister's
Backyard



BBQ's
Birthday Parties
Recreation
Family Recreation
Gathering



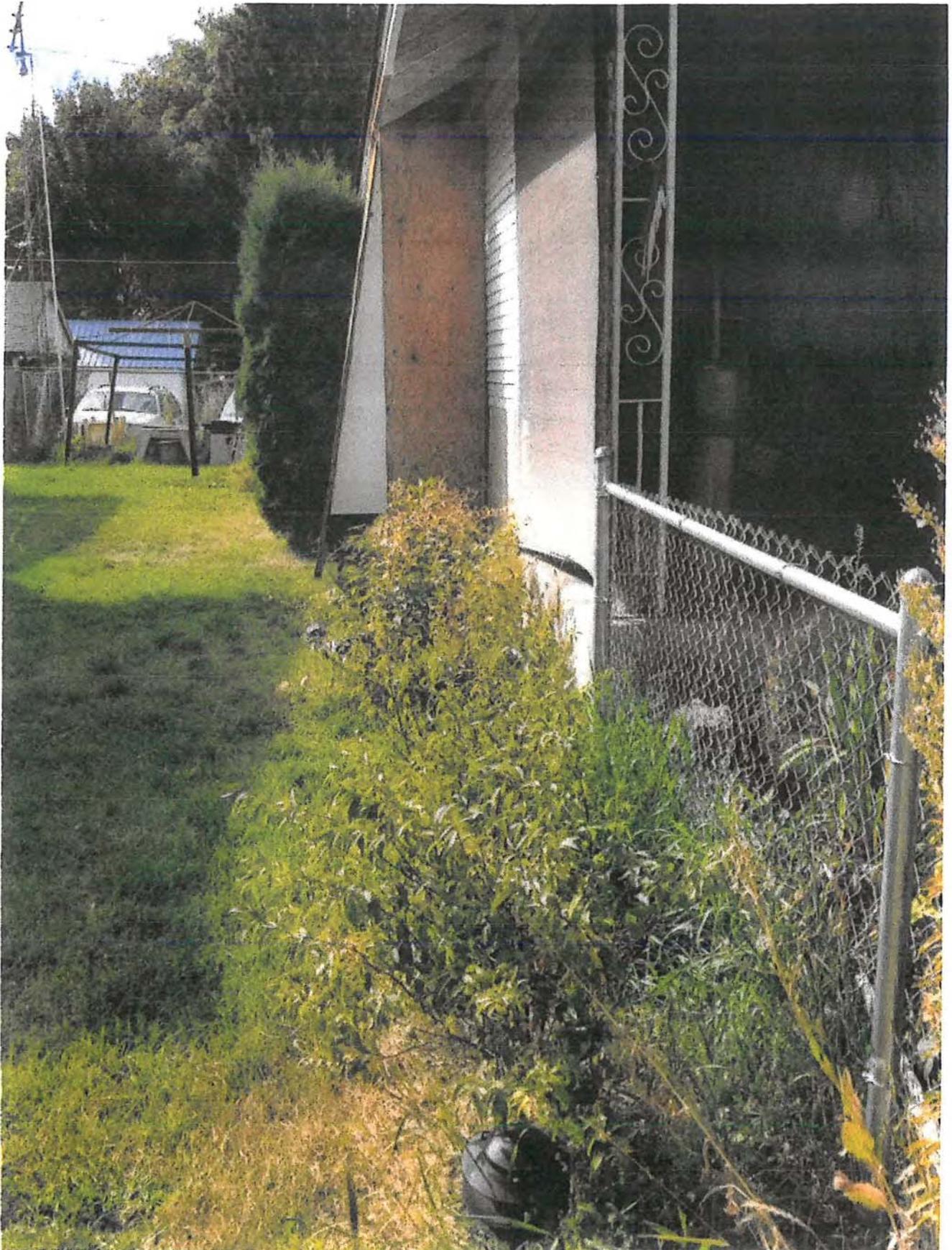
Bar & Grill -
Campground
Paso Verde
- 4760



2011

Again
Family
Gathering
The yard or
Other side
is across
fence is
Where
Campbell
now

EXHIBIT B



PAINÉ HAMBLÉN

May 26, 2020 - 1:46 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 37317-7
Appellate Court Case Title: David L. Snyder, et al v. Lance Campbell, et al
Superior Court Case Number: 18-2-04952-5

The following documents have been uploaded:

- 373177_Briefs_20200526134223D3170652_7555.pdf
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Briefs - Respondents
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Address:
717 W SPRAGUE AVE STE 1200
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