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COURT OF APPEALS NO. 72568-8

SNOHOMISH COUNTY CAUSE NO. 13-2-07974-5

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IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION 1

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DAVID H. ERBECK and E. ADELE ERBECK, husband and  
wife,

Plaintiffs/Respondents,

v.

DEBORAH S. SPRINGER and JOHN DOE SPRINGER, wife  
and husband,

Defendants/Appellants.

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RESPONDENTS' REPLY BRIEF

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LARRY M. TRIVETT, WSBA #6050  
Trivett Law Offices  
1031 State Ave., Ste. 103  
Marysville, WA 98270  
360-659-8282

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I. RESPONDENTS' SUMMARY STATEMENT

Respondents, David Erbeck and Adele Erbeck (herein "Erbecks"), and Appellant, Susan Springer (herein "Springer") own adjacent parcels of rural property situated in Snohomish County. *EX 1, 23 thru 26.* The North 20' of the Erbecks' property (Parcel O) is subject to an access easement, within which there exists a 10' wide single lane gravel driveway (herein "Erbecks' Driveway"). *EX 1, 17, 27; CP 95.*<sup>1</sup> Springer owns separate parcels (Parcels C and D), which are situated on opposite sides of the Erbecks' Driveway. *EX 1; Appendix A.*

Springer claims that she holds express or prescriptive easement rights to utilize the Erbecks' Driveway, for the benefit of Parcel C and D. On October 11, 2013, as a result of Springer's claims, Erbecks filed a Complaint against her,

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<sup>1</sup> Appellant did not file a separate Report of Proceedings per RAP 9.1(b). At the trial level, Appellant filed a transcript of the oral proceedings with her Motion For Amendment Of The Court's Findings of Fact and Conclusions Of Law (CP 68-198). In citing to trial testimony, Appellant's Brief cites to the Clerk's Papers. With no ability to cite to a Report of Proceedings, Respondents have followed the same citing format as utilized within Appellant's Opening Brief.

requesting judgment for quiet title and injunctive relief. CP 250-259. On December 4, 2013, Springer filed her Answer and Counterclaim, requesting that the Court find that she held either express or prescriptive easement rights to utilize the Erbecks' Driveway to access her Parcels C and D. CP 244-249.

On May 24, 2014, this matter came on regularly for trial. At the conclusion of trial, the Court rendered its oral decision. CP 83-90. On September 14, 2014, the Court entered its Findings of Fact and Conclusions of Law, and Judgment. CP 5-15; 1-4. The trial Court ruled that Springer held no express easement rights to utilize the Erbecks' Driveway for either Parcels C or D. The trial Court, also, ruled that Springer had acquired differentiated prescriptive easement rights to utilize the Erbecks' Driveway for residential and agricultural purposes for the benefit of Parcel D, but not for Parcel C. CP 5-15; 1-4. On October 9,

2014, Springer filed a Notice of Appeal of the trial Court's decision.

## **II. STATEMENT OF FACTS**

### **A.) 1972 Creation of Erbeck and Springer Parcels By Segregation Plat.**

Both the Erbecks' and Springer Parcels were created in 1972, pursuant to a "Segregation Plat" (herein "the Plat") by the Echelbarger-Keeler Partnership ("Developer"). *EX 1.* The Plat created some sixteen (16) separate parcels ranging from 5.0 to 11.9 acres in size. The Plat, further, assigned each parcel an alphabetical descriptor ranging from A through P. Each parcel was, also, identified by a fractional description within the Plat. Seven (7) of the parcels (A through G) abut 99<sup>th</sup> Avenue NE, and the Plat did not grant easement rights to any of these abutting parcels. The Plat expressly granted an access easement to each parcel not abutting, or having direct access to 99<sup>th</sup> Avenue NE. *EX. 1.* The Developer marketed the parcels as separate properties. *CP 96.*

B.) Developer/Kuester Statutory Warranty Deed.

Pursuant to the terms of a Statutory Warranty Deed dated March 4, 1974, the Developer conveyed to Fritz W. Kuester and Matilde Kuester ("Kuesters") Parcels C, D, E, and N, as described within the Plat ("Developer/Kuester Deed"). EX 1, 5. The Developer/Kuester Deed conveyed four (4) parcels, with each parcel described by as follows:

*Parcel C:*<sup>2</sup>

*"The East 690 feet of the South 330 feet of the North 1730 feet of Section 24, Township 30 North Range 5 East, W.M.; EXCEPT 99<sup>TH</sup> Avenue N.E."*

*Parcel D:*

*"The East 690 feet of the South 330 feet of the North 1380 feet of Section 24, Township 30 North, Range 5 East, W.M.; EXCEPT 99<sup>TH</sup> Avenue N.E."*

*Parcel E:*

*"The East 690 feet of the South 330 feet of the North 1050 feet of Section 24, Township 30 North, Range 5 East, W.M.;"*

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**2**

For clarification purposes only, the Developer's alphabetical letter assigned to each parcel is stated preceding each deed legal description.

EXCEPT 99<sup>TH</sup> Avenue N.E."

Parcel N:

"The South 330 feet of the North 1380 feet of the West 660 feet of the East 1350 feet of Section 24, Township 30 North, Range 5 East, W.M.;

TOGETHER WITH an easement over the South 20 feet of the North 1400 feet of the East 1350 feet of Section 24, Township 30 North, Range 5 East, W.M."

EX 1, 5. The legal descriptions for Parcels, C, D, E and N are the same as the fractional parcel descriptions stated within the Plat.<sup>3</sup> EX 1, 5. The description of Parcels C, D, and E are complete; the description of each parcel ends with a period "."; and none of the descriptions grant easement rights over any other parcel. The legal description for Parcel N ends with a semicolon";", which is then followed by an express easement grant for the benefit of Parcel O the North 20' of the Erbecks' Parcel O. EX. 1, 5.

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**3**

The Plat legal descriptions are stated in an abbreviated form, while being fully stated within the Developer/Kuester Deed.

The Developer/Kuester Deed did not convey easement rights for the benefit of Parcels C, D, and E, for the reason that each of these parcels abut 99<sup>th</sup> Avenue NE. The Developer/Kuester Deed conveyed easement rights for the benefit of Parcel N, which was the only parcel that not abut 99<sup>th</sup> Avenue NE. EX 1, 5. Within the Developer/Kuester Deed, the Developer did not intend to convey any easement rights for the benefit of Parcels C, D, or E. EX 1.

C.) Erbecks' 1974 Purchase Of Parcel O.

On May 23, 1974, the Erbecks purchased Parcel O from the Developer pursuant to the terms of a Real Estate Contract, which described the Erbecks' Parcel as follows:

*"The South 350 feet of the North 1730 feet of Section 24, Township 30 North, Range 5 East, W.M., lying Easterly of Northern Pacific Railway right-of-way; EXCEPT the South 330 feet of the East 690 feet thereof; and EXCEPT the East 20 feet thereof conveyed to Snohomish County for road. SUBJECT TO an easement over the North 20' feet as under Auditor's File No. 2332625."*

The document identified as "Auditor's File No. 2332625" is the Developer/Kuester Deed. EX 5, 14, 15, 16, and 17. At the time of Erbecks purchase of Parcel O, the Kuester and Erbeck Parcels were vacant, but the Erbecks' Driveway was then in existence. CP 99, 102, 135.

D.) Kuesters' Ownership Of Parcel D and N.

The Kuesters initially intended to construct their residence on Parcel N. CP 105. For several reasons, the Kuesters did not construct a residence upon Parcel N but, rather, upon the West 132' of Parcel D. CP 105, 131, 11. 3-19; EX 4; APP. A. In 1981, Kuesters sold Parcel N, which parcel is now owned by the Tremlins. EX. 11, 12, and 13. The Tremlins' right to use the Erbecks' Driveway is not an issue in this cause. Except as solely being part of the conveyance within the Developer/Kuester Deed, there are no easement issues related to Parcel E.

As a result of Keusters' ownership of Parcel N, Erbecks believed Kuesters had the right, and permitted the Kuesters to utilize the Driveway to access their residence on Parcel D. CP 131, 132. Prior to trial, Erbecks' acknowledged that Kuesters' had acquired a prescriptive easement over the Erbecks' Driveway to access their residence, and whatever rights Kuesters' had to access the residence were now held by Springer. CP 10; 217.

E.) *Kuesters Did Not Use The Erbecks' Driveway For The Benefit Of Parcel C, or Eastern Portion of Parcel D.*

Throughout the term (1974-1988) of their ownership of Parcels C, and the Eastern portion of Parcel D, Kuesters did not make any improvements upon, nor did they utilize Parcel C, or the Eastern portion of Parcel D, for any purpose or utilize the Erbecks' Driveway for the benefit of such parcels. CP 106, 108. For a period of some 17 years, beginning in 1997 and continuing until 1994, the Erbecks utilized Kuesters' Parcel C to graze their

cattle. CP 147. David Erbeck's trial testimony, relating to Kuesters' ownership and use of Parcels C, D, and N, was not rebutted. Prior to March 18, 1988, Mr. Kuester passed away, and Mathilde Kuester continued to live in the Kuester residence. CP 109.

F.) Kuester Conveyance of Parcel D to Springer Involved Two (2) Separate Parcels.

On March 18, 1988, pursuant to the terms of a Statutory Warranty Deed, Mathilde Kuester conveyed the whole of Parcel D to Springer and her then husband, Ross Springer, as two (2) separate parcels described as:

"Parcel A: The West 132 Feet of the East 690 feet of the South 330 feet of the North 1380 feet of the Northeast Quarter of Section 24, Township 30 North, Range 5 East, W.M.

Parcel B: The East 558 feet of the South 330 Feet of the North 1380 feet of the Northeast Quarter of Section 24, Township 30 North, Range 5 East, W.M., EXCEPT County Road. Situate in Snohomish County, State of Washington. 1) SUBJECT TO: Waiver and relinquishment as provided by instrument recorded on February 26, 1934 under recording No. 538726. 2) SUBJECT TO: Easement recorded on November 30, 1951 under recording No. 10111100. 3) SUBJECT

*TO: Easement recorded on November 30, 1951  
under recording No. 1011101."*

The Kuesters' residence was located on "Parcel A", while "Parcel B" was then, and remains, open pasture land utilized for grazing purposes only. *EX. 9; CP 121, 182.* Parcels A and B of Parcel D are separated by a fence, and different uses are made of each Parcel. *CP 185; EX. 32.* Mathilde Kuester's Deed, conveying Parcel D to Springers, contained no grant of easement rights over and across any portion of the Erbecks' Parcel 0. *EX 9.* On March 9, 2007, pursuant to the terms of a Quitclaim Deed, Ross Springer conveyed his then interest in Parcel D to Springer, with no mention of conveying easement rights. *EX 10.*

*G.) Kuester Conveyance of Parcel C to Springer.*

On March 24, 1998, pursuant to the terms of a Statutory Warranty Deed, Mathilde Kuester conveyed Parcel C to Springer, and her then husband, Ross Springer. Within the Deed to Parcel C, Mathilde Kuester purported to grant the Springers easement rights over and across the North 20' of the Erbecks'

Parcel O. EX. 7. Mathilde Kuester possessed no legal right to convey any easement over and across the Erbecks' Parcel O, for the benefit of said Parcel C, or any other parcel. EX. 1, 5, and 7. On March 13, 2007, as part of a divorce settlement, Ross Springer, pursuant to the terms of a Quitclaim Deed, conveyed his interest in Parcel C to Springer, with no mention of easement rights. CP 151-15; EX. 8.

H.) Use Of Parcel C By Springer And Others - Undeveloped Pasture Lands.

When Springers purchased Parcel C, it was vacant pasture land then utilized for grazing purposes. CP 154. Up and until 1994, Erbecks continued to maintain their cattle on Parcel C. CP 147. From and after 1999, Springer has permitted a neighbor, Michael Lopez, to maintain cattle on Parcel C. CP 170, 189. Throughout the use and occupancy of Parcel C, Mr. Lopez has requested Erbecks' permission to utilize the Erbecks' Driveway for a number of purposes, i.e., installation of electrical and water lines. CP 112-113. During the term of her ownership,

Springer engaged in no conduct which would have provided notice to the Erbecks that she was claiming easement rights to utilize the Erbecks' Driveway for the benefit of Parcel C. CP 128.

I.) Springer's Use Erbecks' Driveway Only For Benefit Of The West 132' Of Parcel D.

Again, Springer's residence is located on the West 132' of Parcel D. The remaining East 558' feet of Parcel D is vacant, and has utilized solely for agricultural purposes. There exists a fence separating residential and agricultural portions of Parcel D. CP 166. Other than a "corral" and fencing, no improvements are situated upon the Eastern portion of Parcel D. EX. 2, 3, 34. At trial, Springer provided no specific evidence of a continuous use of the Erbecks' Driveway, for the benefit of the Eastern portion of Parcel D.

**III. RESPONDENTS' ARGUMENT**

A.) The Rules Governing The Standard Of Review In This Cause Are Clear.

In this appeal, one of Springer's primary arguments is that the Developer/Kuester "...Deed is not ambiguous...", and the deed grants express easement rights for the benefit of Springer's Parcels C and D. AB, p. 9, l. 10. In order to reach this erroneous conclusion, Springer wholly disregards several basic rules of grammar; the fact that each parcel is individually described in the Developer/Kuester Deed; and the declaration testimony of Dean Echelbarger. EX 1, 5.

As to issues involving easement rights, the standard of review is:

*"Findings of fact are reviewed under a substantial evidence standard, defined as a quantum of evidence sufficient to persuade a rational fair-minded person the premise is true...If the standard is satisfied, a reviewing court will not substitute its judgment for that of the trial court even though it may have resolved a factual dispute differently. ...Questions of law and conclusions of law are reviewed de novo... The interpretation of an easement is a mixed question of law and fact. Id. What the original parties intended is a question of fact and the legal consequence of that intent is a question of law." (Citations Omitted).*

*Sunnyside Valley Irr. Dist. v. Dickie*, 149 Wash.2d 873, 879-880, 73 P.3d 369 (2003).

A presumption exists that the trial Court's findings are correct, and the party claiming error has the burden of showing that a finding of fact is not supported by substantial evidence. *Fisher Props., Inc. V. Arden-Mayfair, Inc.*, 115 Wn. 2d 364, 369, 798 P.2d 799 (1990). Respondents request that this Court review the record in this cause based upon the foregoing standards.

B.) *The Trial Court Correctly Interpreted The Developer/Kuester Deed To Not Convey Express Rights For Benefit Of Parcels C and D.*

Springer's claims that the Developer/Kuester Deed is unambiguous, and expressly granted easement rights for the benefit of Parcels C and D. AB 11. Springer's assertions on this issue without are without factual or legal support. In asserting her claim, Springer wholly disregards the Developer/Kuester Deed language, and basic grammatical rules relating to punctuation. Again,

the Developer/Kuester Deed describes four (4) separate parcels - Parcels C, D, E and N. The fractional descriptions for Parcels C, D, and E, each end with a period ".", without any mention of granting easement rights. The description for Parcel N ends with a semi-colon ";", followed by an easement grant upon the North 20' of the Erbecks' Parcel O. EX. 5.

If a legitimate issue exists, whether the Developer/Kuester Deed legal descriptions are capable of two or more meanings, the deed is ambiguous. *Hoglund v. Omak Wood Prods., Inc.*, 81 Wash. App. 501, 504, 914 P.2d 1197(1996). The issue of whether the Developer/Kuester deed is ambiguous is a matter of law to be determined by the Court. *Hoglund*, at 504. The interpretation of a deed is a mixed question of law and fact. *Hanson Indus., Inc. v. County of Spokane*, 114 Wn. App. 523, 526, 58 P.3d 910 (2002). The primary goal of the Court is to "give effect" to the parties' intent as expressed in the conveyance document. *Niemann v. Vaughn Community Church*, 154

Wn. 2d 365, 374, 113 P.3d 463 (2005).

If the Developer/Kuester Deed is ambiguous, it was entirely appropriate for the trial Court to consider extrinsic evidence (Declaration Testimony of Dean Echelbarger) in ascertaining the intentions of the Developer and Kuesters. *EX 1. Newport Yacht Basin Ass'n of Condominium Owners v. Supreme Northwest, Inc.*, 168 Wn. App. 56, 65, 277 P.3d 18 (2012). At trial, the Court was required to determine the nature of the interests conveyed under the Developer/Kuester Deed, i.e., whether or not the deed conveyed express easement rights for the benefit of Parcels C and D as claimed by Springer. *EX 1, 5.*

To determine the interest conveyed, a Court is required to "...examine the four corners..." of the deed, taking into account applicable case law. *Lawson v. State*, 107 Wn.2d 444, 448, 730 P.2d 1308 (1986). The whole of the deed is to be considered and, to the extent possible, every "word, clause and expression" is to be given meaning. *Zobrist v. Culp*,

18 Wn. App. 622, 628, 570 P.2d 147 (1977).

As to the proper standard of review for interpretation of a deed, Springer's reliance upon *Carlstrom v. Hanline*, 98 Wn. App. 780, 785-86, 990 P.2d 986 (2000 (involving interpretation of lease language), and *Stranberg v. Lasz*, 115 Wn. App. 396, 402, 63 P.3d 809 (2003) (involving interpretation of a will) is misplaced. The trial Court correctly construed the Developer/Kuester Deed as not granting express easement rights for the benefit of Springer's Parcels C and D. CP 2.

C.) *Kuesters Held No Express Easement Rights Except For The Benefit Of Parcel N.*

Springer's claim that Kuester's easement rights for the benefit of Parcel N were, also, for the benefit of Parcels C, D and E, is contrived. First, there exists no question that Parcels C, D, E and N were separate parcels created by the Plat. Parcels C, D and E, each abutted and had direct access to 99<sup>th</sup> Avenue NE. Parcel N does not abut, nor have direct access to any public road, except by a grant of

easement across the Erbecks' Parcel O. EX 1. The easement granted within the Developer/Kuester deed was appurtenant for the benefit of Parcel N, and makes not mention, nor is it connected to any other Parcel.

Springer's reliance upon *Green v. Lupo*, 32 Wn. App. 318, 647 P.2d 51 (1982), does not support her claim that the easement for benefit of Parcel N, applied to Parcels C, D and E. (App. Br. 11-12). The appurtenant easement rule, stated in *Green*, @ 323-324, applies when a larger parcel, with appurtenant easement rights, is later subdivided into smaller parcels. The rule being that when a dominant estate is subdivided into parcels, the smaller parcels continued to utilize the easement held by the larger parcel. *Clippinger v. Birge*, 14 Wn. App. 976, 986, 547 P.2d 871 (1976). Herein, the Plat had already subdivided the larger parcel into 16 separate parcels. There was no further subdivision to be made, and the foregoing rule is inapplicable. EX. 1

and 5.

D.) As to Parcel C, Springer Failed To Meet Burden Of Proof To Establish Claim Of Prescriptive Rights.

The trial Court's denial of Springer's prescriptive easement right as to Parcel C is supported by substantial evidence. CP 5-15. Springer's easement rights, if any, could only exist by prescription. In Washington, the requirements to establish a prescriptive right are the same as necessary to establish a claim of adverse possession. 17 William B. Stoebuck, *Washington Practice: Real Estate* #2.7 (2013).

It is the rule that prescriptive easements are disfavored in that they diminish another's property rights over their own property. *Northwest Cities Gas Co. v. Western Fuel Co.*, 13 Wn.2d 75, 88, 123 P.2d 771 (1942). In a prescriptive easement claim, there exists a presumption that the servient property (Erbecks' Driveway) was used with the permission of, and in subordination to the Erbecks' ownership.

*Miller v. Anderson*, 98 Wn. App. 822, 964 P.2d 365 (1998). To establish her prescriptive easement claim, Springer had the burden to establish by "clear proof":

"The requirements to establish a prescriptive easement are the same as those to establish adverse possession. The claimant must prove use of the servient land that is: (1) open and notorious; (2) over a uniform route; (3) continuous and uninterrupted for 10 years; (4) adverse to the owner of the land sought to be subjected; and (5) with the knowledge of such owner at a time when he was able in law to assert and enforce his rights."

*Kunkel v. Fisher*, 106 Wn. App. 599, 602, 23 P.3d 1128 (2001). Whether the elements of a prescriptive easement are met is a mixed question of law and fact. *Lee v. Lozier*, 88 Wn. App. 176, 185, 945 P.2d 214 (1997).

Springer's claim that the trial Court improperly applied the element of "continuous" use for the required 10 years is without legal basis, and Springer has failed to cite specific legal authority in support of this claim. AB 15-16. Rather than the

Court, it is Springer who misconstrues the element of "continuous use". At trial, Springer was obligated to establish on her part, or on the part of the Kuesters, specific and continuous use of the Erbecks' Driveway during the required time period. By focusing on intermittent acts upon her own property, rather than the use of the Erbecks' Driveway, Springer failed to meet her burden of proof. *Lee v. Lozier*, @ p. 185. Springer's actions on Parcel C (including the Eastern portion of Parcel D) were irrelevant, unless directly tied to the use of the Erbecks' Roadway.

On the other hand, the record fully supports the trial Court's finding that Springer did not acquire prescriptive easement rights for the benefit of Parcel C. It was Erbecks who maintained cattle on Parcel C, for 17 years, from 1997 through 1994. CP 9. After Erbecks ceased using Parcel C to graze their cattle, Springer and her husband permitted their neighbor, Michael Lopez, to utilize Parcel C for grazing purposes, which use continued through the

trial date. CP 170. During his many years of maintaining cattle on Parcel C, Mr. Lopez requested, and was granted, permission by the Erbecks to utilize the Roadway for different purposes. CP 112. As a result of his permissive use, Mr. Lopez's use of the Erbecks' Driveway could not ripen into a prescriptive easement.

E.) The Trial Court Did Not Subdivide Parcel D.

Springer's claim that the trial Court erred in "subdividing" Parcel D into two (2) separate parcels with separate uses" is without factual or legal support. The trial Court did not subdivide Parcel D. Rather, the Kuester/Springer Deed to Parcel D divided the property into two (2) identifiable parcels. Parcel A consisted of the West 132' of Parcel D, while Parcel B described the East 558' feet of Parcel D. EX. 9, App. A. Within her brief, Springer cites no authority to support her claim that the trial Court erred in differentiating the easement rights granted for the benefit of Parcel D. Springer's argument that the trial Court "subdivided"

Parcel D appears contrived, disjointed, and is simply not supported by the record. AB 15-18.

In determining the extent of prescriptive easement rights to be granted for Parcel D, the trial Court followed the rule as stated in *Lee v. Lozier*, @ p. 187:

*"The extent of the rights acquired through prescriptive use is determined by the uses through which the right originated. Northwest Cities Gas Co. v. Western Fuel Co., 17 Wash.2d 482, 486, 135 P.2d 867 (1943); Restatement of Property § 477, at 2992 (1944). The easement acquired extends only to the uses necessary to accomplish the purpose for which the easement was claimed. Yakima Valley Canal Co. v. Walker, 76 Wash.2d 90, 94, 455 P.2d 372 (1969).*

The Court's award to Springer of differentiated prescriptive easement rights, as between Parcels A and B of Parcel D, was made in accordance with the foregoing rule, and based upon the evidence presented at trial. The West 132' feet of Parcel D was contained Springer's residence, and was utilized for that purpose. The East 558' of Parcel D was utilized wholly for agricultural purposes. The prescriptive

easement rights granted to Springer allowed her to utilize the Erbecks' Driveway for the same purposes as either agreed by Erbecks, or shown at trial.

F.) Respondents Should Be Awarded Their Attorney Fees And Costs.

Pursuant to *RAP 18.1*, and *RCW 7.28.083(3)*, Respondents request that they be awarded their attorney fees and costs incurred in this appeal. *RCW 7.28.083(3)* provides:

*"(3) The prevailing party in an action asserting title to real property by adverse possession may request the court to award costs and reasonable attorney fees. The court may award all or a portion of costs and reasonable attorneys' fees to the prevailing if, after considering all the facts, the court determines such an award is equitable and just."*

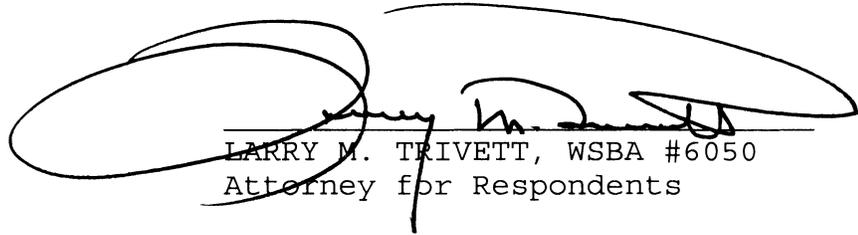
While *RCW 7.28.083(3)* utilizes the term "adverse possession", and the present cause involves a claim of prescriptive easement rights, the elements necessary to establish either claim are the same. *Kunkel v. Fisher*, @ P. 602.

In Washington, the prescriptive and adverse possession claims "... are fully recognized and used as equivalent doctrines." 17 *Stoebuck and Weaver*, *Wash. Prac., Real Estate* § 2.7 and 8.1 (2d ed.) (2014). As a result of Springer's claims, Erbecks have incurred substantial attorney fees and costs in seeking to protect their property rights, and it is only "equitable and just" that they be awarded their attorney fees and costs incurred in this cause.

#### **IV. CONCLUSION**

In all respects, the trial Court's Findings of Fact are supported by substantive facts, and its Conclusions of Law are based upon applicable law. The evidence is clear that Developer/Kuester did not convey express easement rights in or upon the Erbecks' Parcel O, for the benefit of either Parcels C or D. As to Springer's prescriptive easement claims, the trial Court's decision was entirely appropriate, and should be affirmed in all respects. Respondents should be awarded their attorney fees and costs in this cause.

*RESPECTFULLY SUBMITTED* this 2nd day of March,  
2015.



LARRY M. TRIVETT, WSBA #6050  
Attorney for Respondents

**DECLARATION OF SERVICE**

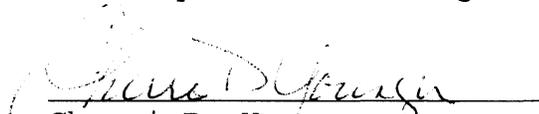
I, Cherri D. Younger, declare that I am an employee of the Trivett Law Offices, am over the age of eighteen and am competent to testify to the matters stated herein.

On this date, I caused to be served a true and correct copy of the within and foregoing "Respondents' Reply Brief" on the following, in the manner indicated:

<b>Attorney for Defendants:</b> Matthew R. Cleverley Fidelity National Law Group 1200 6 <sup>th</sup> Ave., Ste. 620 Seattle, Washington 98101	<input type="checkbox"/> Via first class mail, postage prepaid <input type="checkbox"/> Via facsimile to: <input checked="" type="checkbox"/> Via legal messenger <input checked="" type="checkbox"/> Via Email: matthew.cleverley@fnf.com
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I declare, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

Dated: March 2, 2015, at Marysville, Washington.

  
Cherri D. Younger

Appendix A  
Trial Exhibit No. 4

