Supreme Court Cause No. 99788-8
Court of Appeal Cause No. 80765-0-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

GERALD and SHIUE-HUEY CHANG, husband and wife

Petitioners

v.

SUBIR and Lilliam M. Lahiri, husband and wife,

Respondents

PETITION FOR REVIEW

LEVY | VON BECK | COMSTOCK | P.S.
1200 Fifth Ave., Suite 1850
Seattle, Washington 98101
206-626-5444

Katie J. Comstock, WSBA No. 40637
Seth E. Chastain, WSBA No. 43066
Charles A. Young, WSBA No. 56130
Claire W. Boren, WSBA No. 56909

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Table of Cases

Statutes and Rules

I. IDENTITY OF PETITIONER

Petitioners Gerald and Shiue-Huey Chang ask this court to accept review of the Court of Appeals decision terminating review designated in Part II of this petition.

II. COURT OF APPEALS DECISION

The Court of Appeals filed its opinion on April 26, 2021 (the "Opinion") which is set forth in the Appendix at pages A-1 – A-13.

III. ISSUES PRESENTED FOR REVIEW

A. Whether the Opinion is contrary to Washington Supreme Court decisions which have held that "exclusive dominion" and/or exclusive possession is a necessary and required element to support a finding of adverse possession;

B. Whether the Opinion is contrary to Washington Court of Appeals decisions which have held that "exclusive dominion" and/or exclusive possession is a necessary and required element to support a finding of adverse possession;

C. Whether the Petition involves an issue of substantial public interest, namely the legal elements which must be met before one's property may be taken by adverse possession; and

D. Whether the trial court's and Court of Appeal's Attorney's fee order against Appellant shall be overturned and whether

Respondent shall pay Appellant's attorney's fees for post-judgment review.

IV. STATEMENT OF THE CASE

Appellants Gerald and Shiue-Huey Chang ("the Changs") are a married couple who reside at 4511 Somerset Court, Kent, Washington, 98032 ("Chang Property").[1] Respondents Subir and Lillian Lahiri ("the Lahiris") are Appellants' neighbors who reside at 26428 Canaby Way, Kent Washington, 98032 ("Lahiri Property").[2] The Changs purchased their property in 1989 and the Lahiris purchased their property in 1995.[3] The neighbors rarely interacted prior to the boundary dispute arising in 2018.[4]

The Chang Property is uphill from the Lahiri Property and there is a short retaining wall ("rockery wall") which runs for a portion of the distance along the legal boundary line.[5] A privacy fence built prior to the Changs' acquisition of their property encloses the Changs' backyard but is set back about 2.4 feet from the rockery wall (the area between the privacy fence and rockery wall is hereafter referred to as "Disputed Area").[6]

---

[1] CP 19, at ¶ 2.
[2] CP 19, at ¶ 2.
[3] CP 19, at ¶¶ 2-3.
[4] CP 19, at ¶ 4.
[5] See Ex. 9 pg. 2; Ex. 37; RP 53, lines 8 – 23; RP 56, lines 16 – 18.
[6] See Ex. 44; RP 34, lines 10-25.

From 1995 through 2018, the Changs and their agents would access the Disputed Area to keep the area free of weeds and other vegetation.[7] Mr. Chang and his agents understood at all times that the disputed area was on the Chang Property, and Mr. Chang described this area as a drainage area due to the existence of two drainage pipes at the bottom of the rockery at the southeast corner of the Chang Property.[8] The Lahiris were aware of both drainage pipes and have not objected to their presence or sought their removal.[9] The Changs have also had a utility and cable box in the Disputed Area for many years.[10] There is no indication in the record that the Lahiris have objected to this utility box.

From 1995 forward, the Lahiris believed that the Disputed Area was part of their property.[11] From 1995 until 2015, the Lahiris' use of the Disputed Area was similar in nature to that of the Changs in that they regularly performed maintenance and upkeep of the land.[12] The Lahiris' children also played in the Disputed Area, and the Lahiris documented their landscaping work over the years.[13]

---

[7] RP 63.
[8] Exs. 9, 34, 37, 41, and 42; RP 14, lines 13 – 15; RP 15, lines 17 to 24; RP 46, lines 5-11; Ex. 11, 36; RP 19, lines 7 – 25.
[9] RP 149, lines 19 to 22; Ex. 42; RP 145, line 23 – RP 146, line 1; RP 146, line 18 to RP 147, line 2.
[10] Exs 11, 36; RP 149, lines 14 to 18.
[11] CP 20 (Finding of Fact No. 20).
[12] *Id.*
[13] CP 20 (Finding of fact No. 14).

In the late 1990s, Mr. Chang observed Ms. Lahiri in the disputed area and pointed out a nail in the street adjoining the Lahiri Property and informed her that she was working on his land.[14]

Starting in 2015, the Lahiris began making substantial changes to their property, including planting trees on the Chang Property and attaching items to the Changs' privacy fence.[15]

These sudden changes in the Lahiris' use of the Disputed Area caused the Changs to order a land survey, which confirmed the boundary location.[16] Upon seeing the survey stakes on the Chang Property, Ms. Lahiri tore out the survey stakes and proclaimed it was her land by adverse possession.[17] This was the first time the Lahiris attempted to exclude or limit the Changs' entry into the Disputed Area. The Changs filed suit to quiet title; the Lahiris filed a counterclaim claiming they owned the property by adverse possession.[18]

At trial, the court found that the Lahiris had established ownership of the Disputed Area through adverse possession.[19] The trial court

[14] CP 19 (Findings of Fact Nos. 10 and 11).
[15] CP 21 (Finding of Fact No. 14); RP 56, lines 7 – 14; RP 59 lines 3 to 12; RP 63 lines 6 to 9.
[16] RP 74.
[17] *Id.*
[18] CP 23 (Finding of Fact No. 29).
[19] CP 25.

concluded that the Lahiris were the prevailing party and awarded them attorney's fees pursuant to RCW 7.28.083(3).[20]

On Appeal, the Court of Appeals affirmed and ordered additional attorney's fees pursuant to RCW 7.28.083(3) and RAP 18.1(d).[21]

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The elements of adverse possession in this state are well established. As stated by this court in *ITT Rayonier,* "In order to establish a claim of adverse possession, there must be possession that is: (1) open and notorious, (2) actual and uninterrupted, (3) exclusive, and (4) hostile."[22] "Possession of the property with each of the necessary concurrent elements must exist for the statutorily prescribed period of 10 years.[23] "As the presumption of possession is in the holder of legal title, the party claiming to have adversely possessed the property has the burden of establishing the existence of each element."[24] Because the trial court made no factual findings that the Lahiris possessed the disputed area, the Court of Appeals erred by affirming the Lahiris' claim for adverse possession.

A. Standard of Review for Motion for Discretionary Review.

---

[20] *Id.*
[21] See Appendix A.
[22] ITT Rayonier, Inc. v. Bell, 112 Wn.2d 754, 757, 774 P.2d 6, 8 (1989), (citing Chaplin v. Sanders, 100 Wash.2d 853, 857, 676 P.2d 431 (1984)).(Emphasis Added)/
[23] ITT Rayonier, Inc. v. Bell, 112 Wn.2d 754, 757, 774 P.2d 6, 8 (1989) (citing RCW 4.16.020).
[24] ITT Rayonier, Inc. v. Bell, 112 Wn.2d 754, 757, 774 P.2d 6, 8 (1989) (citations omitted)

As described below, this matter meets three out of four requirements for discretionary review set forth in RAP 13.4.

B. The Court of Appeals' holding that an express factual finding of possession was not necessary to the Lahiris' adverse possession claim is in direct conflict with this Court's holding in ITT Rayonier.

In *ITT Rayonier*, title to a disputed area was quieted in favor of the titled owner ("ITT") despite claims of adverse possession by another ("Bell"). ITT used the disputed area in its timber operation[25] and Bell used the area in connection with his use of a houseboat moored in an adjacent lake.[26] Owners of another nearby houseboat also used the disputed area in much the same way Bell did.[27] Bell's adverse possession claim failed because the other owners' use of the disputed area prevented Bell from establishing the "exclusive possession" necessary to adverse possession.[28]

In analyzing Bell's claim, the ITT Rayonier court addressed the distinction between *use* and *possession* in the context of adverse possession. The court explained, "use alone does not necessarily constitute possession. The ultimate test is the exercise of dominion over the land in a manner consistent with actions a true owner would take. Thus, Bell's burden was to

[25] ITT Rayonier, Inc. v. Bell, 112 Wn.2d 754, 757, 774 P.2d 6, 7 (1989)
[26] ITT Rayonier, Inc. v. Bell, 112 Wn.2d 754, 756, 774 P.2d 6, 7 (1989)
[27] ITT Rayonier, Inc. v. Bell, 112 Wn.2d 754, 756, 774 P.2d 6, 7 (1989)
[28] ITT Rayonier, Inc. v. Bell, 112 Wn.2d 754, 760, 774 P.2d 6, 9 (1989)

establish specific acts of use rising to the level of exclusive, legal possession."[29]

Bell attempted "to establish his exclusive possession" by "pointing to specific instances of his own use of the property."[30] The Court, however, recognized that Bell's approach "logically fails to negate instances of use by others."[31] Quoting *Wood v. Nelson*, the ITT Court explained:

> specific instances of property usage merely provide evidence of possession:
>
> > Evidence of *use* is admissible because it is ordinarily an indication of possession. It is *possession* that is the ultimate fact to be ascertained. Exclusive dominion over land is the essence of possession.[32]

As *Wood* and *ITT Rayonier* establish, possession is the "ultimate fact" to be ascertained, and possession is characterized by "exclusive dominion" over the land which can be negated with a showing of use by others. Despite showing significant use of the disputed area over the statutory period, Bell's claims for adverse possession failed because "Bell's shared and occasional use of the property simply did not rise to the level of exclusive possession indicative of a true owner for the full statutory period."[33]

---

[29] ITT Rayonier, Inc. v. Bell, 112 Wn.2d 754, 759, 774 P.2d 6, 9 (1989) (emphasis added)
[30] ITT Rayonier, Inc. v. Bell, 112 Wn.2d 754, 759, 774 P.2d 6, 8 (1989)
[31] ITT Rayonier, Inc. v. Bell, 112 Wn.2d 754, 759, 774 P.2d 6, 8 (1989)
[32] ITT Rayonier, Inc. v. Bell, 112 Wn.2d 754, 759, 774 P.2d 6, 8 (1989) (Quoting Wood v. Nelson, 57 Wn.2d 539, 540, 358 P.2d 312 (1961))
[33] ITT Rayonier, Inc. v. Bell, 112 Wn.2d 754, 759–60, 774 P.2d 6, 9 (1989)

Here, the trial court relied entirely on the Lahiri's *use* of the Disputed Area but made absolutely no factual or legal findings regarding whether the Lahiris' use was *exclusive*, or whether they *possessed* the Disputed Area at all, let alone with the requisite exclusivity.[34] In fact, although the trial court cited case law which requires a finding that an adverse possessor's possession be exclusive, the court skipped that element in its analysis, and instead improperly relied upon the fact that the Lahiris *used* the Property, and that Ms. Lahiri and the Parties' neighbor believed that the land fell on the Lahiris' property.[35] These findings were irrelevant to the issue of possession and in contrast to well established law that "one's subjective belief about the location of a property line or ownership of property is wholly irrelevant; adverse possession requires *actual possession."*[36]

The Court of Appeals reenforced the trial court's error, mistakenly reasoning that "ITT Rayonier does not compel the trial court to enter an express factual finding that the Lahiris "possessed" the disputed area."[37] This was reversible error on the Court of Appeals' part. Indeed, *ITT*

[34] CP 45-50.
[35] *Id.*
[36] Chaplin v. Sanders, 100 Wash.2d 853, 676 P.2d 431 (1984) (emphasis added).
[37] See Appendix A, Pg. 10.

Rayonier identifies possession as the ultimate fact to be ascertained.[38] Because there was no factual finding of possession or legal analysis thereof by the trial court, the Lahiris did not meet their burden at trial of overcoming the presumption that the Changs, as legal title holders, had possession of the land.

The evidence at trial was clear that both the Changs and the Lahiris continued to enter and use the Disputed Area as if it were each of their properties.[39] Although the trial court described the Changs' use of the Disputed Area as "sparse," the trial court made express findings about the Changs' continued use, including Fact No. 15 which discussed the Changs' daughter routinely maintaining the Changs' fence and her continued replacement of fence boards.[40] The Changs' daughter also testified that she went into the Disputed Area "many times" to inspect the Changs' drainage pipe, to pressure wash, and to plant vinca minor.[41] It is also undisputed that there are two irrigation pipes which carry water and drainage from the Chang Property into the Disputed Area, and that these pipes are known to the Lahiris and remain there to this day, without objection. Although the Court of Appeals acknowledged the existence of the Changs' black pipe (in

[38] ITT Rayonier, Inc. v. Bell, 112 Wn.2d 754, 759, 774 P.2d 6, 8 (1989) (Quoting Wood v. Nelson, 57 Wash.2d 539, 540, 358 P.2d 312 (1961))
[39] CP 45-46.
[40] *Id.*
[41] RP 16, lines 2-17.

response to Chang's objection to the Court's finding of fact which only mentioned one white pipe), the Court performed no additional analysis and did not examine how the existence of two pipes which are used by and for the benefit of the Changs affects a legal analysis on possession.

In addition, two individuals also testified at trial to having done landscaping work on behalf of the Changs within the Disputed Area.[42] One such individual testified that he went into the Disputed Area to make fence repairs and that he did so without anyone's permission.[43] Another testified that he planted vines behind the white drainage pipe in the Disputed Area.[44]

The Changs' continued access and work within the Disputed Area was well beyond what the trial court could reasonably have found to be a neighborly accommodation[45], and their continued use is similar to the neighbors' use in *Bell* in that it prevented the Lahiris from obtaining exclusive possession of the Disputed Area. Indeed, the Changs' continued use is even more legally impactful here than the neighbors in Bell, as the Changs were the legal title holders to the land and are entitled under *ITT Rayonier* to the presumption that the land is theirs, unless the Lahiris meet their burden. *Again*, the ultimate test is the exercise of dominion over the

[42] CP 21 (Findings of Fact Nos. 18 – 19).
[43] CP 21 (Findings of Fact Nos. 18 – 19).
[44] RP 46, lines 13-17.
[45] Lilly v. Lynch, 88 Wn. App. 306, 945 P.2d 727 (1997)

land in a manner consistent with actions a true owner would take, and the Changs' and Lahiris' mutual use under their respective beliefs that they both owned the land does not rise to the level of exclusive possession by the Lahiris. The Lahiris did not did exercise dominion over the land until 2016, and, therefore, the element of exclusive possession of the Disputed Area did not run for the required 10-year period.[46] Thus, The Appellate Court erred by misapplying *ITT Rayonier*, and the Court of Appeals Decision must be reversed.

C. The Court of Appeals' holding that an express factual finding of possession was not necessary to the Lahiris' adverse possession claim is in direct conflict with the Court of Appeals' holding in *Lilly v. Lynch.*

In *Lilly v. Lynch*, the Court of Appeals considered the intensity of use necessary to support a claim for adverse possession.[47] *Lilly* involved a boundary dispute between adjacent waterfront property owners. A boat launch ramp running generally parallel to the boundary line separates the property of the northern neighbor (Lynch) from that of his southern neighbor (Lilly), and both properties are waterfront on their eastern boundaries.[48] For many years, successive owners of both properties mistakenly believed that the surveyed boundary lined up with the northern

[46] *Chaplin v. Sanders*, 100 Wash. 2d. 853, 676 P.2d 43 (1984).
[47] Lilly v. Lynch, 88 Wn. App. 306, 945 P.2d 727 (1997)
[48] Lilly v. Lynch, 88 Wn. App. 306, 309, 945 P.2d 727, 729 (1997)

wall of the boat launch ramp, and that consequently the ramp itself was part of the Lilly property.[49] When the property was surveyed, however, the parties discovered that, in fact, the boat launch ramp was entirely within the legal boundaries of the lot owned by Lynch and his predecessors.[50]

Upon discovering that the Lynches were the titled owners of the boat launch ramp, Lilly brought an action to quiet title to the area in her favor, based on adverse possession.[51] Both parties moved for summary judgment, and the trial court, finding no genuine issue of material fact granted Lynch's summary judgment motion dismissing Lilly's adverse possession claim.[52] The Court of Appeals reversed, explaining that, *viewed in the light most favorable to the non-moving party*, Lilly, material issues of fact regarding the extent and nature of control exerted by Lilly and the amount and type of use by the former owner of the Lynch property prevented summary judgment dismissing Lilly's adverse possession claim.[53]

The elements of adverse possession cited by the *Lilly* court, like those cited in *ITT Rayonier*, identify four elements, all of which require a showing of *possession.*[54] Specifically:

---

[49] Lilly v. Lynch, 88 Wn. App. 306, 309, 945 P.2d 727, 729 (1997)
[50] Lilly v. Lynch, 88 Wn. App. 306, 310, 945 P.2d 727, 730 (1997)
[51] Lilly v. Lynch, 88 Wn. App. 306, 312, 945 P.2d 727, 731 (1997)
[52] Lilly v. Lynch, 88 Wn. App. 306, 311, 945 P.2d 727, 731 (1997)
[53] Lilly v. Lynch, 88 Wn. App. 306, 316, 945 P.2d 727, 733 (1997)
[54] See, Lilly v. Lynch, 88 Wn. App. 306, 312, 945 P.2d 727, 731 (1997)

> A possessor may gain title to property from the true owner by adverse possession if four conditions are met: "[T]he possession must be[ ](1) exclusive, (2) actual and uninterrupted, (3) open and notorious, and (4) hostile and under a claim of right made in good faith." Chaplin v. Sanders, 100 Wash.2d 853, 857, 676 P.2d 431 (1984). These conditions must be met concurrently for at least 10 years. Chaplin, 100 Wash.2d at 857, 676 P.2d 431; RCW 4.16.020.[55] [56]

In *Lilly,* the court determined that the "primary issue" was whether Lilly could demonstrate "condition (1), 'exclusive' possession"[57] Evidence showed that owners of the Lynch property regularly used the boat launch, but did so with permission from the owners of the Lilly property.[58] The trial court also found that part of the Lilly property's septic system lay beneath the disputed boat launch ramp[59] and that, when the bulkhead on the water frontage of both properties was repaired, the area in front of the boat launch ramp was left open at the direction of the then-owner of the Lilly property.[60] Lilly and her predecessors also stored their boats on the boat launch ramp for years at a time and gave workers permission to use the ramp to store construction materials and equipment.[61] On the other hand, there was conflicting evidence regarding the extent of use by a former owner of the

[55] Lilly v. Lynch, 88 Wn. App. 306, 312, 945 P.2d 727, 731 (1997)
[56] The fourth element, hostility, no longer requires good faith. See Chaplin v. Sanders, 100 Wn.2d 853, 861, 676 P.2d 431, 436 (1984).
[57] Lilly v. Lynch, 88 Wn. App. 306, 312, 945 P.2d 727, 731 (1997)
[58] Lilly v. Lynch, 88 Wn. App. 306, 310, 945 P.2d 727, 730 (1997)
[59] Lilly v. Lynch, 88 Wn. App. 306, 310, 945 P.2d 727, 730 (1997)
[60] Lilly v. Lynch, 88 Wn. App. 306, 310, 945 P.2d 727, 730 (1997)
[61] Lilly v. Lynch, 88 Wn. App. 306, 315, 945 P.2d 727, 733 (1997)

Lynch property who regularly used the ramp and occasionally helped with its maintenance.[62]

Applying the law to these facts, the Court of Appeals recognized that "A claimant's possession need not be absolutely exclusive in order to satisfy the exclusivity condition of adverse possession."[63] And that "[a]n occasional, transitory use by the true owner usually will not prevent adverse possession if the uses the adverse possessor permits are such as a true owner would permit a third person to do as a 'neighborly accommodation.'"[64] Nonetheless, "'The ultimate test is the exercise of dominion over the land in a manner consistent with actions a true owner would take."[65]

See also Crites v. Koch[66], in which the Court distinguished between which conduct may constitute a neighborly accommodation for the purposes of negating an adverse possessor's exclusive possession. There, the Court indicated that uses such as temporary parking and crossing one's property as a shortcut were behaviors the community allowed as neighborly accommodations, but that more substantial uses would negate the exclusive possession element of adverse possession. The *Koch* court also referred to

[62] Lilly v. Lynch, 88 Wn. App. 306, 315, 945 P.2d 727, 733 (1997)
[63] Lilly v. Lynch, 88 Wn. App. 306, 313, 945 P.2d 727, 732 (1997) (citing Crites v. Koch, 49 Wash.App. 171, 174, 741 P.2d 1005 (1987)).
[64] Lilly v. Lynch, 88 Wn. App. 306, 313, 945 P.2d 727, 732 (1997) (quotations omitted)
[65] Lilly v. Lynch, 88 Wn. App. 306, 313, 945 P.2d 727, 732 (1997) (citing ITT Rayonier, Inc. v. Bell, 112 Wash.2d 754, 759, 774 P.2d 6 (1989)).
[66] Crites v. Koch, 49 Wash. App. 171, 741 P.2d 1005 (1987),

persuasive authority from Montana, in which the Montana Supreme Court held that an adverse claimant's possession is not exclusive when title owner used property frequently without objection from claimant.[67]

Here, the trial court recognized that the Changs used the disputed area, and though the trial court characterized that use as "sparse,"[68] no finding was made that the Changs' use of the disputed area, especially the continuous use of the disputed area as a drainage site served by two drainage pipes, was use of the type regularly permitted by the Lahiris as a neighborly courtesy. Again, the Court must presume that the Changs, as legal title holders, are in possession of their land until unless the Lahiris can demonstrate that they exclusively possessed the land themselves. The onus is on the Lahiris to demonstrate that the use by the Changs was a neighborly accommodation by the Lahiris. No such showing was made,[69] and, as a result, the Lahiris have not met their burden of establishing all elements of adverse possession.

Instead, the evidence at trial was that the Lahiris understood that the property was or, at a minimum may be, the Changs' until approximately 2016, when the Lahiris' son informed them of the concept of adverse

[67] *Martin v. Randono*, 175 Mont. 321, 573 P.2d 1156 (1978).
[68] CP 21.
[69] CP 42 – 51; Appendix A.

possession.[70] Only then did the Lahiris assert exclusive dominion for the first time by removing survey stakes that had been installed by the Changs after they noticed an increase in the trespass by the Lahiris. While the Lahiris' use may have been hostile to the Changs in that they had been made aware by Mr. Chang that the land was owned by the Changs, yet continued to use the land as their own, this is a separate and distinct element from exclusive possession under *ITT*, and there is nothing in the record to suggest or support a finding that the Lahiris had simply granted to the Changs a neighborly accommodation such that the Lahiri's use could be classified as "exclusive."

Further, the uncontroverted evidence at trial was that the Changs and their agents continued to enter and maintain the Disputed Area, and that the Changs' daughter planted morning glory plants which Ms. Lahiri classified at trial as "noxious."[71] This conduct by the Changs was considerably more substantial than the conduct by appellants in *Crites*, and was more appropriately analogized to the cases set forth in Footnote One to *Crites* where joint access and similar uses were enjoyed by both Parties. The Lahiris cannot both argue that they were allowing the Changs to use the Disputed Area as a neighborly accommodation, but also that she disagreed

[70] RP 74, lines 6-21.
[71] RP 83, lines 9-14.

with the manner in which the area was used by the Changs. These concepts are incongruous.

The Changs' possession and use of the Disputed Area is well beyond the use of the defendant in *Lilly* or Appellant in *Crites*, and it cannot be argued that more than 20 years' worth of use by the Changs (some of which occurred before the Lahiris even owned their property) was simply a neighborly accommodation as permitted by *Lilly*. Such an argument belies what is objectively reasonable behavior for a neighbor, and such an argument by the Lahiris is without legal merit. No exclusive possession by the Lahiris occurred until 2016, and their claim for title by adverse possession must fail.

D. The Court of Appeals' failure to acknowledge all elements of an adverse possession claim implicates the public interest.

Allowing adverse possession in cases where the true owner continues to use the disputed land does not further the public policy objectives of the doctrine:

> The doctrine of adverse possession arose at law, toward the aim of serving specific public policy concerns,
>
> > that title to land should not long be in doubt, that society will benefit from someone's making use of land the owner leaves idle, and that third persons who

> come to regard the occupant as owner may be protected.[72]

Where, as here, the evidence at trial clearly establishes continued use by the true owner and fails to show that such use was allowed as a neighborly accommodation by the adverse possessor, quieting title in the possessor does not serve the public interest.

The Court can imagine the frightening public policy implications which may occur if the element of exclusive possession and dominion was permitted to be removed from what is required for a showing of adverse possession. In such an instance, any joint or permissive use of land by both a true landowner and prospective adverse possessor could, and inevitably would, lead to increased and unanticipated land disputes, many of which may result in similar findings as the Court of Appeal's finding in this case, namely that *possession* itself is not part of adverse *possession*. Such a finding is without legal merit.

Similar concerns were discussed by this very Court in *Gorman v. City of Woodinville*[73], in which the Honorable Justice Madsen argued in concurrence that the original purpose of the doctrine of adverse possession may no longer serve our modern times[74]. Justice Madsen rightfully

---

[72] ITT Rayonier, Inc. v. Bell, 112 Wn.2d 754, 757, 774 P.2d 6, 7–8 (1989) (quoting Stoebuck, Adverse Possession in Washington, 35 Wash.L.Rev. 53 (1960)).
[73] Gorman v. City of Woodinville, 175 Wash. 2d. 68 (2012); 283 P.3d 1082.
[74] Id. at 75.

articulates that the doctrine's basic premise is the legalization of wrongful acquisition of land by "theft," and that said conduct should be discouraged in modern times as it creates uncertainty of ownership and rewards theft while disincentivizing the work ethic on which the American foundation was built.[75]

Here, Chang did exactly as he was expected to do – he continued to use and cultivate his land at all times. The fact that he did so notwithstanding the Lahiris' concurrent and similar use should not (and legally does not) result in the penalty of his losing his land. Such an order from the Court of Appeals must not stand, or the warnings articulated by Justice Madsen become even more relevant, and even more unavoidable.

E. Because Both Lower Courts' Orders Must Be Overturned, So Too Must Both Courts' Orders re Attorney's Fees.

Both lower courts improperly applied Washington precedent to find that the Lahiris were adverse possessors of the disputed area. Because these decisions were in error, the Changs are entitled to a reversal of the fee orders and for an award of their own fees, in the trial court and on appeal, as Petitioners will brief more fully if review is granted.

VI. CONCLUSION

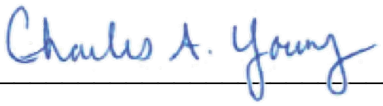
[75] Id. at 77.

This Court should accept review and reverse the Court of Appeals' decision. Because the underlying decision was in error, both lower courts' awards of attorney's fees to the Lahiris should be reversed, and attorney's fees should instead be awarded to the Changs.

June 25, 2021.

Respectfully submitted,

LEVY | VON BECK | COMSTOCK | P.S.



Katie J. Comstock, WSBA No. 40637
Seth E. Chastain, WSBA No. 43066
Charles A. Young, WSBA No. 56130
Claire W. Boren, WSBA No. 56909
1200 Fifth Ave., Suite 1850
Seattle, Washington 98101
206-626-5444
katie@levy-law.com
sechastain@levy-law.com
charlie@levy-law.com
claire@levy-law.com
Attorneys for Appellants/Petitioners, Gerald and Shiue-Huey Chang

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing to the following individuals in the manner indicated:

Nicholas Price
Archer Price Law PLLC
20918 63rd Ave W., Suite A
Lynnwood, WA 98036
nicholas@archerpricelaw.com
Attorney for Respondents

☐ Regular Mail
☒ E-Mail/E-Service
☒ Messenger/Personal Delivery
☐ Facsimile

Jacob Monroe Miller
Archer Price Law PLLC
1736 NW Market Street
Seattle, WA 98107
jake@archerpricelaw.com
Attorneys for Respondents

☐ Regular Mail
☒ E-Mail/E-Service
☒ Messenger/Personal Delivery
☐ Facsimile

DATED this 25th day of June 2021 at Seattle, Washington.

Charles A. Young

Katie J. Comstock, WSBA No. 40637
Seth E. Chastain, WSBA No. 43066
Charles A. Young, WSBA No. 56130
Claire W. Boren, WSBA No. 56909

APPENDIX A

FILED
4/26/2021
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

GERALD and SHIUE-HUEY CHANG, husband and wife, Appellants, v. SUBIR and LILLIAN M. LAHIRI, husband and wife, Respondents.	No. 80765-0-I DIVISION ONE UNPUBLISHED OPINION

SMITH, J. — This is a quiet title action involving adjacent neighbors. Gerald and Shiue-Huey Chang (collectively Changs) appeal the trial court's order determining that Subir and Lillian Lahiri (collectively Lahiris) adversely possessed a disputed area of property between their residential lots. The Changs argue that the Lahiris failed to prove the necessary elements of adverse possession by a preponderance of the evidence and that the trial court erred in granting attorney fees to the Lahiris as the prevailing party. We affirm and also grant the Lahiris their attorney fees on appeal.

FACTS

The Changs and the Lahiris own adjacent residential properties in Kent. In 1989, the Changs purchased their home at 4511 Somerset Court. The Lahiris purchased their property at 26428 Carnaby Way in 1995. The Changs and Lahiris rarely interacted prior to the boundary dispute that led to this action in 2018.

The disputed area is a narrow wedge-shaped portion of property located between the Changs' rear yard and the Lahiris' side yard. A survey commissioned by the Lahiris in 2019 indicates that the disputed area encompasses approximately 439 square feet. A rock retaining wall and wood privacy fence are located on the Changs' side of the property line. The platted property line runs along the base of the rock retaining wall, and the fence runs along the top of the rockery. A small white drainage pipe is visible in the disputed area on the Lahiris' side of the fence. The rock retaining wall, fence, and drainage pipe were all present when the Changs purchased their property in 1989.

When the Lahiris bought their home in 1995, they believed the area between the Changs' fence and their home was part of their property, and they treated it accordingly. Over the years, the Lahiris and their landscape professionals performed regular maintenance and upkeep of the disputed area. They removed and added ferns, shrubs, and small trees, removed portions of a large juniper tree, installed weed barriers, spread beauty bark, trimmed trees and bushes, and managed irrigation. The Lahiris documented these changes with photographs and videos, comparing the appearance of the disputed area in 1996 through 1998 and 2006.

The Changs testified that they could easily access the disputed area two ways: through a gap in the fence and from Carnaby Way. However, the Lahiris' testimony and photographic evidence indicated that the rockery, fence, and mature landscaping made it difficult to access the disputed area from the Chang property. In addition, evidence introduced at trial indicated that the gap in the fence was actually located on the

property of the Changs' neighbors to the south and that it had been blocked by boulders until Gerald Chang removed them in 2019.

Gerald Chang and his daughter Angela Chang testified that they occasionally entered the disputed area to pull weeds, plant some vines, and maintain the fence. Landscaper Doug Doubleton, testified that he trimmed some vines on the Lahiris' side of the fence and trimmed some trees that were even with the fence at the Changs' request in 2013. Landscaper Joseph Garrido also testified that he did some work on the Lahiris' side of the fence at the Changs' request on one or two occasions since 2009. Gerald Chang and Angela Chang also claimed that they occasionally entered the disputed area to make sure the white drainage pipe was open. However, Lillian Lahiri testified that the white drainage pipe was clogged and that it never drained any water until shortly before this dispute arose. She noticed that the drain pipe began working because water running through it eroded some of the soil in the disputed area.

Muriel Drury, a neighbor who can see the disputed area from her property, testified that she thought it appeared to be part of the Lahiris' property. Photographs and videos introduced as exhibits at trial confirm Drury's observation. Drury never saw the Changs or the prior owners of their property doing any work in the disputed area. In contrast, she observed the Lahiris and the prior owners of their property regularly using and maintaining the disputed area. The Lahiris also stated that they never saw the Changs do any work or maintenance in the disputed area.

On one occasion in the late 1990s, while Lillian Lahiri was using a shovel to dig in the disputed area, Gerald Chang pointed to a "nail" in the street adjoining the Lahiri property and informed her that it was the property line and that she was working on his

land. However, Chang did not eject Lillian Lahiri from the disputed area or give her permission to use it. The Lahiris continued to use, maintain, and landscape the disputed area without the Changs' permission.

In 2015, the Lahiris commenced an extensive landscaping project on their property. Some of the work occurred within the disputed area. Although Gerald Chang acknowledged that he could easily see the disputed area from his window, he claimed that he never saw the Lahiris in the area and that he did not notice any changes to the landscaping until 2016.

In June 2018, the Changs commissioned a survey, which confirmed the location of the Changs' property line on the Lahiris' side of the fence. Prior to this survey, the Changs had never objected to the Lahiris' use, maintenance, and upkeep of the disputed area or attempted to eject them from it. The Lahiris removed the survey stakes, installed a "no trespassing" sign, and informed the Changs that they own the disputed area through adverse possession. The Changs instructed the Lahiris to put the stakes back up, but they refused to do so.

In September 2018, the Changs filed a complaint to quiet title. The Lahiris responded with a counterclaim for adverse possession. In October 2019, after a bench trial, the trial court entered detailed findings of fact and conclusions of law, determined that the Lahiris had established adverse possession of the disputed area, and granted the Lahiris' request for attorney fees. The court subsequently entered an order and final judgment quieting title in the Lahiris and a supplemental judgment for attorney fees and costs in the amount of $40,886.98. The Changs appealed.

ANALYSIS

Adverse Possession

The Changs contend that the Lahiris failed to prove the elements of adverse possession by a preponderance of the evidence. They begin by assigning error to six of the trial court's 29 findings of fact.

We review the trial court's findings of fact for substantial evidence. Merriman v. Cokeley, 168 Wn.2d 627, 631, 230 P.3d 162 (2010). Substantial evidence is that which would persuade a fair-minded, rational person of the truth of the finding. In re Estate of Palmer, 145 Wn. App. 249, 265-66, 187 P.3d 758 (2008). A reviewing court will not disturb findings of fact that are supported by substantial evidence, even if there is conflicting evidence. Merriman, 168 Wn.2d at 631. Unchallenged findings of fact are verities on appeal. Merriman, 168 Wn.2d at 631.

The Changs first assign error to finding of fact 7, which states that "[t]he rockery, drainage pipe and fence were all present when the Changs purchased their property in 1989." The basis of the Changs' challenge to finding of fact 7 is their assertion that the Changs' drainage system actually included two pipes, a black one and a white one. They point to a photograph depicting a black drain pipe adjacent to a utility box in a different area of the Changs' property. But the Changs are not contesting the court's finding that the rockery, drainage pipe, and fence were present when they purchased the property, and the existence of the black pipe does not change that fact. This evidence does not undermine or contradict finding of fact 7.

The Changs next argue that substantial evidence did not support the court's findings that "[t]he Disputed Area lies between an old fence and rockery on the Chang

property's east-southeast border, and the Lahiri property's west-northwest border, according to Exhibit 44, which was a survey commissioned by plaintiffs before they filed suit" and that "[t]he Disputed Area encompasses approximately four-hundred and thirty-nine (439) square feet." They contend that the Lahiris' survey does not demarcate the precise boundaries of the disputed area and that the Lahiris failed to provide supporting testimony from the surveyor. However, the survey provided by the Lahiris articulates the disputed area's boundaries, both as a legal description and on the survey maps themselves. And the notes on the last page of the survey specify that the disputed area is 439.08 square feet. These findings are supported by substantial evidence.

The Changs next challenge the portion of finding of fact 9 which states "[t]here is no easy access to the Disputed Area from the Chang property." They assert that "[s]imply looking at the survey would show that a large portion of the disputed area is outside the portion of property bordered by the fence and rockery" and that it could be accessed from the southwest end of the fence or the street. However, this argument ignores testimony and evidence from the Lahiris demonstrating that the combination of the fence, rockery, and dense vegetation make it very difficult for the Changs to access the disputed area and that the gap in the fence is actually on another neighbor's property. The survey depicted in exhibit 44 does not contradict this substantial evidence.

The Changs next challenge the portion of finding of fact 12 that states the Lahiris "eventually installed curbing in the Disputed Area." The Lahiris' survey shows that the curbing does encroach on the disputed area. Although the Changs point out that much

of the curbing lay outside of the disputed area, this does not undermine or contradict the evidence in support of this finding.

The Changs next challenge finding of fact 15, which states that "[e]ven before the Lahiris bought their property in 1995, there was an irrigation system that served the Disputed Area. The water source for this irrigation system was located in the Lahiris' basement; not on the Changs' property." They assert that its location in the Lahiris' basement was not open and notorious. While this argument may be pertinent to the court's legal conclusion regarding adverse possession, it does not undermine or contradict the evidence in support of this finding.

Lastly, the Changs challenge finding of fact 17, which states in pertinent part: "Ms. Lahiri testified credibly that the drain pipe was clogged, and never drained any water until shortly before this dispute arose." The Changs contend that "[t]he fact is the white drainpipe is not perforated, and the pipe is sloped downwards so that the water flow from the pipe will expel any dirt or pine need[le]s." Although Angela Chang testified that she checked the white drainage pipe to ensure it remained open, we defer to the trial court regarding witness credibility and conflicting testimony. Boeing Co. v. Heidy, 147 Wn.2d 78, 87, 51 P.3d 793 (2002).

We conclude that substantial evidence supports the challenged findings.

The Changs also assert that the court erred in determining that the Lahiris met their burden of proving by a preponderance of the evidence that they adversely possessed the disputed area. We disagree and conclude that the findings of fact amply supported the court's conclusions of law.

The doctrine of adverse possession is based on an intent to "assure maximum utilization of the land, encourage the rejection of stale claims, and quiet titles." Roy v. Cunningham, 46 Wn. App. 409, 412, 731 P.2d 526 (1986). A party claiming adverse possession must establish that possession is "(1) open and notorious, (2) actual and uninterrupted, (3) exclusive, and (4) hostile." ITT Rayonier, Inc. v. Bell, 112 Wn.2d 754, 757, 774 P.2d 6 (1989) (citing Chaplin v. Sanders, 100 Wn.2d 853, 857, 676 P.2d 431 (1984)). Possession of the property with each of the necessary elements must exist for 10 years. RCW 4.16.020. "The party claiming adverse possession must establish each element by a preponderance of the evidence." Teel v. Stading, 155 Wn. App. 390, 394, 228 P.3d 1293 (2010). "Whether adverse possession has been established by the facts as found by the trial court is a question of law, which we review de novo." Happy Bunch, LLC v. Grandview North, LLC, 142 Wn. App. 81, 88, 173 P.3d 959 (2007) (citing Bryant v. Palmer Coking Coal Co., 86 Wn. App. 204, 210, 936 P.2d 1163 (1997)).

"Adverse use does not import 'ill will' but means 'use of property as the owner himself would exercise, entirely disregarding the claims of others, asking permission from no one, and using the property under a claim of right.'" Lingvall v. Bartmess, 97 Wn. App. 245, 250, 982 P.2d 690 (1999) (quoting Malnati v. Ramstead, 50 Wn.2d 105, 108, 309 P.2d 754 (1957)). The ultimate test is whether the adverse possessor exercised such dominion over the land that the legal owner should have recognized that the adverse possessor was treating the land as would its true owner. ITT Rayonier, 112 Wn.2d at 759.

"A claimant can satisfy the open and notorious element by showing either (1) that the title owner had actual notice of the adverse use throughout the statutory period or

(2) that the claimant used the land such that any reasonable person would have thought he owned it." Riley v. Andres, 107 Wn. App. 391, 396, 27 P.3d 618 (2001). "[T]o be open and notorious, the possession must be visible and known or discoverable to the true owner." Lloyd v. Montecucco, 83 Wn. App. 846, 853, 924 P.2d 927 (1996).

An adverse possessor's dominion over the land must be as exclusive as the community would expect of an ordinary title owner under the circumstances, including the land's nature and location. Crites v. Koch, 49 Wn. App. 171, 174, 741 P.2d 1005 (1987). The exclusive possession element does not require the claimant to prove his or her possession was "*absolutely* exclusive." Lilly v. Lynch, 88 Wn. App. 306, 313, 945 P.2d 727 (1997). An "'occasional, transitory use by the true owner usually will not prevent adverse possession if the uses the adverse possessor permits are such as a true owner would permit a third person to do as a neighborly accommodation.'" Lilly, 88 Wn. App. at 313 (internal quotation marks omitted) (quoting 17 WILLIAM B. STOEBUCK, WASHINGTON PRACTICE REAL ESTATE: PROPERTY LAW § 8.19, at 516 (1995)).

"Hostility is not personal animosity or adversarial intent, but instead connotes that the claimant's use has been hostile to the title owner's, in that the claimant's use has been akin to that of an owner." Herrin v. O'Hern, 168 Wn. App. 305, 311, 275 P.3d 1231 (2012). "Permission, express or implied, from the true owner negates the hostility element because permissive use is inconsistent with making use of property as would a true owner." Teel, 155 Wn. App. at 394.

The Changs argue that "[p]ossession, not use of property, is required to establish adverse possession." They rely on ITT Rayonier for the proposition that the trial court failed to make the required factual finding that the Lahiris "possessed" the disputed

area. Instead, according to the Changs, the court relied on the legally irrelevant finding that the Lahiris believed the area was part of their property. The Changs' argument is misplaced. In ITT Rayonier, the Supreme Court stated:

> "Evidence of *use* is admissible because it is ordinarily an indication of *possession*. *It is possession that is the ultimate fact to be ascertained.* Exclusive dominion over land is the essence of possession, and it can exist in unused land if others have been excluded therefrom."

ITT Rayonier, 112 Wn.2d at 759 (some emphasis added) (quoting Wood v. Nelson, 57 Wn.2d 539, 540, 358 P.2d 312 (1961)). When read in context, it is apparent that "possession" refers to the court's legal determination regarding whether a party has met its burden of proving the four requirements of adverse possession. ITT Rayonier does not compel the trial court to enter an express factual finding that the Lahiris "possessed" the disputed area. And the court's conclusion that the Lahiris established adverse possession was not based solely on a finding that they subjectively believed they owned it, but rather on the actions they took in accordance with this belief.

The Changs also assert that the Lahiris' alleged use and maintenance of the disputed area does not support their claim of adverse possession because (1) much of the work was done by landscape professionals who did not testify at trial, (2) the work did not result in the Changs being excluded from the disputed area, (3) certain activities, such as installation of a weed barrier and irrigation system, were not visible to the Changs, (4) certain activities, such as installation of the curbing and mowing the lawn, did not fully encroach on the disputed area, (5) the Lahiris did not prevent the Changs from accessing the disputed area, (6) the Changs' use of the disputed area was substantially similar to that of the Lahiris, and (7) the Lahiris never did anything prior to

2016 that would have alerted the Changs that they were adversely possessing the property.

However, in unchallenged findings of fact, the court found that the Lahiris consistently maintained and openly used the disputed area as their own property since they purchased it in 1995; that the Changs were on notice that they were doing so; that the Lahiris never saw the Changs using the disputed area; and that the Changs' evidence regarding their use of the disputed area was sparse, vague, and conclusory. Also unchallenged were the court's findings that the Changs never sought to eject the Lahiris from the disputed area before 2018; that they never gave the Lahiris permission to use or alter the disputed area; and that they never expressly or impliedly allowed the Lahiris to use and maintain the disputed area as a neighborly accommodation.[1] Although the Changs dispute the trial court's determinations regarding witness credibility, conflicting testimony, and persuasiveness of the evidence, we defer to the trial court in these matters. Harris v. Urell, 133 Wn. App. 130, 139, 135 P.3d 530 (2006). The trial court did not err in concluding that the Lahiris adversely possessed the disputed area.

Attorney Fees

The Changs assign error to the trial court's decision to award attorney fees and costs to the Lahiris.[2] "When reviewing an award of attorney fees, the relevant inquiry is

[1] Notably, the Changs did not challenge the court's findings that in the late 1990s, Chang informed Lillian Lahiri that she was working on his land but did not eject her or give her permission to use it.

[2] The Changs did not discuss this issue in the argument section of their brief or support their assignment of error with citations to authority or to the record. We need not address an assignment of error that is unsupported by argument or citation to authority. RAP 10.3(a)(6); see Cowiche Canyon Conservatory v. Bosley, 118 Wn.2d

first, whether the prevailing party is entitled to attorney fees." Unifund CCR Partners v. Sunde, 163 Wn. App. 473, 483-84, 260 P.3d 915 (2011). An award of attorney fees must be based in "contract, statute, or recognized ground of equity." Durland v. San Juan County, 182 Wn.2d 55, 76, 340 P.3d 191 (2014). We review whether there is a legal basis to award attorney fees de novo. Gander v. Yeager, 167 Wn. App. 638, 647, 282 P.3d 1100 (2012). If there is a legal basis for awarding attorney fees, we review "a discretionary decision to award or deny attorney fees and the reasonableness of any attorney fee award for an abuse of discretion." Gander, 167 Wn. App. at 647.

RCW 7.28.083(3) allows for an award of reasonable attorney fees and costs to "[t]he prevailing party in an action asserting title to real property by adverse possession" where the award "is equitable and just." The Changs do not challenge the reasonableness of the award. Rather, they assigned error to the trial court's conclusion that "an award of attorney fees to the Lahiris is just and equitable" because "it was the plaintiffs who chose to litigate" and "the defendants prevailed in their adverse possession claim." Here, as discussed, the trial court properly concluded that the Lahiris adversely possessed the disputed area. And the findings of fact amply support the court's conclusion that the parties were forced to incur fees because the Changs chose to litigate rather than continue to acquiesce to the Lahiris' continued use and maintenance of the disputed area. The fee award was proper.

801, 809, 828 P.2d 549 (1992). However, where the nature of the objection is apparent, we may nevertheless elect to address an issue that is inadequately briefed. See, e.g., State Farm Mut. Auto Ins. v. Avery, 114 Wn. App. 299, 310, 57 P.3d 300 (2002).

The Lahiris request an award of attorney fees on appeal based on RCW 7.28.083(3) and RAP 18.1. "A party may recover attorney fees and costs on appeal when granted by applicable law." Oregon Mut. Ins. Co. v. Barton, 109 Wn. App. 405, 418, 36 P.3d 1065 (2001). RCW 7.28.083(3) provides a statutory basis for the award of attorney fees to the prevailing party of an adverse possession claim on appeal. Workman v. Klinkenberg, 6 Wn. App. 2d 291, 308-09, 430 P.3d 716 (2018). Because the Lahiris are the prevailing party on appeal, we award the Lahiris their reasonable attorney fees and costs incurred in this appeal subject to their compliance with RAP 18.1(d).

Affirmed.

WE CONCUR:

Appendix B

Rules of Appellate Procedure

RULE 18.1
ATTORNEY FEES AND EXPENSES

(a) Generally. If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review before either the Court of Appeals or Supreme Court, the party must request the fees or expenses as provided in this rule, unless a statute specifies that the request is to be directed to the trial court.

(b) Argument in Brief. The party must devote a section of its opening brief to the request for the fees or expenses. Requests made at the Court of Appeals will be considered as continuing requests at the Supreme Court, except as stated in section (j). The request should not be made in the cost bill. In a motion on the merits pursuant to rule 18.14, the request and supporting argument must be included in the motion or response if the requesting party has not yet filed a brief.

(c) Affidavit of Financial Need. In any action where applicable law mandates consideration of the financial resources of one or more parties regarding an award of attorney fees and expenses, each party must serve upon the other and file a financial affidavit no later than 10 days prior to the date the case is set for oral argument or consideration on the merits; however, in a motion on the merits pursuant to rule 18.14, each party must serve and file a financial affidavit along with its motion or response. Any answer to an affidavit of financial need must be filed and served within 7 days after service of the affidavit.

(d) Affidavit of Fees and Expenses. Within 10 days after the filing of a decision awarding a party the right to reasonable attorney fees and expenses, the party must serve and file in the appellate court an affidavit detailing the expenses incurred and the services performed by counsel.

(e) Objection to Affidavit of Fees and Expenses; Reply. A party may object to a request for fees and expenses filed pursuant to section (d) by serving and filing an answer with appropriate documentation containing specific objections to the requested fee. The answer must be served and filed within 10 days after service of the affidavit of fees and expenses upon the party. A party may reply to an answer by serving and filing the reply documents within 5 days after the service of the answer upon that party.

(f) Commissioner or Clerk Awards Fees and Expenses. A commissioner or clerk

will determine the amount of the award, and will notify the parties. The determination will be made without a hearing, unless one is requested by the commissioner or clerk.

(g) Objection to Award. A party may object to the commissioner's or clerk's award only by motion to the appellate court in the same manner and within the same time as provided in rule 17.7 for objections to any other rulings of a commissioner or clerk.

(h) Transmitting Judgment on Award. The clerk will include the award of attorney fees and expenses in the mandate, or the certificate of finality, or in a supplemental judgment. The award of fees and expenses, including interest from the date of the award by the appellate court, may be enforced in the trial court.

(i) Fees and Expenses Determined After Remand. The appellate court may direct that the amount of fees and expenses be determined by the trial court after remand.

(j) Fees for Answering Petition for Review. If attorney fees and expenses are awarded to the party who prevailed in the Court of Appeals, and if a petition for review to the Supreme Court is subsequently denied, reasonable attorney fees and expenses may be awarded for the prevailing party's preparation and filing of the timely answer to the petition for review. A party seeking attorney fees and expenses should request them in the answer to the petition for review. The Supreme Court will decide whether fees are to be awarded at the time the Supreme Court denies the petition for review. If fees are awarded, the party to whom fees are awarded should submit an affidavit of fees and expenses within the time and in the manner provided in section (d). An answer to the request or a reply to an answer may be filed within the time and in the manner provided in section (e). The commissioner or clerk of the Supreme Court will determine the amount of fees without oral argument, unless oral argument is requested by the commissioner or clerk. Section (g) applies to objections to the award of fees and expenses by the commissioner or clerk.

[Amended to become effective December 29, 1998; December 5, 2002; September 1, 2003; September 1, 2006; September 1, 2010]

Click here to view in a PDF.

Whistleblower Policy Pattern Jury Instructions

Privacy and Disclaimer Notices Sitemap

S1

Appendix C

Rules of Appellate Procedure

RAP 13.4
DISCRETIONARY REVIEW OF DECISION TERMINATING REVIEW

(a) How to Seek Review. A party seeking discretionary review by the Supreme Court of a Court o Appeals decision terminating review must serve on all other parties and file a petition for review o an answer to the petition that raises new issues. A petition for review should be filed in the Court Appeals. If no motion to publish or motion to reconsider all or part of the Court of Appeals decisi is timely made, a petition for review must be filed within 30 days after the decision is filed. If a motion is made, the petition for review must be filed within 30 days after an order is filed denyi timely motion for reconsideration or determining a timely motion to publish. If the petition for rev is filed prior to the Court of Appeals determination on the motion to reconsider or on a motion to p the petition will not be forwarded to the Supreme Court until the Court of Appeals files an order on such motions. The first party to file a petition for review must, at the time the petition is filed, the statutory filing fee to the clerk of the Court of Appeals in which the petition is filed. Failu serve a party with the petition for review or file proof of service does not prejudice the rights of party seeking review, but may subject the party to a motion by the Clerk of the Supreme Court to dis the petition for review if not cured in a timely manner. A party prejudiced by the failure to serve petition for review or to file proof of service may move in the Supreme Court for appropriate relief

(b) Considerations Governing Acceptance of Review. A petition for review will be accepted by t Supreme Court only:

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme

(2) If the decision of the Court of Appeals is in conflict with a published decision of t Appeals; or

(3) If a significant question of law under the Constitution of the State of Washington or United States is involved; or

(4) If the petition involves an issue of substantial public interest that should be deter Supreme Court.

(c) Content and Style of Petition. The petition for review should contain under appropriate he and in the order here indicated:

(1) Cover. A title page, which is the cover.

(2) Tables. A table of contents, with page references, and a table of cases (alphabetica arranged), statutes, and other authorities cited, with reference to the pages of the brief where cit

(3) Identity of Petitioner. A statement of the name and designation of the person filing

(4) Citation to Court of Appeals Decision. A reference to the Court of Appeals decision w wants reviewed, the date of filing the decision, and the date of any order granting or denying a mot reconsideration.

(5) Issues Presented for Review. A concise statement of the issues presented for review.

(6) Statement of the Case. A statement of the facts and procedures relevant to the issues for review, with appropriate references to the record.

(7) Argument. A direct and concise statement of the reason why review should be accepted or more of the tests established in section (b), with argument.

(8) Conclusion. A short conclusion stating the precise relief sought.

(9) Appendix. An appendix containing a copy of the Court of Appeals decision, any order g or denying a motion for reconsideration of the decision, and copies of statutes and constitutional provisions relevant to the issues presented for review.

(d) Answer and Reply. A party may file an answer to a petition for review. A party filing an answer to a petition for review must serve the answer on all other parties. If the party wants to s of any issue that is not raised in the petition for review, including any issues that were raised bu not decided in the Court of Appeals, the party must raise those new issues in an answer. Any answer should be filed within 30 days after the service on the party of the petition. A party may file a re to an answer only if the answering party seeks review of issues not raised in the petition for revie A reply to an answer should be limited to addressing only the new issues raised in the answer. A pa filing any reply to an answer must serve the reply to the answer on all other parties. A reply to a answer should be filed within 15 days after the service on the party of the answer. An answer or rep should be filed in the Supreme Court. The Supreme Court may call for an answer or a reply to an answ

(e) Form of Petition, Answer, and Reply. The petition, answer, and reply should comply with th requirements as to form for a brief as provided in rules 10.3 and 10.4, except as otherwise provided rule.

(f) Length. The petition for review, answer, or reply should not exceed 20 pages double spaced excluding appendices, title sheet, table of contents, and table of authorities.

(g) Reproduction of Petition, Answer, and Reply. The clerk will arrange for the reproduction c of a petition for review, an answer, or a reply, and bill the appropriate party for the copies as pr in rule 10.5.

(h) Amicus Curiae Memoranda. The Supreme Court may grant permission to file an amicus curiae memorandum in support of or opposition to a pending petition for review. Absent a showing of particu justification, an amicus curiae memorandum should be received by the court and counsel of record for parties and other amicus curiae not later than 60 days from the date the petition for review is file Rules 10.4 and 10.6 should govern generally disposition of a motion to file an amicus curiae memorar An amicus curiae memorandum or answer thereto should not exceed 10 pages.

(i) No Oral Argument. The Supreme Court will decide the petition without oral argument.

[Originally effective July 1, 1976; amended effective September 1, 1983; September 1, 1990; Septembe 1992; September 1, 1994; September 1, 1998; September 1, 1999; December 24, 2002; September 1, 2006; September 1, 2009; September 1, 2010; December 8, 2015; September 1, 2016.]

Click here to view in a PDF.

Appendix D

RCW 7.28.083

Adverse possession—Reimbursement of taxes or assessments—Payment of unpaid taxes or assessments—Awarding of costs and attorneys' fees.

(1) A party who prevails against the holder of record title at the time an action asserting title to real property by adverse possession was filed, or against a subsequent purchaser from such holder, may be required to:

(a) Reimburse such holder or purchaser for part or all of any taxes or assessments levied on the real property during the period the prevailing party was in possession of the real property in question and which are proven by competent evidence to have been paid by such holder or purchaser; and

(b) Pay to the treasurer of the county in which the real property is located part or all of any taxes or assessments levied on the real property after the filing of the adverse possession claim and which are due and remain unpaid at the time judgment on the claim is entered.

(2) If the court orders reimbursement for taxes or assessments paid or payment of taxes or assessments due under subsection (1) of this section, the court shall determine how to allocate taxes or assessments between the property acquired by adverse possession and the property retained by the title holder. In making its determination, the court shall consider all the facts and shall order such reimbursement or payment as appears equitable and just.

(3) 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.

[**2011 c 255 § 1**.]

NOTES:

Application—2011 c 255: "This act applies to actions filed on or after July 1, 2012." [**2011 c 255 § 2**.]

Appendix E

RCW 4.16.020

Actions to be commenced within ten years—Exception.

The period prescribed for the commencement of actions shall be as follows:

Within ten years:

(1) For actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery unless it appears that the plaintiff, his or her ancestor, predecessor or grantor was seized or possessed of the premises in question within ten years before the commencement of the action.

(2) For an action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or of any territory or possession of the United States outside the boundaries thereof, or of any extraterritorial court of the United States, unless the period is extended under RCW **6.17.020** or a similar provision in another jurisdiction.

(3) Of the eighteenth birthday of the youngest child named in the order for whom support is ordered for an action to collect past due child support that has accrued under an order entered after July 23, 1989, by any of the above-named courts or that has accrued under an administrative order as defined in RCW **74.20A.020**(6), which is issued after July 23, 1989.

[**2002 c 261 § 2**; **1994 c 189 § 2**; **1989 c 360 § 1**; **1984 c 76 § 1**; **1980 c 105 § 1**; Code 1881 § 26; **1877 p 7 § 26**; **1854 p 363 § 2**; RRS § 156.]

NOTES:

Application—1980 c 105: "This act shall apply to all judgments which have not expired before June 12, 1980." [**1980 c 105 § 7**.]

Adverse possession

*limitation tolled when personal disability: RCW **7.28.090**.*

*recovery of realty, limitation: RCW **7.28.050**.*

LEVY VON BECK COMSTOCK PS

June 25, 2021 - 8:51 AM

Filing Petition for Review

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	Case Initiation
Appellate Court Case Title:	Gerald & Shiue-Huey Chang, Apps v. Subir & Lillian M. Lahiri, Resps (807650)

The following documents have been uploaded:

- PRV_Other_20210625085046SC456611_0210.pdf
  This File Contains:
  Other - Notice of Appearance
  The Original File Name was Chang v Lahiri Notice of Appearance SC LvBC.pdf
- PRV_Petition_for_Review_20210625085046SC456611_4246.pdf
  This File Contains:
  Petition for Review
  The Original File Name was Chang Gerald and Shiue Huey Petition for Review.pdf

A copy of the uploaded files will be sent to:

- Nicholas@ArcherPriceLaw.com
- charlie@levy-law.com
- claire@levy-law.com
- jmiller@dicksonlegal.com
- katie@levy-law.com
- mc06823@gmail.com
- melissa@levy-law.com
- sechastain@levy-law.com

Comments:

Sender Name: Seth Chastain - Email: sechastain@levy-law.com
Address:
1200 5TH AVE STE 1850
SEATTLE, WA, 98101-0043
Phone: 206-673-2235

Note: The Filing Id is 20210625085046SC456611