

82326-0

**FILED**  
DEC 2 2008  
CLERK OF SUPREME COURT  
STATE OF WASHINGTON  
*[Signature]*

NO. 823260

SUPREME COURT  
OF THE STATE OF WASHINGTON

---

NOEL PROCTOR,

Petitioner,

vs.

ROBERT "FORD" HUNTINGTON and CHRISTINA HUNTINGTON,  
husband and wife, and the marital community therein,

Respondents.

---

RESPONDENTS' ANSWER TO PETITION FOR REVIEW

---

Bradley W. Andersen, WSBA #20640  
Phillip J. Haberthur, WSBA #38038  
SCHWABE, WILLIAMSON & WYATT, P.C.

Schwabe, Williamson & Wyatt, P.C.  
700 Washington Street, Suite 701  
Vancouver, WA 98660  
(360) 694-7551

Attorneys for Respondents,  
Robert "Ford" Huntington and Christina Huntington

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
2008 DEC -1 AM 7:59  
BY RONALD R. CARPENTER  
CLERK

TABLE OF CONTENTS

Page

I. INTRODUCTION .....1

II. ISSUES PRESENTED FOR REVIEW .....2

III. RESPONDENTS’ COUNTERSTATEMENT OF THE CASE .....3

IV. ARGUMENT .....6

A. The Court of Appeals’ Decision Does Not Warrant Further Review6

B. The Court of Appeals’ Decision Followed Longstanding Washington Law and Should Not Be Disturbed.....7

1. Courts have Broad Discretion when called upon to issue Equitable Relief, especially when the Relief sought is a **Mandatory Injunction**. .....7

2. *Arnold* has already considered and rejected Proctor’s argument that discretion can only be exercised if the encroachment is minor. ....8

3. A trial court’s discretion is not limited to cases that only involve a minor encroachment. ....11

4. While the *Arnold* court did not adopt a rule to require trial courts to blindly issue mandatory injunctions when the encroachment is more than minor, it did suggest, by including factors (2) and (3), that the court should consider the size of the encroachment when deciding whether or not to issue an injunction. ....12

5. The Court of Appeals correctly analyzed *People’s Savings Bank v. Bufford*. ....14

C. The Court of Appeals’ Decision Does Not Present Issues of Substantial Public Importance .....16

## TABLE OF CONTENTS

	<u>Page</u>
1. The betterment statute does not preclude courts from exercising equitable discretion. ....	16
2. The Court of Appeals' Decision will not encourage further encroachments.....	18
V. CONCLUSION.....	18

## TABLE OF AUTHORITIES

	<u>Page</u>
<i>Adamec v. McCray</i> , 63 Wn.2d 217, 386 P.2d 427 (1963).....	13,17
<i>Alderwood Assocs. V. Wash. Envtl. Council</i> , 96 Wn.2d 230, 635 P.2d 108 (1981).....	8
<i>Arnold v. Melani</i> , 75 Wn.2d 143, 437 P.2d 908 (1968).....	<i>passim</i>
<i>Grismer v. Merger Mines Corp.</i> , 43 F. Supp. 990, <i>modified</i> , 137 F.2d 335, <i>cert. den.</i> , 64 S. Ct. 261, 320 U.S. 794, 88 L. Ed. 478 (1942).....	7
<i>Hanson v. Estell</i> , 100 Wn. App. 281, 997 P.2d 426 (2000).....	13,17
<i>Kent v. Holderman</i> , 140 Wash. 353, 248 P. 882 (1926).....	15
<i>Kucera v. DOT</i> , 140 Wn.2d 200, 995 P.2d 63 (2000).....	8
<i>McCann v. Chasm Power Co.</i> , 211 N.Y. 301, 105 N.E. 416 (1914).....	11
<i>Mendez v. Palm Harbor Homes, Inc.</i> , 111 Wn. App. 446, 45 P.3d 594 (2002).....	8
<i>Pardee v. Jolly</i> , 163 Wn.2d 558, 182 P.3d 967 (2008).....	7
<i>Paris v. Allbaugh</i> , 41 Wn. App. 717, 704 P.2d 660 (1985).....	7
<i>People's Savings Bank v. Bufford</i> , 90 Wash. 204, 155 P. 1068 (1916).....	12,14,15,17,18
<i>Pierce County v. State</i> , 159 Wn.2d 16, 148 P.3d 1002 (2006).....	16
<i>Thisius v. Sealander</i> , 26 Wn.2d 810, 175 P.2d 619 (1946).....	10
<i>Tyree v. Gosa</i> , 11 Wn.2d 572, 119 P.2d 926 (1941).....	12
<i>Vaughn v. Chang</i> , 119 Wn.2d 273, 830 P.2d 668 (1992).....	7
<i>Vasquez v. Hawthorne</i> , 145 Wn.2d 103, 33 P.3d 735 (2001).....	7
<i>Wells v. Parks</i> , 148 Wash. 328, 268 P. 889 (1928).....	12,17

## TABLE OF AUTHORITIES

	<u>Page</u>
Statutes	
RCW 7.28.160 .....	2,6,16,17
RCW 7.28.170 .....	2,6,16,17
Regulations and Rules	
RAP 10.3(a)(4).....	3
42 AM. JUR. 2D Injunctions § 5 (2008) .....	8

## I. INTRODUCTION

Robert “and Christina Huntington (the “Huntingtons”) built their home<sup>1</sup> on what everyone, including Noel Proctor (“Proctor”), reasonably believed was their property.<sup>2</sup> Eight years later, Proctor resurveyed the property and, to the shock of everyone, learned the Huntingtons had actually built on a portion of his property. Proctor therefore sued for a mandatory injunction to compel the Huntingtons to tear down their home. After a four-day trial, the court refused to issue the injunction because it would have been “oppressive” and “inequitable under the circumstances of this case to require the Huntingtons to remove their home.”<sup>3</sup> The trial court instead fashioned a remedy to require the Huntingtons to pay Proctor fair market value for the one acre of land necessary for the Huntingtons to maintain their home.

In his Petition for Review, Proctor does not challenge the trial court’s application of the factors laid out by this court in *Arnold v. Melani*.<sup>4</sup> Proctor instead argues that trial judges should not *have the authority* to deny a mandatory injunction when an encroachment is more than “minor.” To prevail, Proctor needs this Court to overturn *Arnold* and

---

<sup>1</sup> See App-9.

<sup>2</sup> Indeed, before they constructed their home, the Huntingtons specifically confirmed their understanding of the property lines with the surveyor and Proctor.

<sup>3</sup> CP 392.

<sup>4</sup> 75 Wn.2d 143, 449 P.2d 800 (1968).

adopt a new statement of law that would prohibit trial courts from exercising discretion. Under Proctor's view, a trial judge would have to blindly issue an injunction if an encroachment is more than "minor." This would overturn a long history of case law that grants to trial courts broad discretion on whether a mandatory injunction should be issued. Because this Court should not overturn *Arnold*, the Court should deny review.

## II. ISSUES PRESENTED FOR REVIEW

1. Since *mandatory* injunctions are considered "extraordinary remedies," the law of equity grants trial judges broad discretion to determine whether to grant or deny the requested relief. Should a trial court's equitable discretion be limited to cases that only involve a minor encroachment?

2. The "betterment statute" found in RCW 7.28.160 and .170 permits a defendant sued in ejectment to seek, by way of a counterclaim, reimbursements for any improvements made by the encroacher. In this case, the Huntingtons did not seek reimbursement for the value of their home; they instead asked the court to deny the mandatory injunction. Does the "betterment statute" preclude a court from exercising equitable jurisdiction to determine whether or not to issue a mandatory injunction?

### **III. RESPONDENTS' COUNTERSTATEMENT OF THE CASE**

Proctor's Statement of the Case omits key facts and, through its failure to present the facts in a chronological order, leaves some false impressions.<sup>5</sup> This Court need only review the trial court's Findings of Fact and Conclusions of Law to determine the key facts.<sup>6</sup>

In 1993, Dusty Moss ("Moss") short platted a large tract of land into the two parcels (referred to herein as the "Huntington Parcel"(37 acres) and the "Proctor Parcel" (36.17 acres)). The Huntingtons acquired this Parcel in 1994 while Proctor acquired his in 1995.

Before acquiring his Parcel, Moss showed Mr. Huntington a metal t-post located at the 16<sup>th</sup> pin as marking the northwest corner of the Huntington Parcel.<sup>7</sup> Moss showed Proctor the same pin as marking his northeast corner. In fact, though not discovered until 2004, the 16<sup>th</sup> pin did not mark the northwest corner of the Huntington Parcel.<sup>8</sup> Thus, until 2004, both sides believed the 16<sup>th</sup> pin marked their common corner.

After camping on their property for two years, the Huntingtons chose a building site for their new home in 1995. However, before they

---

<sup>5</sup> RAP 10.3(a)(4). The statement of the case must be a "fair statement of the facts and procedures relevant to the issues presented for review, without argument."

<sup>6</sup> See APP-1-8. CP 224-231. Proctor does not take issue in his Petition with the trial court's Findings of Facts and therefore they can be considered verities on appeal.

<sup>7</sup> CP 225.

began construction, Mr. Huntington met with the same surveyor that had surveyed the property for Moss in 1993 to confirm his understanding of the boundary lines.<sup>9</sup> Also, before building their home, Mr. Huntington confirmed the 16<sup>th</sup> pin with Proctor. Proctor did not protest the accuracy of the pin or object to where the Huntingtons were planning to build their home.<sup>10</sup> As the trial court noted:

“Both parties were under a mutual mistake of fact. They both believed the 16<sup>th</sup> pin marked the northwest corner of the Huntington Parcel when in fact the actual corner was approximately 400 feet west of the 16<sup>th</sup> pin. The Huntingtons relied upon Mr. Moss, the surveyor and the boundary markers to conclude that the 16<sup>th</sup> pin was their northwest corner when they chose to build on property that turned out to be owned by Mr. Proctor. Because Proctor also believed that this property belonged to the Huntingtons, he did nothing to stop them from developing the Disputed Area. Each side’s belief about the location of the property line was a reasonable mistake.”<sup>11</sup>

In May of 2004, Proctor, concerned with another neighbor’s possible encroachment, surveyed his property.<sup>12</sup> Much to everyone’s surprise, the new surveyor found that the 16<sup>th</sup> pin was not the actual corner and that the Huntingtons had built their home completely on Proctor’s property.<sup>13</sup>

---

<sup>8</sup> RP 188; CP 225.

<sup>9</sup> CP 226.

<sup>10</sup> RP 83-84; CP 226-27.

<sup>11</sup> CP 228, ll. 6-13.

<sup>12</sup> RP 647-48; CP 227.

<sup>13</sup> RP 650-52; CP 227, ll. 8-16.

Proctor sued on February 16, 2005 to force the Huntingtons to move their home.<sup>14</sup> The Huntingtons answered and counterclaimed. They sought quiet title to the Disputed Area under a theory of estoppel *in pais*.<sup>15</sup> The Huntingtons also asked the court to exercise its equitable powers to deny the mandatory injunction because it would be “unduly harsh and inequitable.”<sup>16</sup> The Huntingtons instead asked the court to “fashion a more appropriate and equitable remedy.”<sup>17</sup>

After a four-day trial, the Honorable E. Thompson Reynolds found that both parties were under a “mutual mistake” of fact regarding the boundary line. The court also found that while the Huntingtons did not prove the elements of estoppel *in pais* by “clear and convincing evidence” they had proven it by a “preponderance of the evidence.”<sup>18</sup> The court then adopted and applied the “factors” listed in *Arnold v. Melani* and ruled that requiring the Huntingtons to move their home would be “oppressive, unduly costly, and inequitable under the circumstances of this case.”

In rejecting Proctor’s request for a mandatory injunction, Judge Reynolds ruled that the Huntingtons could retain the approximately one acre of land that their home occupied, provided they paid Proctor the

---

<sup>14</sup> CP 1-4.

<sup>15</sup> CP 7-12.

<sup>16</sup> CP 35-36, 308-312.

<sup>17</sup> CP 36.

<sup>18</sup> *Id.*

fair market value of the property plus all closing costs.<sup>19</sup> The Court of Appeals affirmed the trial court's ruling.

#### IV. ARGUMENT

##### A. The Court of Appeals' Decision Does Not Warrant Further Review

Proctor claims review is appropriate because the Court of Appeals' Decision (1) conflicts with prior decisions of this Court and the Court of Appeals; and (2) presents issues of substantial public importance.

Proctor wants this Court to adopt a new rule of law that would require trial courts to blindly issue mandatory injunctions by stripping away its inherent power to balance the equities whenever an encroachment is more than "minor." In reality, Proctor wants this Court to overturn its decision in *Arnold v. Melani*.

Proctor also argues that the legislature intended for the "betterment statute"<sup>20</sup> to bar a trial judge's discretion in encroachment cases. Proctor argues that because the legislature provided a statutory remedy for encroachment, trial courts do not have the authority to deny a mandatory injunction. There is no evidence that the legislature intended this result and, even if this was the intent of the statute, the legislature certainly cannot limit the court's inherent powers to issue equitable relief.

---

<sup>19</sup> CP 244.

<sup>20</sup> RCW 7.28.160 and .170.

**B. The Court of Appeals' Decision Followed Longstanding Washington Law and Should Not Be Disturbed**

1. Courts have Broad Discretion when called upon to issue Equitable Relief, especially when the Relief sought is a Mandatory Injunction.

A trial court, sitting in equity, may fashion broad remedies to do substantial justice to the parties.<sup>21</sup> When equitable claims are brought, the focus remains on the equities involved between the parties.<sup>22</sup> The novelty of a problem will not prevent a court from acting, and the court may suit proceedings and remedies to the particular circumstances of the case so as to enforce the substantial rights of all parties before them.<sup>23</sup>

This broad equitable power is well established in Washington law.<sup>24</sup> It is recognized that trial courts need broad equitable powers to perform equity in those situations where money damages are not appropriate or, as in this case, granting the requested relief would be oppressive and inequitable.<sup>25</sup> Equity also includes the power of courts to prevent the enforcement of a legal right when to do so would be

---

<sup>21</sup> *Paris v. Allbaugh*, 41 Wn. App. 717, 719, 704 P.2d 660 (1985).

<sup>22</sup> *Vasquez v. Hawthorne*, 145 Wn.2d 103, 107, 33 P.3d 735 (2001).

<sup>23</sup> *Grismer v. Merger Mines Corp.*, 43 F. Supp. 990, *modified* 137 F.2d 335, *cert. den.*, 64 S. Ct. 261, 320 U.S. 794, 88 L. Ed. 478 (1942).

<sup>24</sup> *See Pardee v. Jolly*, 163 Wn.2d 558, 568, 182 P.3d 967 (2008) (equitable power to grant specific performance); *Vaughn v. Chang*, 119 Wn.2d 273, 830 P.2d 668 (1992) (equitable power to vacate judgment); *Arnold v. Melani*, 75 Wn.2d 143, 437 P.2d 908 (1968) (equitable power to deny mandatory injunction).

<sup>25</sup> Washington courts have long recognized that an injunction should be denied when it will be used as a weapon of oppression, rather than a defense of a right.

inequitable under the circumstances.<sup>26</sup> Courts loathe to use their equitable powers to force an inequitable result.

The granting or withholding of an injunction is addressed to the sound discretion of the trial court, which is to be exercised in accordance with the circumstances of each case.<sup>27</sup> An injunction is an extraordinary remedy that should only be granted if there is no adequate remedy at law.<sup>28</sup> Indeed, “[m]andatory injunctions are \* \* \* disfavored as a harsh remedy and are used only with caution and in compelling circumstances.”<sup>29</sup> While courts will, under the right circumstances, order an encroacher to remove an encroaching structure, it is well recognized that a mandatory injunction, such as what Proctor wants in this case, represents extraordinary relief, and should be used sparingly.<sup>30</sup>

2. Arnold has already considered and rejected Proctor’s argument that discretion can only be exercised if the encroachment is minor.

Proctor’s Petition is based on his argument that trial judges can only deny a mandatory injunction when the encroachment is “minor.”<sup>31</sup>

---

<sup>26</sup> *Mendez v. Palm Harbor Homes, Inc.*, 111 Wn. App. 446, 460, 45 P.3d 594 (2002).

<sup>27</sup> *Alderwood Assocs. v. Wash. Envtl. Council*, 96 Wn.2d 230, 233, 635 P.2d 108 (1981).

<sup>28</sup> See *Kucera v. DOT*, 140 Wn.2d 200, 209, 995 P.2d 63 (2000) (“[I]njunctive relief will not be granted where there is a plain, complete, speedy and adequate remedy at law.”).

<sup>29</sup> 42 AM. JR. 2D Injunctions § 5 (2008) (“courts are perhaps more reluctant to interpose mandatory injunctions” than prohibitory injunctions).

<sup>30</sup> *Arnold v. Melani*, 75 Wn.2d 143, 152, 449 P.2d 800 (1968).

<sup>31</sup> Glaringly missing from Proctor’s analysis is a definition of what is considered a “minor” encroachment. Would a court have discretion to determine what constitutes a “minor” encroachment? For example, in this case, the court found that approximately

Because Proctor's argument has been squarely addressed and rejected by this Court in *Arnold*, no further review of this case is necessary.

- a. *Arnold* recognized a trial court's broad authority to deny a request for mandatory injunction and offered "factors" for the court to consider.

*Arnold* is the perennial case on mandatory injunctions including encroachments. While he fails to make this clear, Proctor can only prevail if this Court is willing to overturn *Arnold*. Because *Arnold* correctly states the longstanding law, and provides helpful guidelines for trial courts to apply, no further review is necessary.

In *Arnold*, the Arnolds' house encroached about nine feet onto the neighbor's property.<sup>32</sup> While the Arnolds sued for adverse possession, *laches*, equitable estoppel, and *de minimis*, the neighbors sued for a mandatory injunction.<sup>33</sup> The trial court rejected Arnold's estoppel and *laches* arguments but refused to issue a mandatory injunction. This Court upheld the decision and held:

Ordinarily, even though it is extraordinary relief, a mandatory injunction will issue to compel the removal of an encroaching structure. However, it is not to be issued as a matter of course. We do not deny that a 'sacred' right exists in a free society as to the protection of the concept of

---

one acre of Proctor's property would be necessary for the Huntingtons to enjoy their home. Proctor owns 36.17 acres. RP 467. One acre represents less than a three percent (3%) encroachment. Would that be considered a minor encroachment? If accepted, Proctor's position would lead to greater confusion.

<sup>32</sup> *Id.* at 145.

<sup>33</sup> *Id.* at 144-47.

private property; we simply hold that when an equitable power of the court is invoked, to enforce a right, the court must grant equity in a meaningful manner, not blindly.

“There is no question but that equity has a right to step in and prevent the enforcement of a legal right whenever such an enforcement would be inequitable.” If this is so, then equity has the right to deny the extraordinary remedy of mandatory injunction.<sup>34</sup>

Then, to help guide trial judges in future cases, this Court adopted the following guidelines to determine whether a mandatory injunction should be issued:

As thus construed, *Hart v. Seattle, supra*, *People’s Savings Bank v. Bufford, supra*, and *Tyree v. Gosa, supra*, support the premise that a mandatory injunction can be withheld as oppressive when, as here, it appears (and we particularly stress), that: (1) The encroacher did not simply take a calculated risk, act in bad faith, or negligently, wilfully or indifferently locate the encroaching structure; (2) the damage to the landowner was slight and the benefit of removal equally small; (3) there was ample remaining room for a structure suitable for the area and no real limitation on the property’s future use; (4) it is impractical to move the structure as built; and (5) there is an enormous disparity in resulting hardships.<sup>35</sup>

In this case, Judge Reynolds expressly applied these “factors” and found that: 1) the Huntingtons did not act in bad faith, negligently, or willfully when they chose to build their home on a location later discovered to be Proctor’s property; 2) the Huntingtons acted reasonably and in good faith when they ascertained the boundaries of their property;

---

<sup>34</sup> *Id.* at 152; citing *Thisius v. Sealander*, 26 Wn.2d 810, 818, 175 P.2d 619, 623 (1946).

<sup>35</sup> *Id.* at 152.

3) the damage to Proctor is slight and the benefit of removing the house is equally small; 4) there are no real limitations on Proctor's future use of his property in permitting the Huntingtons to retain their home in its current location; and, 5) there would be an enormous disparity in resulting hardships if the Huntingtons were required to remove their home.<sup>36</sup>

3. A trial court's discretion is not limited to cases that only involve a minor encroachment.

Proctor does not challenge the court's application of the *Arnold* factors; he instead argues that trial judges must blindly issue a mandatory injunction whenever the encroachment is more than minor. Proctor also relies on several cases that predate *Arnold* and were either overruled or limited by this Court in *Arnold*.<sup>37</sup>

As an initial matter, we should be reminded of what this Court stated in *Arnold*: “[I]t is not safe to attempt to lay down any hard and fast rule for the guidance of courts of equity in determining when an injunction should issue.”<sup>38</sup> This says it all. This case involved fairly unique circumstances. Attempting to establish a specific standard of law that would apply to all circumstances would only serve to confuse trial judges in future cases. *Arnold* is sufficient to guide future decisions.

---

<sup>36</sup> *Id.* at 146.

<sup>37</sup> As quoted above, the *Arnold* court expressly discussed and “construed” the previous case law before it set out the “factors” to be used by a trial judge.

<sup>38</sup> 75 Wn.2d at 146-47 citing *McCann v. Chasm Power Co.*, 211 N.Y. 301, 305, 105 N.E.

The *Arnold* court rejected the “minor” approach, stating that “it is certain that the instant case does involve a positive invasion of the land of another, and is something more than a trifle.”<sup>39</sup> The *Arnold* court continued to balance the equities despite the more than *de minimis* encroachment, thus rejecting the *de minimis* threshold that Proctor asserts should exist. The *Arnold* court further noted that the *de minimis* approach was soundly rejected in *Wells v. Parks*.<sup>40</sup>

4. While the *Arnold* court did not adopt a rule to require trial courts to blindly issue mandatory injunctions when the encroachment is more than minor, it did suggest, by including factors (2) and (3), that the court should consider the size of the encroachment when deciding whether or not to issue an injunction.

Without providing any substantive review of the *Arnold* decision, Proctor relies upon *Tyree v. Gosa*, which was effectively overruled by *Arnold*, for his argument that granting the mandatory injunction would have the effect of condemning Proctor’s property.<sup>41</sup> Proctor fails, however, to point out that portion of the *Arnold* opinion where the Court held that the balancing approach was not warranted in *Tyree* because the “entire good faith” on the part of the encroacher was not present.<sup>42</sup> In

---

416 (1914).

<sup>39</sup> *Id.* at 148.

<sup>40</sup> 148 Wn. 328, 268 P. 889 (1928).

<sup>41</sup> 11 Wn.2d 572, 579, 119 P.2d 926 (1941).

<sup>42</sup> See *People’s Savings Bank v. Bufford*, 90 Wash. 204, 155 P. 1068 (1916).

other words, the encroacher in *Tyree* failed to act in good faith when he encroached. The *Arnold* court therefore held that the language in *Tyree* regarding condemnation was not needed, and has not been followed since.<sup>43</sup>

Proctor also fails to point out that the *Arnold* court favorably cited to *Bufford* for the premise that mandatory injunctions may be denied when it would be inequitable to grant the injunction, even if it means that the encroachment will remain entirety upon the plaintiff's property.<sup>44</sup>

Proctor next misconstrues the precedential effect of *Adamec v. McCray*.<sup>45</sup> In *Adamec*, the Court recognized that no Washington case had yet balanced the equities.<sup>46</sup> However, *Arnold* expressly discussed *Adamec* and held that it was appropriate to balance the equities.<sup>47</sup> *Arnold* therefore held that *Adamec* was of little value.

Proctor also argues that *Hanson v. Estell* is at odds with the current case.<sup>48</sup> Despite Proctor's arguments, the Court of Appeals in *Hanson* did not hold that the balancing doctrine only applies to *de minimis* encroachments.<sup>49</sup> In fact, as was done in this case, the Court of Appeals in

---

<sup>43</sup> *Arnold*, 75 Wn.2d at 149-50.

<sup>44</sup> *Id.* at 151.

<sup>45</sup> 63 Wn.2d 217, 219-20, 386 P.2d 427 (1963).

<sup>46</sup> 75 Wn.2d at 149-50.

<sup>47</sup> 75 Wn.2d at 149.

<sup>48</sup> 100 Wn. App. 281, 288-89, 997 P.2d 426 (2000).

<sup>49</sup> *Id.* at 288-89.

*Hanson* affirmed the trial court's award of \$100 for trespass damages and did not order the encroachment be removed.

The trial court here properly applied the longstanding rule in Washington, recognized and applied by the *Arnold* factors, and refused to issue a mandatory injunction under the particular circumstances of this case. To do so would be oppressive and unjust. This holding should therefore not be disturbed.

5. The Court of Appeals correctly analyzed  
*People's Savings Bank v. Bufford*.

Proctor failed to even cite to *Bufford* before the Court of Appeals.<sup>50</sup> It is therefore ironic that Proctor now wants to complain that the Court of Appeals failed to properly analyze *Bufford*.

In *Bufford*, a case with some very strong similarities to the case at hand, both parties owned property in the same subdivision.<sup>51</sup> The buyer (defendant) eventually built a house on the wrong lot. Each side paid the taxes on the property they thought they owned. Just like in this case, the Court found that there was no intention by the defendant to enter upon the land of the other. All actions were done in good faith and were the result of a mistake.

---

<sup>50</sup> 90 Wash. 204, 155 P. 1068 (1916); favorably cited and followed by *Arnold*, 75 Wn.2d at 150.

<sup>51</sup> *Id.* at 204.

Realizing that ejecting the defendant from their house and lot they would be unjust, the Court gave the plaintiff the option of either trading lots or being reimbursed for taxes and assessments.<sup>52</sup> The pragmatic result reached in *Bufford* remains the law today. A court will not force a person to lose their home under circumstances where the encroacher acted in good faith. Indeed, the encroachment in *Bufford* is certainly much more substantial than the encroachment in this case.

Proctor attempts to distinguish *Bufford* by arguing that this case is not about “a total encroachment.”<sup>53</sup> Huntington is not sure what Proctor means. However, as even Proctor concedes, “no two cases are alike in their facts, and with respect to the facts each case must stand upon its own bottom.”<sup>54</sup>

In this case, the trial court expressly found that Mr. Huntington was shown the wrong property line by the developer and the surveyor before he built his house. Mr. Huntington further confirmed the boundary line with Mr. Proctor. The trial court found that, as in *Bufford*, the Huntingtons acted in good faith in building their home on Proctor’s property. While the court denied Proctor’s request for a mandatory

---

<sup>52</sup> *Id.* at 209.

<sup>53</sup> Br. of Petitioner, p. 13.

<sup>54</sup> *Id.*, citing *Kent v. Holderman*, 140 Wn. 353, 354, 248 P. 882 (1926). In *Kent*, the Court did not follow the holding of *Bufford* for the reasons put forth by Proctor. Instead, the Court found that one party had not proven adverse possession to the requisite

injunction, it did issue an equitable remedy. The fact that Proctor does not like the particular relief afforded to him in this case, is not a basis for this Court to accept review.<sup>55</sup>

C. **The Court of Appeals' Decision Does Not Present Issues of Substantial Public Importance**

While the case is certainly important to the parties, it does not present any issues of substantial public importance. The Huntingtons, in good faith, built their home on the wrong property. Proctor prayed for a mandatory injunction to compel them to move their home. The trial court, after considering all of the evidence, determined that, under the unique circumstances present in this case, it would be unjust and oppressive to require the Huntingtons to tear down their home due to a mutual mistake. Since the facts are fairly unique, this Court should not take review.

1. **The betterment statute does not preclude courts from exercising equitable discretion.**

Proctor claims the Court of Appeals erred because the Huntingtons were barred from seeking equitable relief when they did not counterclaim for offset under the betterment statute.<sup>56</sup>

---

element.

<sup>55</sup> As one Justice stated in a dissenting opinion; in equity, "as in love, you can't always get what you want, but in the law of remedies you can get what you need." *Pierce County v. State*, 159 Wn.2d 16, 148 P.3d 1002 (2006) (J. Sanders, dissenting) *citing* The Rolling Stones, *You can't always get what you want*, on let it Bleed (ABKCO 1969).

<sup>56</sup> RCW 7.28.160 and .170.

Proctor ignores the obvious—the Huntingtons counterclaimed for injunctive relief because they did not want to be compelled to leave their home.

The betterment statute was enacted in 1903, well before many of the pivotal cases on mandatory injunction.<sup>57</sup> While the statute allows a defendant in an ejectment action (Proctor asked for equitable relief from the trial court) to counterclaim for the value of the improvements built on the plaintiff's property, it was not intended to replace a trial court's inherent authority to exercise equitable discretion in cases involving mandatory injunctions.

Indeed, all of the cases cited by Proctor and the Huntingtons were decided after the betterment statute was enacted and *none* of the defendants raised the statute.<sup>58</sup> Here, the Huntingtons chose to seek, by way of defenses and counterclaims, equitable rather than monetary relief. They wanted their home; not to be reimbursed for their cost to build the home. In short, the betterment statute does not trump a trial court's discretion to deny a mandatory injunction.

Because Proctor did not properly raise this issue before the Court of Appeals, this Court need not accept review.

---

<sup>57</sup> RCW 7.28.160 and .170.

<sup>58</sup> See *Arnold, Bufford, Hanson, Wells, and Adamec*.

2. The Court of Appeals' Decision will not encourage further encroachments.

Finally, Proctor argues that review is appropriate because the Court of Appeals' Decision will encourage others to take a risk to build substantial improvements on adjoining parcels hoping the court will not force them to remove the improvement. This ignores the factors laid out in *Arnold* and *Bufford*: encroachers must prove that they acted in complete good faith. Indeed, the court in *Arnold* specifically held that an encroacher cannot have taken a calculated risk in building the encroachment.

Despite Proctor's arguments, the trial court did not hold that the mandatory injunction was denied because the Huntingtons built an expensive home on Proctor's property. Indeed, the trial court was quick to point out that the circumstances (*i.e.* mutual mistake and lack of any negligence) warranted the denial of a mandatory injunction. The size and scope of the encroachment are, of course, part of the factors this Court laid out in *Arnold* but an overriding concern is the innocence of the encroacher.

V. CONCLUSION

The Court of Appeals' Decision is wholly consistent with this Court's decision in *Arnold* as well as those cases that have been decided since *Arnold*. Moreover, because of its unique circumstances, this case

does not present an issue of significant public importance. The trial court correctly balanced the hardships and invoked its equitable powers to fashion an appropriate remedy. This Court should not grant further review.

Dated: November 26, 2008.

SCHWABE, WILLIAMSON & WYATT, P.C.

By: 

Bradley W. Andersen, WSBA #20640  
Phillip J. Haberturf, WSBA #38038  
*Attorneys for Respondents*  
Robert "Ford" Huntington and  
Christina Huntington

**APPENDIX**

**Page**

Findings of Fact and Conclusions of Law .....APP-1  
Photograph of Huntington House .....APP-9

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

SKAMANIA COUNTY  
FILED  
MAR - 1 2007  
SHARON K. VANCE, CLERK  
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF SKAMANIA

NOEL PROCTOR,  
Plaintiff,  
vs.  
ROBERT "FORD" HUNTINGTON and  
CHRISTINA HUNTINGTON, husband and  
wife and the marital community therein,  
Defendants.

No. 05 2 00032 7

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
(PROPOSED)

This cause came on for trial before the Honorable E. Thompson Reynolds on  
September 25, 26, 27, 2006 and November 15, 2006. The Court issued its opinion in this  
matter on November 17, 2006. Plaintiff appeared personally and through his attorneys  
Robert Stanton and Ross Rakow. Defendants Ford and Christine Huntington appeared  
personally and through their attorney Bradley Andersen of Schwabe, Williamson & Wyatt.

At trial, the Defendants moved, and the court allowed, the Defendants to amend their  
Complaint. The court dismissed the Plaintiff's timber trespass claims because it arose  
outside the applicable statute of limitations and dismissed the Defendants' adverse  
possession counterclaim. NOW, THEREFORE, the Court makes the following Findings of  
Fact and Conclusions of Law.<sup>1</sup>

<sup>1</sup> Any Finding of Fact that should be considered a Conclusion of Law or any Conclusion of Law that  
should be considered a Finding of Fact are so deemed.

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW (PROPOSED) - 1

SCHWABE, WILLIAMSON & WYATT, P.C.  
Attorneys at Law  
Vancouver center, 700 Washington Street,  
Suite 701, Vancouver, WA 98660  
Telephone 360.694.7551

PDX\112793\141081\KMW\1502853.1

1  
2 FINDINGS OF FACT

3 1. Prior to 1993, Dusty Moss subdivided a large parcel of property in Skamania  
4 County. Mr. Moss hired Dennis Peoples to survey the property for the subdivision. In  
5 December of 1993, the Plaintiff, Ford Huntington, visited the property with an interest in  
6 purchasing one of the lots in Mr. Moss's subdivision. Mr. Huntington walked the property  
7 with Mr. Moss. Mr. Moss showed Mr. Huntington a 30-acre parcel, which was later  
8 purchased by Mr. Proctor (the "Proctor Parcel"), and a 27-acre parcel. Mr. Moss generally  
9 showed Mr. Huntington the property lines, including a metal fence on the north boundary of  
10 the 27-acre parcel. Mr. Moss also showed Mr. Huntington a fence post which marked the  
11 northwest corner of the 27-acre parcel. The Huntingtons purchased the 27-acre parcel (the  
12 "Huntington Parcel") from Mr. Moss on January 7, 1994.

13 2. In June of 1994, the Huntingtons set up a camp site and lived the rest of that  
14 summer on a portion of the Proctor Parcel <sup>617 acre ETR</sup> (the "Disputed Area"). At that time, they believed  
15 this was part of their property. In September of 1994, the Huntingtons moved to Utah for the  
16 winter but returned to live on the Disputed Area the following spring (1995).

17 3. During the winter of 1994-1995, Noel Proctor visited the 30-acre parcel with  
18 Dusty Moss. He also walked the north boundary line with Mr. Moss. Mr. Proctor observed  
19 a pin at the northeast corner of the 30-acre parcel. On February 7<sup>th</sup>, 1995, Mr. Proctor bought  
20 the 30-acre parcel from Mr. Moss.

21 4. Mr. Proctor first met the Huntingtons in April of 1995, when Mr. Proctor  
22 came onto where the Huntingtons were camped and introduced himself. Mr. Proctor was  
23 aware of the camp site and did not object to their use or claim that they were on his property.  
24 Mr. Proctor did not realize that the Huntingtons were on his property.

25 5. <sup>Dr. May 23, 1975 ETR</sup> Dennis Peoples, a surveyor, set a pin for Dusty Moss at what is considered the  
26 "16<sup>th</sup> corner" along the northern boundary line of the Proctor property. This pin was some

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW (PROPOSED) - 2

SCHWABE, WILLIAMSON & WYATT, P.C.  
Attorneys at Law  
Vancouver Center, 700 Washington Street  
Suite 701, Vancouver, WA 98660  
Telephone 360.534.7551

PDXJ112793/141081/RMW/1502853.1

APP-2

1 400 feet west of the actual corner boundary between the Proctor and Huntington properties  
2 (the northwest corner of the Huntington Property).

3 6. In the spring of 1995, the Huntingtons started to clear their homesite. While  
4 doing so, Mr. Huntington encountered Dennis Peoples, the surveyor, in the area. Mr.  
5 Huntington asked Mr. Peoples to confirm the northwest corner of his property. Mr. Peoples  
6 mistakenly pointed out the 16<sup>th</sup> pin and told Mr. Huntington that that was his northwest  
7 corner. ~~This was in the same location as the corner fence post that Mr. Moss had identified~~  
8 ~~to Mr. Huntington as the northwest corner of the property in 1993.~~ <sup>ETC</sup> The Huntingtons relied  
9 upon the surveyor's confirmation of the 1/6th pin as their northwest corner, an error of some  
10 400 feet, when they proceeded to build their home.

11 7. In the summer of 1995, Mr. Huntington approached Mr. Proctor for  
12 permission to construct a driveway across a portion of Mr. Proctor's property to permit the  
13 Huntingtons access to their home site. This road could have been built over the Huntington's  
14 property. However, the Huntingtons and their road construction contractor determined that a  
15 driveway across Proctor's property would provide a better driveway, and would cost less  
16 money because of the slope of the land. Mr. Proctor agreed to allow the Huntingtons to  
17 construct the road across his property on the condition that the Huntington would construct a  
18 gate across the road and also share in the cost of maintenance for that portion of the main  
19 road that the Huntingtons and the Proctors would share. The Huntingtons built their  
20 driveway across the Proctor property to their homesite in 1995 and have maintained that road  
21 ever since.

22 8. In June of 1995, Mr. Huntington drilled a well on the Disputed Area.

23 9. While the road was being constructed in the summer of 2005, Mr. Proctor and  
24 Mr. Huntington met at the 16<sup>th</sup> pin. Mr. Huntington told Mr. Proctor that Mr. Peoples had  
25 told him that the 16<sup>th</sup> pin was his northwest corner. Mr. Proctor ~~acknowledged the pin and~~ <sup>ETC</sup>  
26 did not offer any protest to the accuracy of the pin. In the spring and summer of 1996, and in

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW (PROPOSED) - 3

SCHWABE, WILLIAMSON & WYATT, P.C.  
Attorneys at Law  
Vancouver, 700 Washington Street  
Suite 101, Vancouver, WA 98660  
Telephone 360.884.7551

PDX\112793\141081\KMW\1502853.1

1 reliance upon what both parties believed was their property, the Huntingtons built their house  
2 and garage on the Disputed Area. *designated as Forest Resource Land ETR.*

3 10. Between 1995 and 1997, Mr. Proctor constructed a house on his property.

4 11. The Huntingtons have resided full time in their home on the Disputed Area  
5 since 1996. They have also used the driveway that crosses Mr. Proctor's property as the  
6 primary access to their home. The Huntingtons repeatedly asked Mr. Proctor for a written  
7 easement for the driveway, but Mr. Proctor refused.

8 12. In the spring of 2004, Mr. Proctor was concerned about a possible  
9 encroachment by a neighbor to the southwest of his property. Mr. Proctor hired Richard  
10 Bell, a surveyor, to locate the corners of his property to ascertain if his neighbor to the  
11 southwest was encroaching. Mr. Bell walked the property in June of 2004 and discovered  
12 that the Huntingtons' house, well, garage, and yard were located entirely on Mr. Proctor's  
13 property. While locating Mr. Proctor's northeast corner, Mr. Bell saw Mrs. Huntington at  
14 her home. Mr. Bell asked her to identify her northwest corner. She took him to the 16<sup>th</sup> pin.  
15 Mr. Bell informed her that the true corner was 400 feet to the east of the 16<sup>th</sup> pin.  
16 Mrs. Huntington was surprised.

17 13. After the encroachment was discovered, the parties attempted to settle, but  
18 were not successful. Mr. Proctor brought this action on February 16, 2005, for timber  
19 trespass, ejectment, and quiet title. The Huntingtons counterclaimed for quiet title to the  
20 Disputed Area and for an easement for their private driveway.

21 14. The court finds the expert appraiser Jim Lyons to be credible and finds that  
22 the fair market value for a one (1) acre parcel of the Plaintiff's property, if conveyed by  
23 virtue of a boundary line adjustment to the Defendants, is \$25,000.00.

24 15. The Huntingtons cut down some trees on the Disputed Area for their  
25 homesite. This occurred more than seven (7) years before this lawsuit was filed.

26 16. In addition to the substantial emotional hardship, it would cost the

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW (PROPOSED) - 4

SCHWABE, WILLIAMSON & WYATT, P.C.  
Attorneys at Law  
Vancouvercenter, 700 Washington Street,  
Suite 701, Vancouver, WA 98650  
Telephone 360.694.7551

PDX/112793/141081/KMW/1502853.1

1 Huntingtons more than \$300,000.00 to move their house to another location. The Court  
2 further finds that it would be impractical to move the house.

3 Based on these Findings of Fact, the Court hereby makes the following

4 CONCLUSIONS OF LAW

5 A. Driveway.

6 1. Mr. Proctor gave the Huntingtons an oral license to build and use the  
7 driveway across his property. This was not an easement. Indeed, Mr. Proctor refused to sign  
8 a written easement that was provided to him by Mr. Huntington. The Huntingtons' use was  
9 therefore permissive and Mr. Proctor had a right, at anytime, to withdraw his permission.  
10 The Huntingtons have an alternate access. There is no necessity that they cross Mr. Proctor's  
11 property. The Huntingtons shall cease using the driveway on Mr. Proctor's land on or before  
12 June 1, 2007. This should provide the Huntingtons sufficient time to construct a new  
13 driveway across their property.

14 B. Disputed Area / Quiet Title.

15 2. Both parties were under a mutual mistake of fact. They both believed the  
16 16<sup>th</sup> pin marked the northwest corner of the Huntington Parcel when in fact the actual corner  
17 pin was approximately 400 feet west of the 16<sup>th</sup> pin. The Huntingtons relied upon Mr. Moss,  
18 the surveyor and the boundary markers to conclude that the 16<sup>th</sup> pin was their northwest  
19 corner when they chose to build on property that turned out to be owned by Mr. Proctor.  
20 Because Mr. Proctor also believed that this property belonged to the Huntingtons, he did  
21 nothing to stop them from developing the Disputed Area. Each side's belief about the  
22 location of the property line was a reasonable mistake.

23 3. The Washington Supreme Court has laid out the elements for estoppel *in pais*  
24 in *Thomas v. Harlan*, 27 Wn.2d 512, 518 (1947). The Huntingtons have proven the elements  
25 for estoppel *in pais* by a preponderance of the evidence. However, they have not met the  
26 requisite burden of clear and convincing evidence. Therefore, the Court finds that the

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW (PROPOSED) - 5

SCHWABE, WILLIAMSON & WYATT, P.C.  
Attorneys at Law  
Vancouver center, 700 Washington Street,  
Suite 101, Vancouver, WA 98660  
Telephone 360.534.7551

PDX\112793\141081\KM\W\1502853.1

1 Huntingtons' house and other improvements are located on Mr. Proctors' property and reject  
2 the Huntingtons' defenses and counterclaims based on estoppel *in pais*.

3 4. Plaintiff's claim for timber trespass under RCW 64.12.030 is barred by the  
4 statute of limitations.

5 5. The Court must now address the appropriate remedy to impose in this case.  
6 The Court, in considering the factors listed in *Arnold v. Melani*, 75 Wn.2d 143, 146 (1968),  
7 finds that requiring the Huntingtons to move their home and other improvements to another  
8 location would be oppressive, unduly costly and inequitable under the circumstances of this  
9 case. In reaching this conclusion, the Court notes the following: 1) The Huntingtons did not  
10 act in bad faith, negligently or willfully, when they chose to build their home on a location  
11 that was later discovered to be on Mr. Proctor's property; 2) the Huntingtons acted  
12 reasonably and in good faith when they ascertained the boundaries of their property; 3) the  
13 damage to Mr. Proctor is slight and the benefit of removing the house is equally small;  
14 4) there are no real limitations on Mr. Proctor's future use of his property in permitting the  
15 Huntingtons to retain their home in its current location; 5) it would be impractical and unduly  
16 expensive to remove the structure; and 6) there would be an enormous disparity in resulting  
17 hardships if the Huntingtons were required to move their home. Therefore, the Plaintiff's  
18 petition for a permanent injunction and ejectment is denied, along with any claims for  
19 trespass damages.

20 6. The boundary between the Plaintiff's and the Defendants' property is hereby  
21 adjusted so that the Defendants will acquire one (1) acre of Plaintiff's land where the  
22 Defendants' house, garage, yard, and Defendants' well are located. The Defendants shall, in  
23 consideration for the conveyance of the one (1) acre parcel, pay the Plaintiff the sum of  
24 \$25,000.00, which represents the property's fair market value. The one (1) acre parcel also,  
25 if possible, should be configured to include a new driveway approach for the Defendants'  
26 homesite.

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW (PROPOSED) - 6

SCHWABE, WILLIAMSON & WYATT, P.C.  
Attorneys at Law  
Vancouver, 709 Washington Street  
Suite 701, Vancouver, WA 98660  
Telephone 360.694.7551

FDX/112793/141081/KMW/1502853.1

1 7. The new boundary line between Plaintiff's and Defendants' property is legally  
2 described as set out in the attached Exhibit "A" and depicted in the attached Exhibit "B" and  
3 may hereafter be recorded and relied upon as the legal boundary between the two parcels.

4 8. The Plaintiff's request for rent is denied because the Court awarded a transfer  
5 of land and the Plaintiff did not introduce any evidence as to the rental value of the property.

6 9. Except as expressly provided for herein, the Plaintiff's and the Defendants'  
7 claims are denied.

8 10. Neither party shall be deemed the prevailing party.

9 Based upon the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY  
10 ORDERED AND DECREED that:

11 1. Except as provided below, each of the parties' claims are dismissed with  
12 prejudice.

13 2. The Defendants are hereby declared to be the legal owners of the real property  
14 described in Exhibit "A" and depicted on Exhibit "B".

15 3. The Plaintiff shall convey to the Defendants by virtue of a statutory warranty  
16 deed the one-acre parcel as described in Exhibit "A" and depicted on Exhibit "B".

17 4. Defendants upon the delivery of the Deed into escrow, shall pay the Plaintiff  
18 the sum of \$25,000.00. Defendants shall further be responsible for the costs (surveying and  
19 closing fees) associated with closing of the one-acre parcel.

20 5. The Defendants shall, on or before June 1, 2007, cease using any portion of  
21 the Plaintiff's property for their driveway.

22 6. Each party shall bear their own court costs, legal fees and attorney fees in this  
23 proceeding. Each party shall cooperate with the other to effectuate the Court's judgment,  
24 including but not limited to executing any deeds or other instruments necessary to convey the  
25 one-acre parcel.

26 Dated this 12<sup>th</sup> day of March, 2007.

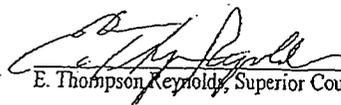
FINDINGS OF FACT AND CONCLUSIONS  
OF LAW (PROPOSED) - 7

SCHWABE, WILLIAMSON & WYATT, P.C.  
Attorneys at Law  
Vancouver, 700 Washington Street,  
Suite 701, Vancouver, WA 98660  
Telephone 360.694.7551

PDX\112793\141081\KM\W\1502853.1

APP-7

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

  
E. Thompson Reynolds, Superior Court Judge

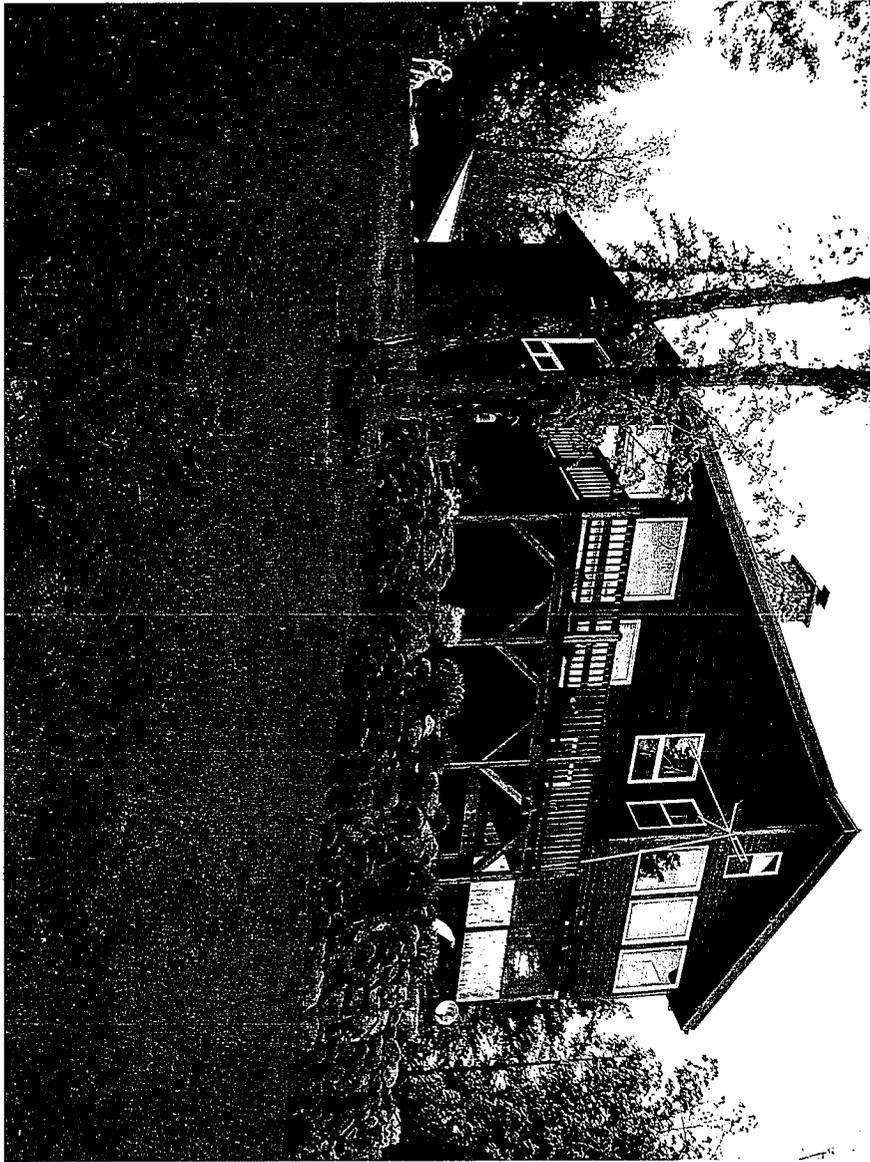
Presented by:  
SCHWABE, WILLIAMSON & WYATT, P.C.

By:   
Bradley W. Andersen, WSBA #20640  
Phillip J. Haberthur, WSBA #38038  
Attorneys for Defendants  
Robert "Ford" Huntington and Christina Huntington

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW (PROPOSED) - 8

PDX\112793\141081\KMW\1502853.1

SCHWABE, WILLIAMSON & WYATT, P.C.  
Attorneys at Law  
Vancouver Center, 700 Washington Street  
Suite 703, Vancouver, WA 98660  
Telephone 360.694.1551



HUNT-PROC000036

APP-9

**CERTIFICATE OF FILING**

I hereby certify that on the 26<sup>th</sup> day of November, 2008 I caused to be filed the original and one copy of the foregoing RESPONDENTS' ANSWER TO PETITION FOR REVIEW with the Supreme Court Administrator at this address:

Ronald L. Carpenter, Clerk  
State of Washington  
The Supreme Court  
Temple of Justice  
P.O. Box 40929  
Olympia, WA 98504-0929

by First Class Mail.



---

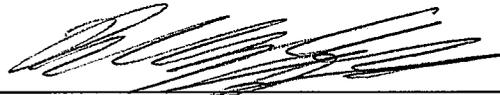
Bradley W. Andersen, WSBA #20640  
Attorneys for Respondents,  
Robert "Ford" Huntington and  
Christina Huntington

**CERTIFICATE OF SERVICE**

I hereby certify that on the 26<sup>th</sup> day of November, 2008, I served one correct copy of the foregoing RESPONDENTS' ANSWER TO PETITION FOR REVIEW by First Class Mail to:

Katharine W. Mathews, Esq.  
Cobb & Bosse  
1308 E First Street  
Newberg, WA 97132  
*(Attorneys for Petitioner)*

Emmelyn Hart-Biberfeld, Esq.  
Talmadge/Fitzpatrick  
18010 Southcenter Parkway  
Tukwila, WA 98188-4630  
*(Attorneys for Petitioner)*



---

Bradley W. Andersen, WSBA #20640  
Attorneys for Respondents,  
Robert "Ford" Huntington and  
Christina Huntington