

NO. 46380-6-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

WILLIAM M. McNEFF and ARACELI McNEFF,

Respondents,

v.

MARIA C. JOYCE,

Appellant.

Appeal from Superior Court of Wahkiakum County
Honorable Michael Sullivan
NO. 12-2-00025-4

APPELLANT'S REPLY BRIEF

Maria Joyce
Appellant *Pro Se*
P.O. Box 11
Roseburg, Washington 98643

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I. INTRODUCTION

When Appellant spoke about her mother's possession of the property as not adverse the meaning was clearly that the possession was peaceful, not that her mother was not claiming to be the true owner. Respondent's proof of title without probate was inadequate. Tenants in common have the right to possession and do not owe rent to the other tenants in common.

II. ARGUMENT

A. No Waiver of Adverse Possession.

Respondent's counsel asked Appellant about a complicated legal issue—adverse possession, as a non-lawyer she answered truthfully, but her answer should not be read to be a knowing waiver of anything.

B. No Proof of Ownership by Appellant.

Respondent claims Appellant cannot claim adverse possession because she and her predecessor (her mother) were tenants in common. But without probates for any of three estates, Harold Badger, Marvin Badger or Virginia Badger, any finding as to ownership is speculative at best.

C. No Rent Due by Tenants in Common.

Respondent's claim rent from a tenant in common. They cannot have it both ways. If Appellant is a tenant in common, she has the right to occupy the property and no obligation to pay rent. As set forth by the court in *Fulton v. Fulton*:

Absent ouster or exclusion of one cotenant by the other from free access to the common property, there can be no liability between cotenants for rental value of portions of the premises occupied by either. It should be noted, however, that we are not called upon,

ELIZABETH PENOYAR ATTORNEY AT LAW

November 12, 2015 - 3:47 PM

Transmittal Letter

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