

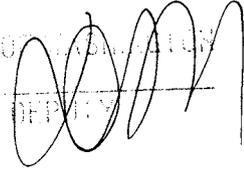
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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

No. 37772-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON



JOSEPH A. BACUS and SANDRA BACUS, husband and wife,

Appellants,

vs.

STANLEY and CATHERINE ANDERSEN, husband and wife,

Respondents.

RESPONDENTS' RESPONSE BRIEF

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I. INTRODUCTION

The Appellants Joseph and Sandra Bacus (the “Bacuses”) want to invalidate a Final Short Plat (“Short Plat” or “Plat”) that was approved and recorded by Skamania County on June 29, 1989. Because they did not challenge the County’s approval until 2002, some 13 years after the decision became final, the Bacuses’ challenge is time-barred.

The Bacuses also claim that the private roads and easements shown on the Plat are invalid because the Short Plat refers to one of them as a “private road” as opposed to an “easement.” This challenge also lacks merit because the law does not require any special language to create an easement, and the intent of the developer is clear and undisputed.

Finally, the Bacuses’ claim, for the first time on appeal, that even if the easements are valid, they have been extinguished by adverse possession. Because the Bacuses did not include this in their Complaint, it cannot now be raised on appeal. Regardless, the Bacuses did not present any admissible evidence to support this claim.

II. ISSUES PERTAINING TO APPELLANTS’ ASSIGNMENTS OF ERROR

The Andersens restate the Issues as follows:

1. Even prior to the enactment of the Land Use Petition Act (“LUPA”), challenges to land use decisions, including approvals of short

plats, had to be brought within 30-days. The Patricia Andersen Short Plat was given final approval in June 1989. The Bacuses did not challenge the Short Plat until 2002. Is the Bacuses' challenge to the Short Plat time-barred?

2. Easements can be created by describing them on the face of a short plat. The undisputed evidence shows the easements described on the Plat. It is also undisputed that the original developer intended for these easements to provide access to the various parcels. Did the trial court err in holding the easements on the Plat valid?

3. A party generally cannot raise issues or claims for the first time on appeal. The Bacuses did not claim in their Complaint -- nor did they ever seek to amend their Complaint to allege -- that the easements on the Plat were extinguished by adverse possession. Should this Court permit the Bacuses to raise a new issue or claim on appeal?

4. Washington law disfavors the extinguishment of easements by adverse possession and requires the party seeking to invalidate such easements to prove their claim by a heightened level of evidence. The Bacuses did not present any admissible evidence to prove adverse possession. Did the trial court err when it granted the Andersens' Motion for Summary Judgment and denied the Bacuses' Cross-Motion?

5. RAP 18.9 permits appellate courts to award costs and attorney's fees as sanctions when a party files or pursues a frivolous appeal. The Bacuses' appeal relies upon unfounded claims without legal support. Are the Andersens entitled to their attorney's fees and costs for having to defend against the Bacuses' frivolous appeal?

6. RCW 4.84.370 allows a party who has prevailed at all previous levels in a land use proceeding to recoup their attorneys' fees and costs from the other side. If they prevail in this appeal, the Andersens will have been the prevailing party at each step of the process. Are the Andersens entitled to their attorneys' fees and costs?

III. STATEMENT OF THE CASE

A. Undisputed Facts

Because the Bacuses' summary of the facts is incomplete, and unclear in many respects,¹ the Andersens submit the following statement of undisputed facts.

Stan and Patricia Andersen purchased the property, that now makes up the Patricia Andersen Short Plat, in 1966.² In 1987, the Andersens applied to short plat the property into four (4) lots.³ The

¹ The Bacuses' unconventional pleadings and briefs make it difficult for the Andersens to comprehend or respond to the issues.

² CP 52.

³ *Id.*

County gave its final approval to, and recorded, the Patricia Andersen Short Plat (“Short Plat”) on June 29, 1989.⁴

The undisputed evidence shows that the Andersens intended to create on the face of the Plat one easement across the western portion of Lot 3 to provide access to Lot 2 and a second easement across the eastern portion of Lot 3 to sever the “Remainder Lot.”⁵

On June 29, 1989, Stanley and Patricia Andersen recorded a Private Roadway Agreement to indicate that all of the roadways shown within the boundaries of the Short Plat were to be considered “Private Roadways.”⁶

On July 28, 1989, Stan Andersen conveyed, in fulfillment of a divorce decree, Lot 3 to Patricia Andersen.⁷ In turn, Patricia Andersen conveyed Lot 3 to David Prosser.⁸ The Deeds reference the Short Plat, the recorded Roadway Agreement, and the easements.⁹ On December 13,

⁴ CP 91. The Final Plat is attached as App-1.

⁵ CP 52. The Short Plat Map describes “Patricia Road” as providing access to Lots 2 and 3. CP 91. The Plan further describes a “Roadway Easement” providing access across Lot 3 to the Remainder Lot. *Id.*

⁶ CP 53; CP 60.

⁷ *Id.*

⁸ CP 53; CP 61.

⁹ CP 60; CP 61

1995, Prosser conveyed Lot 3 to the Bacuses.¹⁰ This Deed also incorporated the Short Plat, the Private Roadway Agreement, and the “easements along the Westerly Line and the Easterly Line, as shown on the Plat.”¹¹

B. Trial Proceedings

The Bacuses¹² filed this lawsuit on July 30, 2002. Despite its label as a “Quiet Title” action, the suit seeks to invalidate the Short Plat¹³ and to have the easements depicted on the Plat declared invalid.¹⁴ The Andersens filed for summary judgment to dismiss the Bacuses’ lawsuit.¹⁵ The Bacuses filed a “Cross” Motion for Summary Judgment.¹⁶ Defendants filed their Reply on December 18, 2007.¹⁷

On February 14, 2008, Judge Brian Altman, in a “written ruling,” granted the Andersens’ Motion for Summary Judgment and denied the

¹⁰ CP 62.

¹¹ CP 62.

¹² While he apparently is not licensed to practice law in Washington, Mr. Bacus represented to the trial court that he retired as a “senior United States Attorney” in 1995. CP 68. He also signed many of his pleadings as “attorney at law” or esquire. CP 36, 37, 87, 142, 146, and 224. He therefore should be held to the standard of a practicing lawyer.

¹³ The Bacuses named Skamania County as a party but failed to secure service.

¹⁴ CP 1-7.

¹⁵ CP 38-50.

¹⁶ CP 64-87.

¹⁷ CP 166-167.

Bacuses' Cross-Motion for Summary Judgment.¹⁸ After denying the Bacuses' Motion for Reconsideration, Judge Altman entered a final Order together with a Final Judgment on May 29, 2008.¹⁹ The Bacuses filed this appeal.

IV. ARGUMENT

A. Summary Judgment

An appellate court reviews a trial court's grant or denial of summary judgment *de novo*.²⁰ This Court engages in the same inquiry as the trial court.²¹

Summary judgment is appropriate when the pleadings, depositions, and admissions, together with affidavits, if any,²² show there is no genuine issue about any material fact and, assuming facts most favorable to the nonmoving party, establish that the moving party is entitled to judgment as a matter of law.²³ Once the moving party has proven that there are no

¹⁸ CP 187.

¹⁹ CP 270-274.

²⁰ *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005).

²¹ *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982).

²² It is not enough that the affiant be "aware of" or "familiar with" the matter; personal knowledge is required. *Marks v. Benson*, 62 Wn. App. 178, 13 P.2d 180, *rev. den.*, 118 Wn.2d 1001 (1991). In this case, the Bacuses failed to present any affidavits or declarations that were based on personal knowledge.

²³ *Lloyd v Montecucco*, 83 Wn. App. 846, 924 P.2d 927 (1996); *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982); CR 56(c).

undisputed facts, the burden then shifts to the other party to “come forward with evidence” to show that there are sufficient questions of material facts.²⁴

If the non-moving party fails to present admissible evidence to dispute the moving party’s evidence, summary judgment is proper.²⁵ A non-moving party, however, “may not rely on speculation [or on] argumentative assertions that unresolved factual issues remain.”²⁶ The non-moving party must submit *admissible* evidence.

B. The Bacuses’ Challenge to the Short Plat is Time-Barred

The Bacuses filed this suit to try and invalidate the Short Plat.²⁷ While the trial court opined that LUPA applied,²⁸ it also concluded that the Bacuses’ challenge to the Short Plat was time-barred. Even if a

²⁴ *Howell v. Spokane & Inland Empire Blood Bank*, 117 Wn.2d 619, 625, 818 P.2d 1056 (1991).

²⁵ *Id.*

²⁶ *Seven Gables Corp. v. MGM/UA Entm’t Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986).

²⁷ Although labeled an action for “quiet title”, the Bacuses’ Complaint is really a challenge to the Plat.

²⁸ CP 177-187. The trial court wrote that the Bacus’ challenge was barred by LUPA. However, Judge Altman also wrote that “even if” LUPA did not apply retroactively, the Bacus claim was still time-barred under Washington law. CP 184-186.

portion of Judge Altman's written opinion is wrong, his conclusion was correct.²⁹

Although LUPA was not passed until 1995, there was a statute that set a 30-day deadline for challenging land use decisions. RCW 36.32.330 had a 30-day deadline. Further, the Washington Supreme Court held, even before LUPA was passed, that, in absence of a controlling statute or ordinance to the contrary, any challenge to a land use decision had to be filed within 30 days of a final decision.³⁰ Thus, in 1989, when this Plat was approved, the deadline was 30 days.

In addition, RCW 58.17.180 -- which also predates LUPA -- required all challenges to a final short-plat be made within 30 days after final approval. Thus, even if LUPA does not apply retroactively, a challenge to the Short Plat would have needed to be filed within 30 days of the County's approval. Thus, any challenge to the Plat had to be filed before July 30, 1989.

The statutes are clear, but case law lends further support to the fact that any challenge to a land use decision must be made within a

²⁹ See *In Re Estate of Jones*, 152 Wn.2d 1, 93 P.3d 147 (2004) (Where a judgment or order is correct, it will not be reversed merely because the trial court gave the wrong reason for its rendition.).

³⁰ *Cathcart-Maltby-Clearview Community Council vs. Snohomish County*, 96 Wn.2d 201, 634, P.2d 853 (1981). These challenges were referred as "writs of review."

reasonably short deadline. In holding that the Gorge Commission waited too long to challenge a land use decision, the Supreme Court in *Skamania County v. Columbia River Gorge Commission*³¹ recognized a strong public policy to support the “finality” of land use decisions. The Court stated that “[i]f there were not finality [in land-use decisions], no owner of land would ever be safe in proceeding with development of his property . . . to make an exception . . . would completely defeat the purpose and policy of the law in making a definite time limit.”³²

Even absent a statute, the courts will impose a short deadline for challenging land-use decisions. For example, in *Brutsche v. The City of Kent*, the Court of Appeals held that where “there is no other appeal period prescribed by state statute or local ordinance governing the type of land-use action involved, **the appeal must be brought within 30 days of the municipalities or agencies final decision.**”³³ The Court explained its ruling on the basis of public policy: “Such a bright-lined rule will serve

³¹ 144 Wn.2d 30, 226 P.3d 241 (2001).

³² 144 Wn.2d at 49, quoting *Deschenes v. King Co.*, 83 Wn.2d 714, 717, 521 P.2d 1181 (1974).

³³ *Brutsche v. City of Kent*, 78 Wn. App. 370, 898 P.2d 319, *rev. den.*, 128 Wn.2d 1003, 907 P.2d 296 (1995) (emphasis added). See also *Deschens v. King County*, 83 Wn.2d 714, 521, P.2d 1181(1974); *Neighbors and Friends of Veretta Park v. Miller*, 87 Wn. App. 361, 940 P.2d 286 (1997).

the public's interest by giving decision makers, landowners and citizens a clear deadline by which the land-use decision, if not appealed, is final."³⁴

Failure to timely challenge a land use decision deprives a reviewing court of jurisdiction. In *KSLW v. City of Renton*, the Court held that "[t]imely notice of appeal is required, therefore, to confer appellate jurisdiction on the court. A court lacking jurisdiction of any matter may do nothing other than enter an order of dismissal."³⁵

In this case, the County made its final land-use decision to approve the Plat on June 29, 1989. The Bacuses did not challenge the decision until 2002. There is simply no basis whatsoever to allow a person to collaterally attack a final land-use decision 10 years after the decision becomes final. The Court simply lacks jurisdiction to entertain the Bacuses' challenge to the validity of the Plat.

The Bacuses then try to avoid the appeal deadline by arguing that a) the Short Plat is illegal; and, b) their Complaint is for quiet title and not declaratory judgment—a new issue they admit was not argued below to

³⁴ *Brutsche v. City of Kent*, 78 Wn. App. 370, 898 P.2d 319, rev. den., 128 Wn.2d 1003, 907 P.2d 296 (1995).

³⁵ 47 Wn. App. 587, 736 P.2d 664 (1986)

the trial court.³⁶ These arguments have been attempted and repeatedly rejected by our courts.

In determining if the challenge is timely, the Court will look to the substance, and not the label, of the attack on the land use decision. For example, the Washington Supreme Court in *Samuels Furniture, Inc. v. State Department of Ecology*, clearly stated that, regardless of the form or merit of the challenge or collateral attack, a final land-use decision cannot be attacked unless challenged within the statutory deadlines.³⁷

Another example is found in *Chelan County v. Nykreim*. Chelan County and several adjoining property owners filed a petition for declaratory judgment to invalidate a boundary line adjustment the County had approved approximately one year before the lawsuit was filed.³⁸ It was undisputed that the County had illegally approved a boundary line adjustment which resulted in the creation of three illegal lots. When the owner later attempted to develop one of the illegally created parcels, the County tried to revoke the boundary line adjustment as being illegal and void. The Washington Supreme Court flatly rejected the County's

³⁶ Br. of App., p.15.

³⁷ 147 Wn.2d 440, 54 P.3d 1194 (2002). See also *Wenatchee Sportsmen's Assoc. v. Chelan County*, 141 Wn. 2d 169, 4 P.3d 123 (2000); *Chelan County v. Nykreim*, 146 Wn.2d 904, 52 P.3d 1 (2002); *Skamania County v. Columbia River Gorge Commission (Bea case)*, 144 Wn.2d 30, 26 P.3d 241 (2001).

position because it found the County had waited too long to challenge the approval. The Court held that, despite the validity of the County's position, it simply waited too long to challenge the land use decision.

The Bacuses want to re-open a land use decision that was made in 1989. Even if there was some basis for the Bacuses' concerns, Washington's policy to recognize "finality" in land-use decisions prevents such a result. The Bacuses' challenge is simply too late for the Court to assume jurisdiction.

The Bacuses next argue that the Plat is not protected by a statute of limitations because it was never approved by the Skamania County Assessor. This argument is difficult to comprehend because the Short Plat itself states "[t]his short plat is approved pursuant to County and State laws."³⁹ The Plat fully complies with RCW 58.17.170, which requires a County to give its "written approval on the face of the plat."

The Bacuses argue that the County Auditor did not have the authority to accept the filing of the Short Plat because there was no "notation" in a form designed by the County Assessor. The Bacuses posit that the Skamania County Assessor and Deputy Auditor did not approve

³⁸ *Chelan County v. Nykreim*, 146 Wn.2d 145, 52 P.3d 1 (2002).

³⁹ CP 91.

the Short Plat.⁴⁰ The Bacuses are wrong—the statements Mr. Bacus solicited from these two officials contradict his argument. These two officials stated that a note or other notation is *never* received from the Auditor’s office. The Assessor does not have any authority to approve or disapprove short plats.

The Short Plat itself was approved and recorded by the County. The County Engineer, the County Planning Department, the Health Department, and the County Treasurer signed the Plat. Indeed, the County Planning Director, Robert Lee, declared and certified that the Plat met the minimum requirements of the law. Even if there was a technical violation when the Plat was recorded, the undisputed fact remains that the Plat was given final plat approval. Regardless, no challenge was made to the Plat until 13 years after it was approved.

Finally, the Bacuses raise a new issue on appeal. They claim the trial court should not have applied an appeal deadline to their “quiet title” action.

⁴⁰ Br. of App., 17; CP 110-111.

In general, issues not raised before the trial court may not be raised for the first time on appeal.⁴¹ Thus, this Court need not consider the Bacuses' new claim regarding quiet title; however, even if addressed, this Court should reject this new argument.

The Bacuses appear to argue, without authority, that, because the Short Plat is invalid, they should have title to their lot quieted in them while the rest of the lots are declared illegal. The Bacuses' quiet title argument is based entirely on their claim that the statute of limitations is 10 years under RCW 4.16.020. The Bacuses' reliance is again misplaced. This statute does not apply to quiet title actions. Established case law dating back to 1892 holds that this statute is "inapplicable" to quiet title actions.⁴² Accordingly, even if this Court were to entertain the Bacuses' new issue, it would find that it does not support their position.

Even if the court were to accept the Bacuses' argument, their suit was still filed more than 10 years after the Short Plat was approved. Regardless of its label, the Bacuses' challenge to the Short Plat is time-

⁴¹ See RAP 2.5(a) (an "appellate court may refuse to review any claim of error which was not raised in the trial court"). *Roberson v. Perez*, 156 Wn.2d 33, 39, 123 P.3d 844 (2005).

⁴² *Wagner v. Law*, 3 Wn. 500, 28 P. 1109 (1892); *Krutz v. Isaacs*, 25 Wn. 566, 66 P. 141 (1901); *Anderson v. Hall*, 91 Wn. 376, 157 P. 996 (1916); *Inland Empire Land Co. v. Grant County*, 138 Wn. 439, 245 P. 14 (1926).

barred. The trial court and this Court therefore lack jurisdiction to do anything other than to dismiss the Bacuses' challenge.

C. The Easements Shown on the Short Plat are Valid

The Bacuses also challenge the validity of the easements because, they argue, the Short Plat uses the term “roadway,” instead of “easement.” The trial court properly rejected this argument and held that the easements are valid.⁴³

“An easement is a property right separate from ownership that allows the use of another’s land without compensation. No particular words are required to constitute a grant; instead, any words which clearly show an intention to give an easement are sufficient.”⁴⁴ Further, “[t]he intent of the plat applicant determines whether a plat grants an easement.”⁴⁵

Easements by plat have been recognized in Washington since 1916. Under *Van Buren v. Trumbull*, there can be no question that the intent of the plat applicant must control.⁴⁶ In this case, there is no dispute that the developer intended to create the roads and easements depicted on

⁴³ CP 272.

⁴⁴ *M.K.K.I., Inc. v. Krueger*, 135 Wn. App. 647, 654, 145 P.3d 411 (2006).

⁴⁵ *Id.*, citing *Selby v. Knudson*, 77 Wn. App. 189, 194, 890 P.2d 514 (1995).

⁴⁶ 92 Wn. 691, 159 P.2d 891 (1916).

the Short Plat. He was required to provide access to Lots 2 and the Remainder Lot. He chose to do this by creating an easement across Lot 3.

The fact that the applicant referred to the easements as a “roadway” or “road” rather than an “easement” is of no legal consequence. Easements created by plat do not require any “magic words” provided the intent of the creator is clear.⁴⁷

The Bacuses’ attempt to use the County’s ordinance to define “roads” versus “easements” is nonsensical. The Bacuses try to rely upon certain definitions contained in SKMC 17.64.020 to confuse the Court.⁴⁸ The plain language of SKMC 17.64.020 states that the definitions only apply to usage within the code section.⁴⁹ The private roads depicted on the Short Plat (*i.e.* the “Patricia Road”) were clearly intended to create a means for ingress and egress to the various lots. No other interpretation makes sense. Because the intent of the plat applicant determines whether an easement is granted, and because that intent is not in dispute, the Bacuses’ argument is entirely without merit.

⁴⁷ *Id.*

⁴⁸ CP 116.

⁴⁹ CP 116, SKMC 17.64.020 “Whenever the following words and phrases appear in this chapter, they shall be given the meaning attributed to them by this section.”

D. The Bacuses Have Not Extinguished the Easements by Adverse Possession

In their final argument, the Bacuses claim that, even if the easements are valid, they were extinguished by adverse possession.⁵⁰ Unfortunately for the Bacuses, this claim was not raised in their Petition for Quiet Title. While the Bacuses may have raised this argument in a Memorandum, they failed to produce any admissible evidence to support their claim.⁵¹ Therefore, the trial court did not err when it dismissed their lawsuit.

Regardless of the procedural defect, the termination of easements by adverse possession, or any other means, is highly disfavored under Washington law.⁵² Even if the Bacuses could have established the elements of adverse possession, the law requires a much higher threshold when the claim is being used to terminate an easement by adverse possession.⁵³

Because a servient estate owner is entitled to make any use of the easement area that does not interfere with the easement holder's use, adverse use must be particularly severe and clear to terminate an

⁵⁰ Br. of App., p.20.

⁵¹ CP 253.

⁵² *City of Edmonds v. Williams*, 54 Wn. App. 632, 636, 774 P.2d 1241 (1989).

⁵³ *Cole v. Laverty*, 112 Wn. App. 180, 186, 49 P.3d 924 (2002).

easement.⁵⁴ When the dominant owner has not yet used the easement for its intended purpose, the party seeking to terminate the easement has a particularly high burden to establish adverse use.⁵⁵ This is because the specific purposes for which the dominant owner may use the easement are not always evident at the time of the servient owner's use.

For example, in *Cole v. Laverty*, the court held that, during a period of nonuse by the dominant estate owner, use of the easement area by the servient owner — including uses that actually blocked the easement — did not terminate the easement by means of adverse possession.⁵⁶ In that case, the servient owner erected fences across a driveway, and placed three large planters across one end of the easement area. The court reasoned that these uses of the easement area did not meet the heightened level of adverse use required to terminate an easement. Because the dominant owner had not yet had the occasion or need to use the easement for its intended purposes, the fences and other obstructions were not sufficiently adverse.⁵⁷

⁵⁴ *Id.* at 184-5.

⁵⁵ *Id.* at 184-5.

⁵⁶ *Id.* at 185.

⁵⁷ *Id.*

In this case, the Bacuses did not submit any **admissible** evidence whatsoever to support a claim for adverse possession.⁵⁸ The trial court therefore did not err when it denied the Bacuses' Motion, and granted the Andersens' Motion for Summary Judgment.

E. The Andersens Are Entitled to Their Attorney's Fees and Costs

(i) The Bacuses' appeal is frivolous

The Andersens are entitled, and hereby move, to recoup their fees and costs incurred in this appeal under RAP 18.1 and RAP 18.9.⁵⁹ In the instance of a frivolous appeal, attorney fees are appropriate.⁶⁰ An appeal is frivolous where the appellant cannot cite any authority in support of its position. The Bacuses' appeal is frivolous because there are no debatable issues, and no reasonable possibility of reversal exists.⁶¹

⁵⁸ The Bacuses failed to submit any affidavits or declarations that satisfy the requirements for admissible evidence. Although Mr. Bacus "certified" several of his legal memoranda (see CP 087, 254), they are not in the form of admissible evidence because they are not based on personal knowledge.

⁵⁹ RAP 18.1(a) and (b) require a party to devote a separate section in their brief to their request for an award of fees on appeal. RAP 18.9 permits this Court to award attorney fees as a sanction against a party who files a frivolous appeal.

⁶⁰ *Mahoney v. Shinpoch*, 107 Wn.2d 679, 692, 732 P.2d 510 (1987).

⁶¹ *See Pub. Employees Mut. Ins. Co. v. Rash*, 48 Wn. App. 701, 706-7, 740 P.3d 370 (1987).

- (ii) The Andersens are entitled to their fees under RCW 4.84.370

If they prevail in this appeal, the Andersens are entitled, and therefore move, to collect their attorney's fees and costs on appeal under RCW 4.84.370. This statute requires the court to reimburse a party, who has prevailed on appeal, their costs and fees, if that party has substantially prevailed before the county and the trial court.

Because the Andersens were the "prevailing party" when the Short Plat was approved, and were also the prevailing before the trial court, they are entitled to their fees and costs, if in fact they prevail in this appeal.

V. CONCLUSION

Because the Bacuses' challenge to the Short Plat is untimely, the trial court properly dismissed their Complaint. Likewise, their claims that the easements depicted on the face of the Plat are invalid should be rejected. There is also no evidence to support their newly raised claim that the easements were extinguished by adverse possession. Thus, the trial court's rulings should be upheld. Finally, because there is no basis in law or fact for the Bacuses' claims, and because the Andersens have prevailed

at all stages of these proceedings, the court should award the Andersens
their reasonable costs and attorney's fees.

Dated this 7th day of November 2008.

SCHWABE, WILLIAMSON & WYATT, P.C.

By:



~~Bradley W. Andersen, WSBA #20640~~
Phillip J. Haberthur, WSBA #38038
Attorneys for Appellant

CERTIFICATE OF FILING

I hereby certify that on the 7th day of November, 2008, I caused to be filed the original and one copy of the foregoing RESPONDENTS' RESPONSE BRIEF with the State Court Administrator at this address:

David Ponzoha, Clerk/Administrator
Court of Appeals, Division II
950 Broadway
Suite 300 MS TB-06
Tacoma, WA 98402-4454

by First Class Mail.



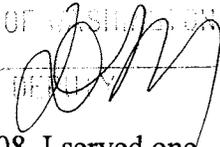
Bradley W. Andersen, WSBA #20640
Phillip J. Haberthur, WSBA #38038
Attorneys for Appellant

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STATE OF WASHINGTON

CERTIFICATE OF SERVICE

BY 

I hereby certify that on the 7th day of November 2008, I served one correct copy of the foregoing RESPONDENTS' RESPONSE BRIEF by

First Class Mail to:

Joseph A. Bacus, Pro Se
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Stevenson, WA 98648



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APPENDIX

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Final Plat.....APP-1

