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COURT OF APPEALS
10 APR 21 PM 3:28
STATE OF WASHINGTON
BY Cm
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No. 39273-9-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

SUZANNE VAUGHAN,

Respondent

v.

STILES and POKI MOORE,

Appellants.

RESPONDENTS BRIEF

Martin D. Meyer
Attorney at Law
402 S. Capitol Way, Suite 12
Olympia, WA 98501
(360) 357-6335
Attorney for Respondent

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I. INTRODUCTION

Respondent Suzanne Vaughan (hereinafter Vaughan) purchased her property from Jay and Marcia Anderson in April, 2000. RP 2/2/09 40. Her property adjoins Appellant's Moore (hereinafter Moore) thus sharing a common boundary line. RP 2/2/09 41 & Ex 1 & 2.

Vaughan's predecessors in interest were L.R. Montgomery and Marjorie V. Montgomery, husband and wife. Moore's predecessor in interest was Sue H. Walbridge, a widow. RP 2/2/09 125 & 146. Ex 2 & 14. On July 15, 1985, Walbridge (Moore's predecessor) and Montgomery's (Vaughan's predecessor) entered into an easement agreement that is the source of this dispute. Ex 2.

Among other easements executed in this document, Walbridge granted the Montgomery's a "perpetual exclusive easement" over a roughly 15' x 30' area, the size and location of which is not in dispute, "for the sole purpose of providing

space for the maneuvering and parking of motor vehicles.” RP 2/2/09 145. Ex. 2 & 3.

Sometime in 2007, Appellant Moore began parking his vehicle in the easement area thereby preventing and interfering with Vaughan’s use and enjoyment of the easement area. RP 2/2/09 66, 98-99 & Ex 4,5,6,7,8. Vaughan then file a Complaint seeking injunctive relief prohibiting Moores from interfering with her use and enjoyment of the area in question. CP 65-75. Prior to trial, Vaughan sought and obtained a Temporary Restraining Order prohibiting Moore from parking in the exclusive easement area. Ex 15.

Following a bench trial on 2/2/09, the trial court entered its Findings of Fact/Conclusions of Law and Permanent Injunction on May 1, 2009. CP 116-122

After the Permanent Injunction was entered, Appellant’s Moore continued blocking Vaughan’s vehicle which caused Vaughan to file a Motion/Declaration for Order to Show Cause re: Contempt on 5/7/09. CP 123-129. Vaughan filed a

supplemental her Declaration on 6/1/09. CP 149-157 with additional photos showing how Moores continued interfering with her access. CP ____.¹ Vaughan filed an additional post trial supplemental declaration June 30, 2009 further documenting her ongoing difficulties with the Moores interference with her use of the easement area. CP 161-164. Moore's were held in contempt. CP 186-188.

II. ARGUMENT

A. THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW ARE SUBSTANTIALLY SUPPORTED BY THE RECORD.

Unchallenged findings of fact or improperly challenged findings become verities on appeal. Estate of Lint, 135 Wn.2d 518, 957 P.2d 755 (1998). Where there is conflicting evidence, the court only needs to determine whether the evidence viewed most favorable to respondent supports the challenged finding.

¹ See clerk's papers submitted in response to respondent's designation of clerk's papers.

Estate of Lint at p. 532 *citing* Miller v. Badgley, 51 Wn. App. 285, 753 P.2d 530, *review denied*, 111 Wn.2d 1007 (1988).

While Appellant's counsel assigns error to finding of fact 4, the Appellant's Brief is devoid of any argument and citation to the record why finding of fact 4 is not supported by the record. See Brief of Appellant. It is the appellant's obligation to present the Court with argument why specific findings are not supported by the record. Estate of Lint at p. 532. *See also* RAP 10.3.

In this case, there is substantial evidence in the record supporting the Court's finding of fact 4 that Vaughan and her predecessors enjoyed uninterrupted use of the easement area without interference from anyone. CP 116-119. Ms. Vaughan testified that the Moores never occupied that space. RP 2/2/09 65 Her predecessor in interest, Jay Anderson testified that the Moores never utilized the 15' x 30' easement area for any purpose. RP 2/2/09 112.

Likewise, 40 year resident and uphill neighbor, Darlene Dow testified that she never observed the Moores park vehicles in the easement area. RP 2/2/09 45-46. A 43 year resident and neighbor, Katherine Hayes testified she never observed the Moores park in the easement area. RP 2/2/09 51 & 55.

Ms. Vaughan's friend, Jeanne Cushman testified that she too had never seen Moores park in the easement area in all her visits to Ms. Vaughan's residence. RP 2/2/09 29 This testimony was consistent with Ms. Vaughan's sister, Karen who likewise testified that she never observed the Moores park in the easement area. RP 2/2/09 38.

There could be nothing more plain and less ambiguous than a plain reading of the language at page 4 of the Easement Agreement which provides Vaughan a perpetual exclusive easement to *maneuver* and *park* her motor vehicles in the easement area. Ex 2

**B. THE TRIAL COURT PROPERLY REJECTED
MOORE'S THEORY OF ADVERSE POSSESSION.**

Appellant's theory that they "adversely possessed" a small portion of the easement area was rejected by the trial court and not supported by the testimony. RP 2/2/09 174-187.

An easement can be extinguished through adverse use. Cole v. Lavery, 112 Wn. App. 180, 49 P.3d 924 (2002). However, when it is the servient owner seeking adverse user, it is a much more difficult prospect because a servient owner already has the right to use his land for any purpose that does not interfere with the enjoyment of the easement. Cole at p. 184.

In order to start the prescriptive period, the adverse use of the easement must be clearly hostile to the dominant estate's interest in order to put the dominant estate owner on notice. Cole at p. 184. In this case, there was nothing Moores did to interfere with Vaughan's use or her predecessor's use and enjoyment of the easement area in question such that it would give rise to a claim of adverse possession. There are no encroaching walls. There is no encroaching landscape. There

are no fences. The paved 15' x 30' area is the same as it has been for many years.

C. THE TRIAL COURT PROPERLY FOUND MOORES IN CONEMPT FOR INTENTIONAL VIOLATION OF A LAWFUL COURT ORDER FOR THEIR CONTINUED OBSTRUCTION AND INTERFERENCE WITH VAUGHAN'S USE OF THE EASEMENT AREA.

The Court did not err in finding Appellants Moore in contempt following entry of the Order of May 1, 2009. CP 120-122 The order was clear that Moores were restrained from blocking and preventing Vaughan from maneuvering and parking her vehicles and accessing the 15' x 30' easement area. CP 121

Thereafter, Vaughan was forced to seek Court assistance to enforce the Court's order because of Moores ongoing complete and partial interference with her access/egress from

the easement area. CP 123-129, 149-157, 161-164 and __

2

On May 3, 2009, Moores completely blocked her vehicle preventing her from leaving the easement area. CP 124. Throughout the month of May 2009, the Moores continually partially blocked Vaughan from accessing the easement area. CP 149-157 & CP 161-164.

An initial hearing on the contempt motion was held 6/2/09 in which the court declined to make a ruling and sent the parties to mediation. RP 6/2/09 1-17 The parties returned to Court 7/17/09 for a ruling on Vaughan's Motion for Contempt. RP 7/17/09 1-14. The parties returned to Court 8/21/09 for entry of the Order on Show Cause re: Contempt/Judgment. CP 186-188 & RP 8/21/09 1-8.

RCW 7.21.010 defines "Contempt of Court" to mean the intentional disobedience of any lawful judgment, decree, order, or process of the court. RCW 7.21.010(1)(b). There was

² See clerk's papers submitted in response to respondent's designation of clerk's papers.

substantial factual evidence for the court to conclude that Moores intentionally violated the Court's order by continually either completely or partially blocking Vaughan from accessing or leaving the easement area. CP 123-129, 149-157, 161-164 and _____³

The court properly awarded Vaughan her reasonable attorney's fees for having to bring the Contempt Motion. RCW 7.21.030(3).

D. ATTORNEY'S FEES & EXPENSES

Vaughan is requesting her reasonable expenses and attorney's fees for having to defend this appeal pursuant to RCW 7.21.030(3) & RAP 18.1.

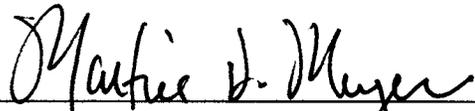
III. CONCLUSION

The decisions of the trial court ought to be affirmed in all respects. There is substantial evidence in the record to support the trial court's findings of fact and conclusions of law. The trial court properly rejected Appellant's claim for adverse

³ See clerk's papers submitted in response to respondent's designation of clerk's papers.

possession. Notwithstanding the entry of the Permanent Injunction on May 1, 2009, the trial court properly found Moores in contempt for their continued and repeated intentional violations of the court's order. The Order finding Moores in contempt and awarding Vaughan her reasonable attorney's fees ought to be affirmed. Likewise, Vaughan ought to be awarded her reasonable attorney's fees on appeal.

RESPECTFULLY SUBMITTED this 21st day of April, 2010.



Martin D. Meyer, WSBA #18338
Attorney for Respondent Vaughan
#12 U.S. Bank Bldg.
402 S. Capitol Way
Olympia, WA 98501
(360) 357-6335

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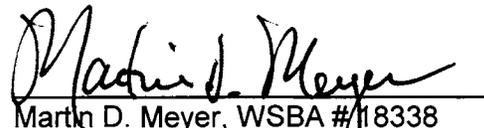
Appellants.

DECLARATION OF SERVICE

Martin D. Meyer, upon oath, deposes and says: I am the attorney for Suzanne Vaughan, Respondent herein. On April 21st, 2010 I personally served a copy of the Respondent's Brief and this Declaration of Service to Allen T. Miller, Attorney for Appellants by delivering a copy to his office at 1801 West Bay Drive NW, Suite 205, Olympia, WA and that I filed the original of the same in the Clerk's Office of the Court of Appeals, Division II, 950 Broadway, Suite 300, Tacoma, WA on April 21st, 2010.

I declare under penalty and perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 21st day of April, 2010.


Martin D. Meyer, WSBA #18338
Attorney for Respondent

Declaration of Service