

63621-9

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NO. 636219-I

COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON

PHILIP BITAR and MARIE BITAR

Defendants/Appellants,

v.

CHRISTOPHER TOMPKINS and LISA TOMPKINS,

Plaintiffs/Respondents.

APPEAL FROM THE SUPERIOR COURT
FOR SNOHOMISH COUNTY
THE HONORABLE GEORGE F. APPEL

REPLY BRIEF OF APPELLANTS

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OTHER

This Reply Brief will discuss four subjects: (1) the evidence (or lack thereof) supporting the trial court's Finding of Fact 6 and Conclusion of Law 5 regarding permission; (2) whether that permission, if established, was vitiated under Miller v. Anderson, 91 Wn. App. 822, 964 P.2d 365 (1998); (3) whether the Bitars carried their burden of proof of adverse possession of the disputed area; and (4) whether the Bitars carried their burden of proof of mutual recognition and acquiescence as to the disputed area.

- (1) There is not substantial evidence for the trial court's Finding of Fact 6 and the trial court erred to conclude "permission" in its Conclusion of Law 5.

When stripped to essentials, with all strong argument disregarded, the linchpin for the trial court's finding and conclusion of permission consists of less than 40 words of testimony from Angela Adams and an affirmative "yes" to one question:

A. . . . But the first one was that I recall that our fence was over, not exactly where the property line was.

* * * *

A. And John and Barb thought that that was okay not to mess with the fencing . . .

* * * *

Q. They said it was fine where it was?

A. Yes.

RP 191 Lines 5-7; Lines 14-15; Line 25; RP 192 Line 1. There is no other testimony by any other witness – Mr. Haggerty or Mr. Adams or otherwise – alluding to facts or discussion concerning the Adams locating their fence.

There is testimony by Mr. Adams concerning both an “agreement” and an “assumption”.

Q. Sir, page 16 of your deposition, Lines 6 and 7. At line 7, isn't it correct that you answered: “Everybody agreed that's where the property line was.”

A. I would have to read the context

Q. I understand

A. Yes.

Q. Now, in fact, later in your deposition, I asked you more questions about that, and you said, in fact, there wasn't an agreement as to the west line, but everybody assumed that the fence reflected the west line, isn't that correct?

A. Yes.

RP 201, lines 11-22. Mr. Stegena then asked Mr. Adams additional questions in re-direct. At this point Mr. Adams testified:

Q. “Everybody agreed that's where the property line was.”

Prior to that though, what was the question? I will read it: “That's on the street side?” That immediately preceded your answer, is that correct?

A. Yes.

RP 202, lines 14-18.

With all due respect to Mr. and Mrs. Adams, neither within itself, nor in context does their testimony make sense and therefore the trial court's finding is completely undermined and its conclusion of law is simply error.

As to Mrs. Adams' testimony, it is brief, not identified as to time or place, and does not include the word "permission." To the Bitars, the words in Mrs. Adams' testimony, "okay not to mess with the fencing" and "fine where it was", are easily as amenable to a parol boundary line agreement as to permission.¹

As to Mr. Adams' testimony, it is submitted that indeed there was a discussion leading to an agreement concerning a boundary, and it was the same boundary Mrs. Adams was alluding to, the western boundary, despite Mr. Adams saying the eastern boundary.

The Bitars described the lay of the land in their Brief of Appellants. The Bitar property is the southeast 5 acres of an approximate

¹ The Respondent's Brief at page 8 cites Miller v. Anderson, 91 Wn. App 822, 828, 964 P.2d 265 (1998) and Granstron v. Callahan, 52 Wn. App. 288, 294, 759 P.2d 462 (1988) for the principle that "an inference of permissive use arises when it is reasonable to assume 'that the use was permitted by sufferance and acquiescence.'" Miller involved an express written and recorded agreement. Granstron involved an agreement among brothers, or as characterized by the court as a "close, friendly relationship or family relationship." 52 Wn. App at 294. Both cases are distinguishable and the inference of permission does not arise in this case.

20 acre tract. The only common boundaries therefore between the Adams/Bitar property and the Haggerty/Tompkins property are the west and north boundaries of the Adams/Bitar property. Why the Adams and the Haggertys would have an agreement as to the east boundary of the Adams/Bitar property, when that is not a shared boundary is inexplicable. Mr. Adams is either completely wrong (and he was referring to the west boundary of his and later the Bitar property) or partly but equally wrong (and his reference to the east line, was to the east line of the Haggerty property, being the west line of the Adams/Bitar property, and in any event the common boundary).

In context the Adams' testimony is also faulty. Mr. Haggerty testified to no such "permission". The lack of such testimony by Mr. Haggerty is then consistent with the Haggerty's behavior with respect to the fence. In later years they asked the Bitars permission to access the pond and to cross the property. Finding of Fact 15, CP 35. In addition, Mr. Bitar removed trees, without any protest. Finding of Fact 16, CP 36. It is hard to imagine, if permission there was to a horse fence and horses only, that the Haggertys would later believe it necessary to secure permission to enter and would later allow tree cutting on their property.

Equally as important, as the trial court accurately found in Finding of Fact 9, the Adams never communicated the fact of this "permission" to

the Bitars when the Bitars purchased. Rather the impression left was that the fence was the boundary (consistent with either an assumption or an agreement as to the fence as the west boundary):

9. In 1995, the Bitars purchased the 5-acre parcel from the Adamses. They did not obtain a survey. A real estate agent told them the western boundary of the property was marked by a post at the southern end. The Adams fence was then still standing and was connected to the post.

Finding of Fact 9. CP 35.

The trial court's Finding of Fact 6 is not supported by substantial evidence or any reasonable inference. The trial court should not have concluded that occupancy to first the Adams fence and later the Haggerty fence was by permission.

- (2) If permission was given, that permission was vitiated and the trial court's Conclusion of Law 5 is error.

Respondent's Brief at page 34 asserts that the "Bitars never provide how Adams actually used the land east of the encroaching fence" and therefore concludes that proof of an "obvious change in use" could not be established. But the record does establish what the Adamses' use was and does demonstrate an obvious change in use by the Bitars.

Mrs. Adams testified to the fence and use as follows:

[Q.] Now, when you lived on that property, it's my understanding you could have horses on that five-acre parcel?

A. Right.

Q. Did you have horses?

A. Yes.

Q. While there, did you install any fencing or perhaps your husband install any fencing anywhere west of the pond?

A. Yes.

Q. Did you?

A. Yes.

Q. What kind of fencing was it?

A. It was just an electric fence.

Q. For what purpose did you put that fence in?

A. Horses.

RP 186, lines 5-21. If Mrs. Adams is to be believed, they put a fence in for one purpose, and used the disputed area for one purpose, "horses."

This is consistent with the setting observed by Mrs. Bitar shortly after closing on the Bitars' purchase from the Adamases in 1995. Mrs.

Bitar walked the west boundary with her children and described the area in her testimony as follows:

Q. Now, as that fence proceeded along the west there, what was the character of the property on your side of the fence versus the character of the property on the west side of the Tompkins-Haggerty side of that fence?

A. Our side had a lot more brush and alder. The other side was pretty much pretty clear with the pasture. Basically, it was pasture.

RP 78, lines 3-9. Thus, at the time of the Adamses' ownership, at the time of the alleged use, the use consisted of the placement of a fence with wires, the area otherwise being in its native state, and perhaps horses approached the fence.

After the Bitars purchase, there was indeed obvious changes in use.

The pond, a portion of which is in the disputed area, "was the focus of many of the Bitar family's activities." Extensive use was made of the pond. It was stocked with fish and ducks. Finding of Fact 11. CP 35. Though the trial court characterizes these family activities in the disputed area as "minimal" this gratuitous comment is contrary to the evidence.

In addition, the Bitar children sledded down the hill within the disputed area. In warmer weather, they "played hide-and-seek and built forts in the disputed area." Finding of Fact 13, CP 35. Mr. Bitar mowed grass within the disputed area approximately every other year. He sprayed and removed blackberries within the disputed area approximately every three years. Finding of Fact 14, CP 35. In 1999, while the Haggertys were still the adjoining owners, Mr. Bitar removed the Adams fence and he constructed the first of two dog fences. Findings of Fact 17-18, CP 36. Mr. Bitar also removed trees "from the west side of the pond, within the

disputed area.” Finding of Fact 16, CP 36. During this same period of use by the Bitars, the Haggertys and their children asked the Bitars for permission to use the pond and to cross the Bitar property. Finding of Fact 15, CP 35.

The trend in the common law of Washington since Chaplin v. Sanders, 100 Wn.2d 853, 676 P.2d 431 (1984), has been to make the law of boundaries “objective” consistent with the character of the property at issue.

The properties in question here are rural. Finding of Fact 2, CP 33. The Adamses used the disputed area to install a fence, consisting of push poles and wire, to contain horses. The area, according to Mrs. Bitar, was otherwise “brush and alder.” The Bitars objectively and obviously changed the use in the disputed area, making it a focus of family activities, mowing the area, removing blackberries, removing the Adamses’ fence and installing a new dog fence (on two occasions), and cutting trees, and this change was known by Haggertys. Haggertys asked permission to use the pond and to cross this area.

Though Bitars do not believe the evidence establishes permission from the Haggertys to the Adamses, if there was permission, that permission was vitiated by an obvious change in use. The trial court erred in its Conclusion of Law 5.

- (3) The Bitars did indeed carry their burden of proof to establish adverse possession of the disputed area.

The Bitars have never disputed that theirs is the burden of proof on adverse possession to the disputed area. Nor have they disputed what those elements are: for ten years possession that is (1) exclusive, (2) actual and uninterrupted, (3) open and notorious, and (4) hostile. Miller v. Anderson, 91 Wn. App. 822, 827, 964 P.2d 365 (1998).² The Bitars purchased their property in 1995. This action was commenced in 2007, more than ten (10) years later. The issue of hostility or permission has been previously discussed. The Bitars occupied the property actually and in an uninterrupted fashion. Finding of Fact 24, CP 36.

The Bitars' activities were detailed in the prior section. The Bitars submit that those activities, in the context of the character of the property, prove the elements of "open and notorious" and "exclusive". Also addressed under this heading is Tompkins' assertion that Bitars did not prove a boundary for their area of adverse possession. These issues are addressed in reverse order.

- a. The disputed area is not in question – it consists of 8,145 square feet.

² The Respondent's Brief at pages 13 and 14 appears to assert that "notice" is an element of adverse possession. That is not true. The element of "open and notorious" can be satisfied by actual notice or by, in effect, constructive notice due to the openness and notoriety of the actual use.

Finding of Fact 3 identifies the disputed area and the survey evidence, Exhibits 2, 2A and 43. Finding of Fact 3, CP 33-34. The disputed area consists of 8,145 square feet and is the area between the Bitars' west deed line and what is now the Haggerty fence, built no later than the "mid nineteen-nineties." Finding of Fact 7, CP 34.³ The Haggerty fence "forms the western edge of the 'disputed area'". Finding of Fact 8, CP 35.

Though there is no survey showing the location of the earlier Adams fence, the testimony concerning the location of the Adams fence is not in serious dispute.

After the Bitar's purchased in 1995, as noted earlier, Mrs. Bitar walked the boundaries to show their children their limits. The Adams fence was present at that time:

[Q.] When you got to the southwest corner, which you thought was the southwest corner, what did you observe?

A. There was a big block of wood, looks like a railroad tie, and there were some wires connected to it to a fence running west.

Q. A fence running west or running north?

A. I'm sorry, on the west line running north.

³ As discussed *Infra* p.18, this fence was installed no later than December 1996. In reply to the Respondents brief, p. 10, paragraph 1, Mr. Bitar pinpointed the installation of the Haggerty fence to the time between the Bitar occupancy of their property in February 1995 and the date of the Bitar photo of the Haggerty fence in December 1996. RP 118. Within this 1995-1996 time span, there was approximately a year and a half for the Haggertys to install their fence.

Q. Okay.

Can you describe the wires that were connected to that railroad tie-type corner, the southwest?

A. They were electrical wires.

Q. Do you remember how many strands were there?

A. I'm not sure, but I think there were three.

Q. As you proceeded north along the west line, what additional evidence of a fence in 1995 did you see?

A. At that time, there was a red fence. It was old and kind of rusty. It just ran straight on that western line. Some of the wires were sagging and down.

RP 77, lines 4-21. Mr. Bitar's testimony concerning the Adams's fence thus needs to be understood in the context of Mrs. Bitar's foregoing testimony:

[Q.] At a certain point in time, apparently, you took out all or a portion of the Adams fence, is that correct?

A. Yes.

Q. Now, where did the Haggerty fence, as shown in Photos 30, 31, and 32, lay in relationship to the Adams fence?

A. That, of course, requires a few words. It's not like I can say yes or no.

* * * *

Q. Where did it lay?

A. Next to it. Next to it, within inches, but as you go toward the railroad tie, there would have been some divergence. Marie testified she believes that . . .

Q. What's your memory, Mr. Bitar?

A. They were close, but as you go to the railroad tie, right down here where the railroad tie is right here, if you go down there, I don't believe that the Adamses connected to that railroad tie . .

RP 120, lines 13-25, RP 121, lines 1-8. Thus there was a continuous fence from the date of the Adams' installation in 1989. Finding of Fact 4. CP 34. The Adams fence was within inches of the later Haggerty fence that bounds the disputed area.⁴

Tomkins try to make something out of nothing. After the Haggertys installed their fence west of the pond by December 1996, until the Bitars removed the old Adams fence, there were two fences, side by side, within inches of each other. Separately and together they marked a

⁴ The Respondent's Brief at page 24 asserts that the requirement "that boundary lines be well defined" is "equally applicable to adverse possession claims." Though a generally true statement, the evidence here satisfies the standard of a line well defined. As stated in Bryant v. Palmer Coking Coal Co., 86 Wn. App 204, 212, 936 P.2d 1163 (1997):

"An adverse possessor need not enclose the claimed parcel. Moreover, the trial court need not 'find a blazed or manicured trail along the path of the disputed boundary; it is reasonable and logical to project a line between objects when the extent of the adverse possessor's claim is open and notorious as the character of the land and its uses requires and permits."

Respondents also cite Scott v. Slater, 42 Wn.2d 366, 255 P.2d 377 (1953). The case is completely distinguishable: "both parties used the strip" and there "never ha[d] been a fence or any other mark such as a point to which the ground was cultivated to define the line." Id. 368-69. In the present case there was a line of historic occupancy and two fences within inches of each other.

well defined line observed by the parties as the boundary in their normal activities. It would be incongruous at best and a travesty at worst if a dispute over an inch or two undermined a claim to a well defined area 20 feet wide on one end and 30 feet wide on the other, which from 1995 to 2007 was “understood” [Mr. Adams’ word] and observed by the parties as lying entirely on the Bitar property because it lay entirely to the east of the longstanding fence line.⁵

b. The Bitars' occupancy was open and notorious.

⁵ In reply to the Respondents brief, p. 18, 25-28, and p. 30, paragraph 1. There are two points that need to be made:

First, according to the testimony of the Bitars, discussed earlier, *infra* pp.10-12, the two fences were positioned side-by-side, but, of necessity, were separated by inches. Since the two fences together were understood and observed by the parties as marking the property boundary, there was no issue as to where, in the small space between the fences, the boundary precisely lay. This held true all along the fence line, including at the southernmost part. The difference in memory between Mr. and Mrs. Bitar pertains only to the southernmost part, and it attests to the fact that the exact separation of the fences was so small as to never become an issue to the Haggertys or to the Bitars. Sometime after the Haggertys had installed their fence by December 1996, the Bitars removed the old Adams/Bitar fence (as the trial court correctly found) since it was no longer needed to mark the property boundary and since they, the Bitars, had never used it for anything else since they had no livestock. Since the few inches of separation between the two fences had never been an issue, reverting to the Haggerty fence alone was not an issue, so the Bitars installed their permanent, underground dog fence within inches of the Haggerty fence, as shown in the 1999 photos. RP 132; Exhibit 41.

Second, regarding the Respondents concern about the unsubmitted photo, Mr. Bitar located a photo that was taken in 1995, shortly after they took occupancy of the property. Mr. Bitar was standing at the northeast area of the pond perimeter, taking a photo of his daughter and a duck nearby. The Adams/Bitar fence is so far to the southwest, in the distant background beyond the alders, that it is invisible in a normal print of the photo. Mr. Bitar had a high resolution scan done, and even this scan just barely reveals two fence posts. The problem is that the fence posts are too small and are too distant. RP 150. Since the Bitar case can hinge on the installation of the Haggerty fence by December 1996, the 1995 photo contributes nothing to their case, so it was not included as an exhibit in the evidence.

Open and notorious occupancy is objective and site specific. The standard is set out in Anderson v. Hudak, 80 Wn. App. 398, 403, 907 P.2d 305 (1995):

What constitutes possession or occupancy of property for purposes of adverse possession necessarily depends upon the nature, character and locality of the property involved and the uses to which it is ordinarily adapted or applied. Frolund v. Frankland, 71 Wn.2d 812, 817, 431 P.2d 188 (1967), *overruled on other grounds* by Chaplin v. Sanders, 100 Wn.2d 853 (1984). When a claimant does everything a person could do with a particular property, it is evidence of the open hostility of the claim. Hunt v. Matthews, 8 Wn. App. 233, 237, 505 P.2d 819 (1973), *overruled on other grounds* by Chaplin v. Sanders, 100 Wn.2d 853, (1984). Thus, the necessary occupancy and use of the property need only be of the character that a true owner would assert in view of its nature and location.

The property in question here is located in unincorporated, rural Snohomish County. Finding of Fact 2, CP 33. The disputed area has been fenced since 1989. Finding of Fact 4, CP 34. A portion of the disputed area consists of a pond. Id.; Finding of Fact 10, CP 35. West of the pond was timber. Finding of Fact 16, CP 36. According to the testimony of Marie Bitar, reported above, the remainder of the disputed area consists of “brush and alder.” RP 78, line 7.

The Bitars’ activities were open and notorious for the nature, character and locality of the disputed area.

The pond portion of the disputed area was “the focus of many of the Bitar family’s activities.” Extensive use, largely children playing, was

made. The Bitars stocked the pond with fish and ducks. Finding of Fact 11, CP 35. West of the pond, Mr. Bitar removed trees. Finding of Fact 16, CP 36.⁶

The Bitars' activities in the rest of the disputed area included "the Bitar children" sledding down the hill in the winter-time within the disputed area and in the summer sometimes playing hide-and-seek, and building forts. Finding of Fact 13, CP 35.⁷

Mr. Bitar mowed the grass within the disputed area approximately every other year. He sprayed and removed blackberries approximately every three years. Finding of Fact 14, CP 35. Mr. Bitar also removed the Adams fence and installed dog fences on two occasions. Finding of Fact 19 and 22, CP 36.⁸

⁶ In reply to the Respondents brief, p.11, paragraph 2, and p. 12, paragraph 1-2, the Tompkins are misusing the term 'pond' to refer to the water level, which varies with the seasons. But the term 'pond' in everyday life refers to the distinctive perimeter of vegetation within which the water level rises and falls, and when the water level falls, it reveals a distinctive perimeter of mud. In this light, the disputed area, which is 20 feet at its south end and 30 feet at its north end, does not comprise a small sliver of the pond but a substantial portion of the pond. Furthermore, as to the testimony of Mrs. Bitar, there were no survey stakes in the pond when the photos were taken in past years, and, in fact, there are no survey stakes in the pond to this day, so only an expert witness could determine, based on extensive analysis, where, in the photos, the survey line lies. It is impossible for anyone to merely look at a photo and say whether or not a person in the pond is to the west or to the east of the survey line unless they are close to the perimeter of the pond to the west or the east.

⁷ In reply to the Respondents brief, p.13, paragraph 1, the Bitar children were homeschooled, so they accessed the pond regularly. RP 79; 85-86.

⁸ In reply to the Respondents brief, p.11, top of page, in 1996, Mr. Bitar mowed the large swath to give the Haggertys a view of the pond, which is shown in a number of photos. RP 128; Exhibits 38, 39 and 40. Mr. Bitar mowed the swath once again in a subsequent year. As Mr. Bitar explained in his testimony, he mowed the swath in response to Mr.

These activities in total for the nature, character and locality of the disputed area were open and notorious.

c. The Bitars' occupancy was exclusive.

The trial court found that the Bitars occupied the disputed area. Finding of Fact 24, CP 36. This occupancy commenced in 1995. Finding of Fact 9, CP 35. Through the period of Haggerty's ownership in 2002, there is no evidence of Haggertys engaging in any activity in the disputed area. Indeed, the Haggertys and their children asked the Bitars for permission to access the pond and to cross the Bitar property to access the bus stop. Finding of Fact 15, CP 35.

After the Tompkins purchased in 2002, seven years into the Bitars' occupancy, either in 2002 or 2003 "Mr. Tompkins cleared brush along the fence within the disputed area once per year." The brush clearing, presumably along each side of the fence took about a "day". Finding of Fact 20, CP 36. Mr. Tompkins' testimony illuminates these findings:

Q. So you would enter at the northwest corner, and you would proceed south about to the mid-point, is that correct?

A. Yes. Then, I would come back out and go around when I couldn't go any farther.

Haggerty telling him that the Adams had given the Haggertys permission to trim pond vegetation. *Id.* Mr. Bitar did not want to give the Haggertys this permission, but wanted to be neighborly, he mowed the swath for the Haggertys. *Id.*

Q. So did you just cut one swath at the Bitar side of the fence or multiple swaths?

A. In the corner, probably a couple. But, yes, my intention was to keep the vegetation off of the wire, so whatever it took. If there was a blackberry bush somewhere farther out, I went and mowed it.

Q. Okay.

It's not your testimony, as you sit here today, though, that you mowed the entire width of the swath, of the disputed area?

A. No.

RP 63, lines 8-23. Since it is undisputed that the Bitars' occupancy was exclusive until this activity, can it really be that this activity, permitted by the Bitars as neighborliness, undermined their possession, rendering it nonexclusive and precluding a claim of adverse possession?

A fundamental point of Chaplin v. Sanders, 100 Wn.2d 853 (1984) was to bring "objectivity" to the determination of adverse possession. A one day once a year action, in years 7 to 10, by a deed holder to mow a strip to keep vegetation "off of the wire", the Bitars submit, should not overwhelm and nullify their exclusive possession to that date. The trial court erred in its Finding of Fact to find otherwise.

(4) The Bitars did indeed carry their heavy burden of proof to establish mutual recognition and acquiescence to the Adams/Haggerty fences as the boundary.

The Bitars acknowledge that it was their burden to prove by clear, cogent and convincing evidence the elements of mutual recognition and acquiescence to a boundary: (1) a line certain, well defined, and in some fashion physically designated, (2) acts, occupancy and improvements with respect to their property showing a mutual recognition and acceptance of the designated line as the true boundary line, and (3) the endurance of this state for ten years. Lamm v. McTighe, 72 Wn. 2d 587, 592-93, 434 P. 2d 565 (1967).

In the previous section, the Bitars' activities were discussed. Their activities were the only activities to first the Adams fence and then the Haggerty fence, and thus in the disputed area, until 2002 or 2003. During this period, the Haggertys asked permission to access the pond for winter recreation and to cross the disputed area to access the school bus. The Bitars submit that Mr. Tompkins' effort to keep vegetation off of a wire fence seven years into the period of occupancy did not destroy the ongoing acquiescence and acceptance of the fence as the line, but on the contrary confirmed acceptance of the fence as the line through the restriction of the Tompkins activity to the fence line for the purpose of maintaining their fence.

Indeed, Bitars speculate that this is why the Tompkins' Respondents Brief spends so much time parsing the details of Mr. Bitar's

testimony concerning the physical locations of the Adams and Haggerty fences.

This action was commenced in 2007. The Haggerty fence was built in the “mid-nineteen nineties.” Finding of Fact 7, CP 34. The Bitars’ Brief of Appellants demonstrated, through Exhibits 30, 31, and 32 and Mr. Bitar’s testimony, that the Haggerty fence was in place by “December of 1996.” RP 119. Thus there is no real dispute about the presence of a line well defined enduring for ten years before commencement of this action.

CONCLUSION

The application of an objective standard to all of the elements of adverse possession and/or to all of the elements of mutual recognition and acquiescence establishes that the trial court erred in its findings of fact and conclusions of law. The decision of the trial court should be reversed with direction to quiet title to the disputed area in Mr. and Mrs. Bitar.

RESPECTFULLY SUBMITTED this 16 day of November,
2009.

WEED, GRAAFSTRA AND BENSON, INC., P.S.

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COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

PHILIP BITAR AND MARIE
BITAR, husband and wife,

Appellants,

vs.

CHRISTOPHER TOMPKINS AND
LISA TOMPKINS, husband and
wife,

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NO. 636219-I

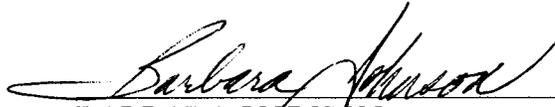
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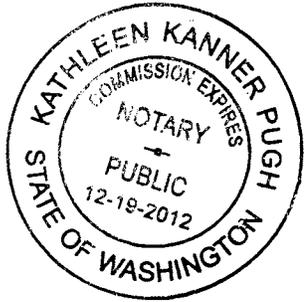
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ss.
COUNTY OF SNOHOMISH)

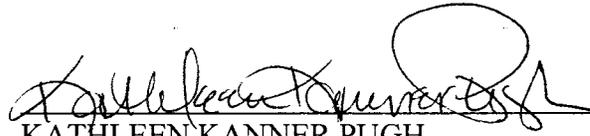
BARBARA JOHNSON, being first duly sworn upon oath, states that she is over the age of 18, and competent to be a witness herein, that she is employed by Weed, Graafstra and Benson, Inc., P.S., attorneys for Appellants, and that on November 16, 2009 she instructed ABC Legal Services to deliver a copy of the REPLY BRIEF OF APPELLANTS and this Proof of Service directed to:

Roy T. J. Stegena
Law Offices of B. Craig Gourley
1002 – 10th Street
Post Office Box 1091
Snohomish, WA 98290


BARBARA JOHNSON

SIGNED AND SWORN TO before me this 16th day of
November, 2009.




KATHLEEN KANNER PUGH
Notary Public in and for the State of
Washington, residing at SNOHOMISH
My commission expires 12/19/2012