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INTRODUCTION

This brief will attempt to set out the points made on behalf of Mr. Malella in the Brief of Respondent and refute them when necessary. Matters not discussed here were sufficiently dealt with in the Brief of Appellant.

DISCUSSION

I. Standard of Review.

Adverse possession is a mixed question of law and fact. What essential facts exist is determined by the trier of fact. The Court determines as a matter of law whether those facts are sufficient to constitute adverse possession. *Peeples v. Port of Bellingham*, 93 Wn.2d 766, 771, 613 P.2d 1128 (1980); *Chaplin v. Sanders*, 100 Wn.2d 853, 863, 676 P.2d 431 (1984). Mixed questions of law and fact are reviewed *de novo*. Conclusions of law are reviewed under the same *de novo* standard. *Clayton v. Wilson*, 168 Wn.2d 57, 62-3, 227 P.3d 278 (2010).

Mr. Malella suggests that the standard of review is “legal error” as opposed to “*de novo* review.” (Brief of Respondent, p. 8) However, as the Court stated in *Clayton v. Wilson, supra*, questions of law are reviewed *de novo*. There is no difference between the two standards.

In any event, the Court must determine whether substantial evidence supports the findings of fact that the trial court made and then whether those facts are sufficient to support its conclusions of law. Some of the statements made in the findings of fact, however, amount to conclusion of law. These were statements as to who had or did not have “dominion and control” over the disputed area; whether certain persons were required to have permission to go onto the premises; whether Kris Leonard was a “trespasser;” and whether plaintiff had proved his adverse possession claim. (Brief of Appellant, pps. 19-20) They also include questions related to the existence and effect of “neighborly accommodation.” These statements are clearly conclusions of law subject to *de novo* review or review for legal error.

II. Certain of the Trial Court’s Findings of Fact Were Not Supported By Substantial Evidence.

a. Findings Concerning Exclusivity.

Mrs. Keist assigned error to Findings of Fact Nos. 10.1, 10.2, 11.2, 11.3, and 12.5 because they contained statements indicating use of the disputed area by Mr. Malella and his predecessors “to the exclusion of all others.” These statements were contradicted by other findings the trial court made.

In Finding of Fact No. 10.1, the trial court found that Jack Phillips, “to the exclusion of all others,” attempted to keep the public off the property by posting “No Trespassing” signs. But in Finding of Fact No. 24.6, the trial court also found that George Elkins, one of Mrs. Keist’s sons, was also posting “No Trespassing” signs during the same period. Obviously, if Mr. Elkins was posting “No Trespassing” signs, Mr. and Mrs. Phillips could not be doing so “to the exclusion of all others.”

Mr. Malella responds by stating that Mr. Elkins’ activity only shows that the disputed area was not open to the public. (Brief of Respondent, p. 10). This statement does not refute the notion that Mr. Phillips was not alone in posting “No Trespassing” signs. It is therefore obvious that Finding of Fact No. 10.2 is contradicted by Finding of Fact No. 24.6. Therefore, to the extent that Finding of Fact No. 10.2 states that Mr. Phillips posted “No Trespassing” signs “to the exclusion of all others,” it is not supported by substantial evidence.

Similarly, in Finding of Fact No. 11.2, the trial court found that Mr. and Mrs. Manwaring, “to the exclusion of all others,” took certain action with regard to the disputed area. This statement was also contradicted by other findings of fact that the trial court made. Specifically, George Elkins posted “No Trespassing” signs in the area, cleared brush on the trail, and swam in the area. (CP 42, FF 24.3, FF 24.5)

Marc Elkins, Mrs. Keist's grandson, fished in the disputed area, cleared blackberries and tree branches, and also picked up garbage. (CP 42, FF 23.4) Kris Leonard fished in the area numerous times. (CP 43, FF 25.2) Mrs. Keist herself posted "No Trespassing" signs. (CP 44, FF 26.1) Mr. Malella simply does not refute the conclusion that the trial court's findings of fact concerning George Elkins, Marc Elkins, Kris Leonard, and Mrs. Keist contradict the statement that Mr. and Mrs. Manwaring's activities were "to the exclusion of all others." Finding of Fact No. 11.2 is therefore not supported by substantial evidence to the extent that it states that Mr. and Mrs. Manwaring acted "to the exclusion of all others."

In this regard, Mr. Malella takes issue with Mrs. Keist's interpretation of Finding of Fact No. 26.1. In Finding of Fact 26.1 and 26.2, the trial court stated:

26.1 No credible evidence accepted by the court that the defendant did anything tangible to keep the disputed property open to the public. In fact, defendant testified that she posted "No Trespassing" signs.

26.2 Defendant Keist's testimony regarding keeping the property open to the public was not credible and her testimony regarding putting up "No Trespassing" signs on the property contradicts such a claim.

These findings were made to address the claim that Mrs. Keist had previously raised — that the Recreational Use Statute, RCW 4.24.210,

precluded Mr. Malella's adverse possession claim. *Malella v. Keist*, Court of Appeals No. 31681-1-II, Slip Opinion, p. 11. The trial court obviously credited the testimony of Mrs. Keist that she had posted "No Trespassing" signs because it used that testimony to refute the notion that she had kept the property open to the public. Mr. Malella is in no position to argue to the contrary because he also claimed that RCW 4.24.210 did not eliminate his claim for adverse possession. For this reason, Mrs. Keist's posting of "No Trespassing" signs as found by the trial court must be considered to be an established fact.

The trial court's finding that Mr. Malella took action concerning the dispute property "to the exclusion of all others" in Finding of Fact No. 12.5 was also belied by several of the other findings of fact. These included Mrs. Keist's giving permission to John Thomas and Kris Leonard to fish in the disputed area. (CP 34, FF 12.7; CP 41, FF 21.1) Furthermore, the trial court specifically found that her son George Elkins worked on clearing a trail in 2001 and used a chainsaw to cut down trees. (CP 42, FF 24.4) Mr. Keist and Mr. Elkins were also posting "No Trespassing" signs as discussed above. Mr. Malella argues that there is no contradiction because the trial court also found that Mr. Thomas and Mr. Leonard were asked to leave by Mr. Malella or persons in concert with him. That argument misses the point. By granting permission to use the

premises, Mrs. Keist was necessarily exercising control over the property. Therefore, whatever control Mr. Malella was exerting was not “exclusive.”

b. Findings of Fact That Are Conclusions of Law.

Certain of the trial court’s findings contained statements best regarded as conclusions of law. These include whether Mr. Malella and his predecessors exercised “dominion and control” over the disputed area; whether persons had to obtain permission from Mr. Malella or his predecessors to come onto the property; and whether Kris Leonard was a trespasser. As Mrs. Keist observed, these are ultimate questions of law for the Court to decide. (Brief of Appellant, pps. 19-20)

Mr. Malella appears to agree that these statements in the findings of fact are subject to *de novo* review as questions of law but argues that the conclusions are justified. Those conclusions are what this Court must ultimately determine.

c. Finding Concerning Permission for the Garage to Encroach.

The most troubling finding of fact the trial court made was Finding of Fact No. 10.2. In this finding, the trial court stated that Jack Phillips built a garage that encroached upon the disputed area and that “no one told him (the garage he was building) was on the Keist property.” (CP 29). The trial court had previously found, however, in its prior

Finding of Fact 18.6 that Mrs. Keist and her husband told Mr. Phillips that they felt that the garage was on their property. *Malella v. Keist, supra*, Slip Opinion, p. 7.

The juxtaposition of Finding of Fact 18.6 in 2003 and Finding of Fact No. 10.2 in 2010 begs a question — why did the trial court enter two diametrically opposed findings of fact on a critical issue, one in 2003 and the other in 2010? Mr. Malella attempts to answer this question by reference to the findings where the court took issue with Mrs. Keist's credibility as a witness. But Mr. Malella fails to tell us why the trial court would not have had the same difficulty with Mrs. Keist's credibility in 2003 as it did in 2010. In other words, he does not tell us why the trial court credited her testimony on this issue in 2003 but chose not to do so in 2010.

This question is resolved quite simply. The trial court entered Finding of Fact 18.6 in 2003 because Mrs. Keist testified that she told Mr. Phillips that the garage was encroaching on her property and because Mr. Phillips did not deny that the conversation occurred although he could not specifically recall it. On that basis, Finding of Fact 18.6 was based upon substantial evidence and the contrary statement in Finding of Fact 10.2 is not.

As pointed in Brief of Appellant, page 23, this Finding of Fact became law of the case because no one assigned error to the Finding when the matter was first appealed. Mr. Malella could have referred the Court to the brief he submitted in the previous appeal to show that he in fact had assigned error to that finding. He has not done so, however. He only states that he objected to its entry — apparently by the trial court — without citing to the record where he did so. (Brief of Respondent, pps. 21-22) He does not argue that he assigned error to this Finding in the previous appeal. Therefore, Finding of Fact 18.6 became law of the case.

Mr. Malella goes on to argue that the Court previously reversed the trial court's findings of fact and directed the trial court to "enter new findings and conclusions that resolve the disputed facts and legal issues." (Slip Opinion, p. 2) It does not appear that the conversation at issue between Mrs. Keist and Mr. Phillips was one of those "disputed facts."

In short, Mr. Malella has not established any substantial evidence for the trial court's finding in 10.2 that no one told Mr. Phillips that the garage was encroaching upon the disputed area.

///

III. The Findings of Fact Do Not Support the Conclusions of Law.

a. Introduction.

In the last portion of the Court's opinion in *Malella v. Keist*, *supra*, the Court stated:

We vacate the trial court's findings of fact and conclusions of law and remand to the trial court to enter new findings of fact and conclusions of law that resolve the disputed facts and legal issues. In so doing, the trial court shall award to Malella by adverse possession only such property that the trial court finds he specifically used adversely to Keist's interest for the requisite period; in support of such award, the trial court must set forth specific, necessary facts to support such adverse possession and precisely delineate a legal description of the adversely possessed land that comports with these findings.

(Emphasis added) Slip Opinion, p. 13. The Court's direction was clear. It told the trial court to make specific findings concerning use by Mr. Malella and his predecessors of every piece of property that Mr. Malella was claiming. As Mrs. Keist pointed out in the Brief of Appellant, the trial court did not make findings sufficient to justify its award to Mr. Malella. For his part, Mr. Malella seeks to justify the trial court's decision on the basis of generalities contained in the findings of fact. His arguments are simply insufficient.

///

b. Encroaching Garage.

Mr. Malella claims adverse possession as to the portion of the disputed area on which his garage sits. Mrs. Keist has argued that the encroachment was permissive based upon her telling Mr. Phillips that the garage was on her property line at the time when the garage was under construction as the trial court initially found. (Brief of Appellant, pps. 26-27) Mr. Malella counters by reference to Finding of Fact No. 10.2, which states that no such conversation ever took place.

The issue here is squarely based upon the Court's decision on the findings of fact in question. If Finding of Fact No. 10.2 is found to be supported by substantial evidence, then Mr. Malella is entitled to adverse possession for the small piece of property in the disputed area on which the garage sits. Conversely, he is not so entitled if Mrs. Keist's conversation with Mr. Phillips occurred and Finding of Fact No. 10.2 is not supported by substantial evidence.

c. The Area Adjacent to the Garage.

As the trial court found, "Don Bryden, built the parking area located on the disputed property in 1991." (CP 35, FF 13.1) As Mrs. Keist pointed out, there was no finding that Mr. Bryden did his work prior to ten years before the filing of the suit in this matter. In the absence of

such a finding, there can be no use of the property of the requisite period of ten years. (Brief of Appellant, pps. 27-30)

Mr. Malella does not dispute the absence of any finding that Mr. Bryden did his work earlier than ten years before the suit was filed. Rather, he attempts to defeat this argument by stating that Mr. and Mrs. Manwaring believed they owned all of the property in question and maintained it.

This argument is insufficient for a number of reasons. First of all, Mr. and Mrs. Manwaring's belief about their ownership of the property is irrelevant. *Chaplin v. Sanders, supra*, 100 Wn.2d at 860-62.

The more important issue is precisely what use Mr. and Mrs. Manwaring or, for that matter, Mr. and Mrs. Phillips made of this disputed property. As noted above, the Court in *Malella v. Keist, supra*, specifically requested the trial court to make findings that would identify each distinct piece of property that Mr. Malella or his predecessors used adversely to Mrs. Keist's interests. The trial court's findings lacked this specificity with regard to this area at least as to the time prior to the placement of the fill.

It is unlikely that any finding of fact could be made as to any specific use that anyone made of this area prior to Mr. Bryden depositing the fill. As Mr. Bryden testified:

Q: What did you do at that time (around '91)?

A: Next to his garage their referring to is — it just dropped off, so we put a lot of fill material in there so he could park and stuff.

Q: And that's again, looking at this blowup is that this area next to the garage is that what you are talking about.

A: Right. Uh-huh. Exactly. This area wasn't here til they put the material in it and the garage like this.

Q: Okay. So, you put in fill and built up the area and made a bigger parking area than what was there in the first place?

A: Right.

Q: Did that go over in front of the garage as well?

A: No. No. That was —

Q: So you just built up on the side?

A: Yeah, that was part of the right-of-way where the garage is.

(RP 72-73) In other words, the area was not particularly useable by anyone for anything before Mr. Bryden deposited the fill because it dropped off precipitously.

Next, Mr. Malella claims that the Court should not “carve out pieces of property and award small portions to either her or Mr. Malella. . .because that is not practical.” (Brief of Respondent, p. 29) As

pointed out above, however, that is precisely what the Court of Appeals directed the trial court to do in *Malella v. Keist, supra*. There is also no reason why a legal description of this area could not be created if the requisite elements of adverse possession were satisfied.

There is nothing in the trial court's findings of fact to show that Mr. Bryden placed the fill prior to ten years before this suit was filed. The findings also say nothing about the use of this particular area prior to the placement of the fill. Mr. Malella's claim of adverse possession therefore fails for that portion of the property.

d. The Water Source.

In the Brief of Appellant, Mrs. Keist conceded that Mr. Malella would have a right to a prescriptive easement to the water source and for use and maintenance of associated equipment. She was clear, however, that this use would not entitle Mr. Malella to claim title by adverse possession of the remainder of the property. (Brief of Appellant, pps. 31-32) Without citing to any facts in the record or any authority, Mr. Malella dismisses this argument on the basis that he is seeking title to the disputed area by adverse possession and not merely a prescriptive easement.

As previously indicated, the Court of Appeals directed the trial court to enter findings of fact that would justify Mr. Malella's claim

title to specific portions of the disputed property by adverse possession. Mr. Malella points to no findings that the trial court made that would support anything other than the prescriptive easement Mrs. Keist concedes. (Brief of Respondent, pps. 29-30) The only conclusion that can be drawn from the competing arguments, therefore, is that the trial court's findings of fact justify a prescriptive easement for the water source and associated equipment only.

e. The Remainder of the Property.

Mr. Malella begins his discussion by stating that the remainder of the property is useable. (Brief of Appellant, p. 30) The only uses he notes, however, are the encroachment of the garage; a use for parking in the area adjacent to the garage without proof that any use existed prior to ten years before the filing of this action; and use and maintenance of trails from the road to the river; and picking up garbage on the trails and near the river. The trial court's findings of fact do not discuss any other or further use.

Mr. Malella then states that the remainder of the disputed area must be construed as a whole, without citing any authority. (Brief of Respondent, p. 31) This argument flies in the face of the direction from this Court in *Malella v. Keist, supra* — that the trial court specifically delineate all areas that Mr. Malella or his predecessors claimed to use and

describe the nature of the use. Since the trial court findings do not set out any generalized usage of the remainder of the disputed area, Mr. Malella cannot claim this area on the basis of adverse possession.

The trial court found that Mr. Malella and his predecessors used and maintained a trail from the road to the river and picked up litter in the area. Mrs. Keist presented two cases from other jurisdictions that presented similar facts, *Nome 2000 v. Fagerstrom*, 799 P.2d 304 (Alaska 1990) and *Estate of Welliver v. Alberts*, 278 Ill.App.3d 1028, 663 N.E.2d 1094 (1996). Mr. Malella attempted to distinguish these two cases on the basis that Mr. Malella and his predecessors also took steps to keep trespassers off the disputed area. That distinction does not help him. Mrs. Keist and her son, George Elkins, also posted “No Trespassing” signs. In other words, this “use” was not exclusive. More importantly, the steps taken to keep trespassers off the property were simply not adverse to Mrs. Keist’s interests. In *Malella v. Keist, supra*, the Court required findings that Mr. Malella or his predecessors used “the property adversely to Keist’s interests.” (Slip Opinion, p. 13) The posting of “No Trespassing” and eviction of trespassers simply does not meet that requirement. Mrs. Keist obviously had an interest in keeping trespassers off the property as well. See Brief of Appellant, pps. 37-38.

IV. Entitlement to a Prescriptive Easement Does Not Give the Claimant Title by Adverse Possession.

Mrs. Keist has conceded that Mr. Malella would be entitled to a prescriptive easement to the water source and the use of associated equipment. (Brief of Appellant, pps. 31-32) She also mentioned the possibility that use of the trails from the road to the river by Mr. Malella and his predecessors could conceivably ripen into a prescriptive easement. (Brief of Appellant, p. 35) Mr. Malella responded only by saying that he does not claim prescriptive easement and that therefore Mrs. Keist's reference to prescriptive easements is not germane. (Brief of Respondent, pps. 29-30, 32)

The difference between a claim for adverse possession on the one hand and a claim for a prescriptive easement on the other is critical especially in the context of this case. Adverse possession requires — as the doctrine would imply — actual possession of the land claimed. *Chaplin v. Sanders, supra; ITT Rayonier, Inc. v. Bell*, 112 Wn.2d 754, 757, 774 P.2d 6 (1989). In most cases, the person claiming adverse possession must be in physical possession of every part of the land that he claims. *Stoebuck & Weaver Real Estate: Property Law* 17 Wash.Prac. §810

(2004).¹ By contrast, a person claiming an easement by prescription must only show use of another's land. *Stoebuck & Weaver Real Estate: Property Law* 17 Wash.Prac. §2.7 (2004).

It is clear that Mr. Malella and his predecessors have demonstrated some level of use of the disputed area. This includes utilization of the water source and use and maintenance of the trails, and picking up litter along the river. This is not equivalent to possession, however, because the use is necessarily transient.

In essence, Mr. Malella is arguing that any activity that would give rise to a prescriptive easement would also give the person claiming the easement title to the land over which the use is made by adverse possession. Crediting such a position would lead to unprecedented forfeiture of the rights of persons in title to real property. It would allow every person claiming a prescriptive easement over the property of another also to claim title to the servient tenement by adverse possession.

Mr. Malella cannot claim that he can establish possession because of maintenance of the trails by him and his predecessors. Maintenance of the area where the prescriptive easement is claimed is used to demonstrate

¹ Professor Stoebuck also notes the "constructive possession" exception to this rule. That exception is present when the adverse possession claimant argues possess based on "color of title." *Stoebuck & Weaver Real Estate: Property Law* 17 Wash.Prac. §8.20 (2004). That doctrine does not apply here. The findings of fact contain no reference to any deed or other document under which Mr. Malella could claim "color of title."

use by the person claiming the easement. *Drake v. Smersh*, 122 Wn.App. 147, 89 P.3d 726 (2004). Furthermore, parties have sought and obtained prescriptive easements for the very purpose of maintenance of irrigation ditches. *Ochfen v. Kominsky*, 121 Wash. 60, 207 P. 1050 (1922); *Hovila v. Bartek*, 48 Wn.2d 238, 292 P.2d 877 (1956); *Yakima Valley Canal Co. v. Walker*, 76 Wn.2d 90, 455 P.2d 372 (1969); *Sylvester v. Imhoff*, 81 Wn.2d 637, 503 P.2d 734 (1972).

V. There Was No Neighborly Accommodation.

Mr. Malella claims that the uses of Mrs. Keist, her family, and associates are not significant because they amount to “neighborly accommodation.” The facts of this case simply do not support this claim.

Where “neighborly accommodation” has been found to be present, the party claiming title to the property did not interfere with the use of the premises made by the person so “accommodated.” In *Frolund v. Frankland*, 71 Wn.2d 812, 431 P.2d 188 (1967), owners of neighboring beach properties and their children came onto and played on disputed property without objection. In *Crites v. Koch*, 49 Wn.App. 171, 741 P.2d 1005 (1987), the true owners used disputed property without objection to park farming equipment and as a shortcut to another parcel of land. In *Lilly v. Lynch*, 88 Wn.App. 306, 945 P.2d 727 (1997), the owner claiming adverse possession of land upon which a boat ramp was situated allowed

regular and unfettered use of the boat ramp by others as, in the words of the Court, neighborly accommodation.

Mr. Malella cannot claim the benefit of “neighborly accommodation” because he did not “accommodate” Mrs. Keist, her family, and her associates. To the contrary, he sought to eject them whenever they came onto the property. (CP 40, FF 20.1, 20.2; CP 41, FF 21.1; CP 43, FF 25.3; CP 42, FF 24.2)

Mr. Malella simply does not address how the rule regarding “neighborly accommodation” can be applicable in light of these facts.

VI. Mr. Malella Is Not Entitled to the Entire Disputed Area Based on the Court’s Holding in *Lloyd v. Montecucco*.

Notwithstanding the fact that Mr. Malella and his predecessors used only a very small portion of the disputed area, Mr. Malella states that he is entitled to the whole. He rests this assertion on the Court’s holding in *Lloyd v. Montecucco*, 83 Wn.App. 846, 853, 924 P.2d 927 (1996). Mrs. Keist discussed that case and this issue in some detail in the Brief of Appellant, pps. 41-44, and will not repeat the entirety of that discussion here.

One aspect of this issue calls for emphasis here. Mr. Malella and his predecessors have only possessed a very small portion for the entirety of the ten years prior to the filing of this suit — the area under which the

encroaching garage sits. By contrast, the parties claiming adverse possession in *Lloyd v. Montecucco, supra*, had constructed a bulkhead to protect the area from erosion; had planted and harvested trees in the disputed area; and had also planted a garden in the area. In effect they had established possession of virtually the entire area. The sole issue was whether the line for the property that was adversely possessed should be straight or needed to follow the precise jagged edge of the property they adversely possessed. Therefore, the case cannot be said to stand for the proposition that use of a portion of a disputed area somehow entitles a claimant to title by adverse possession of the entire area.

VII. Mr. Malella Is Not Entitled to an Award of Attorney's Fees.

Mr. Malella claims entitlement to an award of attorney's fees. However, his Brief contains no citation to any authority justifying that request. For that reason, he cannot obtain an award of attorney's fees. *Wilson Court Ltd. Partnership v. Toni Maroni's, Inc.*, 134 Wn.2d 692, 710 *fn. 4*, 950 P.2d 590 (1998); *Austin v. U.S. Bank of Washington*, 73 Wn.App. 293, 313, 869 P.2d 404 (1994); *Lakes v. von der Mehden*, 117 Wn.App. 212, 220, 70 P.3d 154 (2003).

In any event, attorney's fees can only be awarded to the prevailing party, and Mr. Malella will not prevail. Even if he did prevail, an award of attorney's fees is not available in actions to quiet title on the basis of

adverse possession. As is well-established, attorney's fees can only be awarded if there is a statute, contractual provision, or recognized rule in equity to justify such an award. *Wagner v. Foote*, 128 Wn.2d 408, 416, 908 P.2d 884 (1996); *Weismann v. Safeco Insurance Company of Illinois*, 157 Wn.App. 168, 236 P.3d 240 (2010). There certainly is no contract between the parties. There is also no statute or recognized ground in equity that would justify an award of attorney's fees in this matter. Mr. Malella is not entitled to an award of attorney's fees.

CONCLUSION

The trial court's findings of fact that are supported by substantial evidence simply do not support the conclusions of law it made. At best, Mr. Malella is entitled to a prescriptive easement to the water source together with the accompanying equipment. Furthermore, Mr. Malella is not entitled to an award of attorney's fees.

RESPECTFULLY SUBMITTED this 29 day November, 2010.



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NO. 40500-8-II
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

COURT OF APPEALS
DIVISION II
10 DEC 11 PM 1:20
STATE OF WASHINGTON
BY [Signature]
DEPUTY

ANTHONY MALELLA,

Plaintiff/Respondent,

v.

LONA KEIST, individually and as Trustee of the LONA POULSEN REVOCABLE LIVING TRUST; STEVEN D. KOCH and JANE DOE KOCH, husband and wife; JOHN E THOMAS and JANE DOE THOMAS, husband and wife; GEORGE R. ELKINS and JANE DOE ELKINS, husband and wife; MARC ELKINS, SR., and JANE DOE ELKINS, husband and wife; MARC ELKINS, JR., and JANE DOE ELKINS, husband and wife; and MEREDITH ELKINS and JOHN DOE ELKINS, husband and wife,

Defendant/Appellant

APPEAL FROM THE SUPERIOR COURT

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STATE OF WASHINGTON)
) ss.
County of Clark)

THE UNDERSIGNED, being first duly sworn, does hereby depose
and state:

1. My name is LORRIE VAUGHN. I am a citizen of the
United States, over the age of eighteen (18) years, a resident of the State of
Washington, and am not a party to this action.

2. On November 29, 2010, I caused a copy of the Brief of
Appellant to be hand delivered via Vancouver Legal Messengers to the
following person(s):

MR. RONALD W. GREENEN
GREENEN & GREENEN
1104 MAIN STREET, SUITE 400
VANCOUVER, WA 98660

I SWEAR UNDER PENALTY OF PERJURY THAT THE
FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY
KNOWLEDGE, INFORMATION, AND BELIEF.

DATED this 29th day of November, 2010.

Lorrie Vaughn
LORRIE VAUGHN

SIGNED AND SWORN to before me this 29 day of Nov., 2010.



B. Shafton
NOTARY PUBLIC FOR WASHINGTON
My appointment expires: 9-1-2011