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No. 70691-8

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COURT OF APPEALS, DIVISION I,  
FOR THE STATE OF WASHINGTON

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REGINALD K. WREN and BRENDA M. WREN, husband and wife,

Respondents,

v.

TAMMY S. BLAKEY, an unmarried person, and  
FLYING T RANCH, INC., a Washington corporation,

Appellants.

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BRIEF OF APPELLANTS

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A. INTRODUCTION

Since the early 1930s, a fence (“historic fence”) has existed between abutting farms in rural Snohomish County, Washington now owned by Flying T Ranch, Inc.<sup>1</sup> to the east and Reginald and Brenda Wren to the west. A large hedgerow<sup>2</sup> has grown along the fence over the years. Although the parties and their predecessors-in-interest treated the historic fence as the boundary between the properties for more than 50 years, it was not situated on the section/deed line (legally described “true” boundary line).

Blakey repaired or replaced sections of the historic fence in 1990.<sup>3</sup> She replaced the fence in its pre-existing and historic location. The parties, or their predecessors-in-interest, continued to graze livestock and raise hay and crops up to the edge of the hedgerow on their respective sides of the fence.

The underlying lawsuit was precipitated by Blakey’s repair and replacement of the fence in 2009. Blakey again replaced the fence in its historic location. The Wrens disagreed with the location of the fence and

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<sup>1</sup> Flying T is an active and duly registered Washington corporation. CP 48. Tammy Blakey serves as its president and is its sole shareholder. *Id.*; RP 323. Flying T owns the property located east of the fence. CP 51.

<sup>2</sup> A hedgerow is a row of shrubs or trees enclosing or separating fields. MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 577 (11th ed. 2004).

<sup>3</sup> Blakey’s activities were done for and on behalf of Flying T as its president.

filed suit to quiet title to the strip of land that lies east of where the fence has historically been situated (“disputed property”). They also alleged waste and injury to land under RCW 4.24.630 (“trespass”), timber trespass under RCW 64.12.030, and damages resulting from the escape of Flying T’s cattle due to inadequate fencing. Blakey and Flying T counterclaimed, alleging adverse possession of the disputed property.

After a four-day trial, the trial court rejected the adverse possession claim and quieted title in the Wrens. It awarded treble damages of more than \$42,000 to the Wrens on their trespass claim. Blakey and Flying T challenge the sufficiency of the evidence to support the trial court’s decision rejecting their adverse possession claim and quieting title to the disputed property in the Wrens.

Blakey and Flying T also challenge the trial court’s order imposing more than \$65,000 in attorney fees and costs against them. The trial court failed to issue appropriate findings of fact and conclusions of law to explain the basis for its award. Meaningful appellate review is not possible given the trial court’s failure to “show its work.” Accordingly, this Court should reverse the order determining fees and costs and remand to the trial court for entry of appropriate findings.

Even if the record is sufficient to permit meaningful appellate review of the trial court’s order, the Court should still reverse it and

remand for further proceedings. The trial court abused its discretion by awarding the Wrens an unreasonable and excessive amount of attorney fees where it did not segregate the fees.

Finally, the trial court erred by entering a judgment holding Blakey personally liable. Where substantial evidence does not support its apparent veil piercing, this Court should, at the very least, reverse the award of judgment against Blakey personally.

Costs on appeal should be awarded to Blakey and Flying T.

B. ASSIGNMENTS OF ERROR<sup>4</sup>

(1) Assignments of Error

1. The trial court erred in making finding of fact number 6.<sup>5</sup>
2. The trial court erred in making finding of fact number 7.
3. The trial court erred in making finding of fact number 14.
4. The trial court erred in making finding of fact number 17.
5. The trial court erred in making finding of fact number 18.
6. The trial court erred in making finding of fact number 19.
7. The trial court erred in making finding of fact number 20.

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<sup>4</sup> Copies of the trial court's memorandum decision, findings of fact and conclusions of law, order quieting title and judgment, and supplemental order and judgment for attorney fees are in the Appendix.

<sup>5</sup> Blakey specifically assigns error to any finding of fact or conclusions of law that purport to impose personal liability on her. *See, e.g.*, 85-86, 90-93 (FF 6-7, 11, 17, 20, 23, 25-29; CL 5-8).

8. The trial court erred in making finding of fact number 21.
9. The trial court erred in making finding of fact number 22.
10. The trial court erred in making finding of fact number 23.
11. The trial court erred in making finding of fact number 24.
12. The trial court erred in making finding of fact number 25.
13. The trial court erred in making finding of fact number 26.
14. The trial court erred in making finding of fact number 27.
15. The trial court erred in making finding of fact number 28.
16. The trial court erred in making finding of fact number 29.
17. The trial court erred in making finding of fact number 30.
18. The trial court erred in making conclusion of law number 3.
19. The trial court erred in making conclusion of law number 4.
20. The trial court erred in making conclusion of law number 5.
21. The trial court erred in making conclusion of law number 6.
22. The trial court erred in making conclusion of law number 7.
23. The trial court erred in making conclusion of law number 8.
24. The trial court erred by issuing a memorandum decision adverse to Blakey and Flying T on February 28, 2013.
25. The trial court erred by entering an order quieting title in the Wrens and a judgment imposing damages, attorney fees, and costs on Blakey and Flying T on June 3, 2013.

26. The trial court erred by entering an order on June 27, 2013 denying Blakey and Flying T's motion for reconsideration.

27. The trial court abused its discretion by entering a supplemental order and judgment for attorney fees in favor of the Wrens on July 23, 2013.

(2) Issues Pertaining to Assignments of Error

1. Did the trial court err by rejecting the defendants' adverse possession claim and quieting title to the disputed property in the plaintiffs where substantial evidence does not support the trial court's findings that the historic fence separating the parties' properties was never located on the section/deed line and that the individual defendant moved the historic fence? (Assignments of Error Nos. 4-7, 9, 24-26)

2. Did the trial court err by rejecting the defendants' adverse possession claim and quieting to the disputed property in the plaintiffs where substantial evidence does not support the trial court's findings that the defendants' possession of that property was not actual, open and notorious, hostile, and uninterrupted for the statutorily required 10 years? (Assignments of Error Nos. 3, 8-16, 18-22, 24-26)

3. Did the trial court abuse its discretion by entering an order awarding the prevailing plaintiffs their attorney fees and costs where it failed to utilize the lodestar method to calculate those fees and failed to enter any findings of fact or conclusions of law to support the award, thereby precluding meaningful appellate review? (Assignments of Error Nos. 17, 23, 25-27).

4. Did the trial court abuse its discretion by awarding the prevailing plaintiffs an unreasonable and excessive amount of attorney fees and costs where it did not segregate the fees it awarded for their successful claim from the fees attributable to their unsuccessful claims and also failed to segregate the fees incurred for their successful claim from any claims that did not permit a fee award? (Assignments of Errors Nos. 17, 23, 25-27)

5. Did the trial court err by disregarding the corporate entity and holding the individual defendant personally liable, jointly and severally with the corporate defendant, for the prevailing plaintiffs' damages in the absence of the factual findings requisite to veil piercing? (Assignments of Error Nos. 1-2, 24-27)

C. STATEMENT OF THE CASE

Flying T owns real property in Snohomish County, Washington that it uses for a cattle ranch and to grow crops.<sup>6</sup> CP 48, 51. Flying T purchased its property at a sheriff's sale in 1989, but did not take possession of it until it evicted the prior owner, Ed Tannis, approximately one year later.<sup>7</sup> RP 409, 432. The Wrens purchased their property from Robert and Winnie Rollins in 2004. RP 56. The Rollins purchased their property from Charles and Glenice Kroeze in 1983. RP 94. Charles Kroeze was born in a house on the property in 1934 and lived there until it was sold in 1983. Ex. 40, pp. 8, 28. According to Kroeze, the historic fence between the properties was installed sometime in the mid-1930s and was always considered the boundary between the properties. Ex. 40, pp. 26, 28.

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<sup>6</sup> The trial court erroneously found that Blakey and Flying T, "or either of them, are the owners" of the property. CP 85 (FF 6). Blakey has never personally owned the property and does not reside on it. CP 48, 51. Flying T holds the title. CP 51.

<sup>7</sup> The trial court erroneously found that Flying T acquired the property in 1991. CP 87 (FF 7). Flying T purchased the property in 1989, but did not take possession until October 1990. RP 432.

Sometime in the middle to late 1960s, Kroeze and Jack Thorsen, a predecessor-in-interest then owning Flying T's property, agreed to replace specific sections of the historic fence. Ex. 40, pp. 16-17. Thorsen decided not to replace his section of the historic fence after he sold his cattle. *Id.* at 18. Kroeze eventually replaced the entire historic fence. *Id.* at 17, 19.

Even Tannis and the Rollins recognized the historic fence as the boundary between the properties. CP 333, 337; RP 354, 358. But the fence was not situated on the section/deed line. CP 30, 32. The section/deed line is actually east of the fence. *Id.*

The properties on either side of the fence were used for agricultural purposes by the various property owners for decades. For example, the Kroezes and the Rollins used the property now owned by the Wrens as a dairy farm, to graze livestock, and to raise hay and crops. RP 92; Ex. 40, p. 9; Ex. 30. Tannis likewise used the property now owned by Flying T for agricultural purposes, as did his predecessor. CP 335-336; RP 236-37; Ex. 40, p. 18. Tannis leased his property to the Rollins for about three years, just before it was sold to Flying T in 1989. RP 93-94, 111-12. During that time, the Rollins farmed Tannis's property and raised corn or green chop for feed. CP 333; RP 93, 111. After Flying T purchased the property, the Rollins leased it from Flying T for one year. RP 112, 430, 432, 447; Ex. 56.

Through the years, the properties were each farmed by their respective owners up to the edge of the hedgerow. Exs. 8-26. The actual area of cultivation depended on the size of the hedgerow at the time.<sup>8</sup> *Id.*

Flying T used its property for cattle and to grow hay for feed. RP 315, 317, 430. It also used the property to cut firewood and to ride horses. RP 435. In 1990, Blakey prepared the property for cattle by repairing the fences surrounding it. RP 416. To repair the fence between the Rollins and Flying T properties, she first had to use a backhoe to cut down the hedgerow growing in front of it. RP 418-19, 424. In the course of doing this, she accidentally knocked down a section of the fence. RP 419, 423. She replaced that section with new barbed wire and steel t-posts and then repaired the sections that remained standing in their pre-existing and historic locations. RP 419-20. She also closed two gaps in the fence. RP 421. With one exception, she repaired the fence in its historic location. RP 422. The one exception was the gap at the north-end of the properties.<sup>9</sup> RP 411, 421, 432-33. While there was no longer any barbed wire fencing in the last approximately 50 feet between the

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<sup>8</sup> The hedgerow consists mainly of blackberry vines. CP 46. Although its width and height has varied over the years depending on the cultivation occurring on either side of the fence, it has been anywhere from 50 to 70 feet wide and 10 to 12 feet high. RP 62, 445. Despite the hedgerow's size, the fence posts were still visible from the air in 1983. RP 205; Ex. 12.

<sup>9</sup> Robert Rollins testified that he removed the fence at the north end, but never put it back up. RP 354.

properties at that end, a single hot wire<sup>10</sup> remained and ran to a mature alder tree.<sup>11</sup> RP 411, 421-22, 432-33. Blakey built a barbed wire fence to the alder tree at the north end of the properties, following the hot wire that then existed. RP 422. She ran the fence “just like it was when [she] found it.” RP 422. Following the hot wire to the alder tree caused the fence to veer to the west at the north end. CP 30. This is the only section of the fence ever moved from its historic location. RP 434.

The hedgerow eventually grew back. *See, e.g.*, Exs. 17-18. Flying T and the Rollins continued to graze livestock and raise hay and crops up to the edge of the hedgerow on their respective sides of the fence. Exs. 16-27.

After the Wrens purchased their property from the Rollins in 2004, they used the property to raise hay and to pasture horses. RP 63, 81. They cultivated their property up to the hedgerow. RP 81-82. They typically cut-back the hedgerow on their side of the fence annually. RP 81, 89-90.

In 2009, Blakey decided to fertilize Flying T’s primary ranch fields located five miles east of the property. RP 435. To do so, she first needed

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<sup>10</sup> A hot wire is electrically charged to give mild shocks to deter animals or people from crossing a boundary. RP 422.

<sup>11</sup> Blakey’s expert arborist, Tom Boyce, later opined that there was evidence of old barbed wire embedded in the alder tree in addition to the newer wire that Blakey attached in 2009. CP 47. Boyce estimated the old barbed wire had been attached to the tree more than 20 years ago, *id.*, which would correspond with Blakey’s assertion that she attached it in 1990.

to move the cows from those fields to the fields abutting the Wrens' property. RP 435-36. Prior to moving the cattle, she needed to repair the fence. RP 437. During the repair work, she and Reginald Wren got into a verbal altercation near where the repair work had already started. RP 439. Although Reginald claimed the property on which Blakey was working belonged to him, Blakey informed him that Flying T had owned the property for more than 20 years and that she had repaired the fence in that exact location in 1990.<sup>12</sup> RP 439. Blakey knocked down the hedgerow on the Flying T side to expose the fence and continued with the repairs. CP 329; RP 440, 442. Blakey had the fence repaired in its historic, existing location. CP 330; RP 434. Ex. 57. A huge hedge of berries remained on the Wrens' side of the fence. CP 330; RP 445; Exs. 43, 46, 49.

The Wrens disagreed with the location of the fence and filed suit to quiet title to the disputed property on November 25, 2009. CP 360-71. They sought damages from Blakey and Flying T for trespass, timber trespass, and for escape of Flying T's cattle due to inadequate fencing.<sup>13</sup> CP 362-63. They later engaged the services of a surveyor who prepared a

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<sup>12</sup> Reginald later admitted that the historic fence had been in place since the 1930s and conceded that Blakey had not moved it when she repaired and replaced it in 1990. RP 480.

<sup>13</sup> The Rollins were joined as third-party defendants; the third-party claims were later bifurcated for trial. CP 338-39.

sketch (“Lloyd sketch”) showing the location of both the section/deed line and the existing fence between the two properties. RP 75; Ex. 6. Blakey and Flying T counterclaimed, alleging adverse possession of the disputed property. CP 355.

The suit proceeded to a bench trial in February 2013 before the Honorable George F. Appel that lasted four days. The trial court heard testimony from a number of witnesses and admitted more than 50 exhibits. CP 106-113. After trial, the court determined the historic fence and the section/deed line were on the same line and that Blakey and Flying T failed to prove adverse possession by a preponderance of the evidence. CP 8. Relying on an erroneous exhibit (exhibit 28), it decided that the Wrens “are the owners of this parcel represented by the Lloyd survey.” RP 543; Exs. 6, 28. It then stated that the fence was “wrong. It needs to be taken down and removed to the Defendants’ side of the property line as demonstrated by the Lloyd survey[.]” RP 546. It entered detailed findings of fact and conclusions of law, and quieted title to the disputed property in the Wrens. CP 81-93.

The Wrens requested \$69,859.63 in attorney fees and costs under RCW 4.24.630. CP 312-413. Although the Wrens discounted their request to account for the fees incurred in preparing a summary judgment motion that was never filed, they did not otherwise segregate their fees.

CP 374-375. Blakey and Flying T objected. CP 449-453. The trial court granted the Wrens' request and found the fees they incurred reasonable. CP 92. Despite finding the Wrens incurred \$69,859.63 in attorney fees and costs, the trial court imposed only \$65,497.13 when it reduced the award to judgment. CP 14, 17, 92.

Blakey and Flying T moved for reconsideration, which the trial court denied on June 27, 2013. CP 19-20. The trial court entered a supplemental order and judgment for attorney fees on July 23, 2013 to award the Wrens the attorney fees and costs they incurred in responding to the motion. CP 1-3. Blakey and Flying T timely appealed. CP 4-21, 428-448.

D. SUMMARY OF ARGUMENT

Blakey and Flying T challenge the sufficiency of the trial court's findings that the historic fence and the section/deed line were along the same line and that when Blakey repaired the fence in 2009 she relocated it west of that line. They also challenge the trial court's findings that they did not adversely possess the disputed property because their activities were not actual, open and notorious, hostile, and uninterrupted for the statutorily required 10-year period. Where substantial evidence does not support the trial court's findings, those findings do not support the court's legal conclusions and the judgment must be reversed.

Contrary to the trial court's findings, substantial evidence shows that the fence has always been located west of the section/deed line. The only exhibit presented at trial to show otherwise (exhibit 28) was not prepared by a land surveyor. Three professional land surveyors independently surveyed the parties' properties at different times over the years. All three agreed that the historic fence and the section/deed line are not on the same line. Substantial evidence demonstrates that the historic location of the fence has never been on the section/deed line. The trial court erred by finding that it was.

Substantial evidence also does not support the trial court's finding that Blakey moved the fence in 2009. That the fence was not located on the section/deed line is not evidence that she moved it in 2009. The evidence from the three land surveyors and the photos offered at trial by Blakey and Flying T confirm that the fence was never moved.

At a minimum, this Court should reverse and order the trial court to reestablish the boundary at the existing fence location, which is its historical location.

Substantial evidence also does not support the trial court's finding that Blakey and Flying T did not adversely possess the disputed property. To establish ownership of that property by adverse possession, Blakey and Flying T had to show possession for 10 years that was (1) exclusive,

(2) actual and uninterrupted, (3) open and notorious, and (4) hostile. They can “tack” the possession of a predecessor-in-interest to establish the use required for adverse possession. Title to the disputed property should have vested automatically in Flying T where Flying T and its predecessors-in-interest satisfied all of the required elements for more than 50 years.

Where the court’s findings are not supported by substantial evidence, it incorrectly concluded that Blakey and Flying T failed to establish adverse possession. The trial court therefore erred by entering a judgment in favor of the Wrens. This Court must reverse it. Moreover, since Blakey and Flying T and their predecessors-in-interest adversely possessed the disputed property for more than 50 years, they cannot be found to have trespassed or to have damaged the Wrens’ property. If this Court reverses the judgment quieting title in the Wrens, it should reverse the judgment as to the Wrens’ trespass claim because that claim would not be supported by substantial evidence.

Even if the Court refuses to vacate the trial court’s order rejecting Blakey and Flying T’s adverse possession claim and instead quieting title in the Wrens, it must still address the propriety of the trial court’s fee award. The record presented to this Court to support the trial court’s attorney fee award is insufficient to permit meaningful appellate review.

The trial court failed to “show its work” by issuing appropriate findings of fact and conclusions of law. Accordingly, the Court should reverse the fee award and remand for the entry of appropriate findings and the calculation of fees using the lodestar method.

Regardless of the sufficiency of the record with respect to the award of attorney fees, the trial court abused its discretion by awarding the Wrens an unreasonable and excessive amount of attorney fees because it failed to properly segregate fees. The trial court made no effort to segregate time spent on the Wrens’ successful claims and claims for which no award is permitted from the time spent on their successful trespass claim for which they were entitled to fees. Consequently, this Court should reverse the fee award and remand to the trial court with instructions to award the Wrens attorney fees solely attributable to their successful trespass claim.

The trial court erred by entering a judgment holding Blakey personally liable for the Wrens’ damages. To the extent the court may have based its decision to hold Blakey personally liable on piercing the corporate veil, it erred by doing so in the absence of factual findings requisite to veil piercing.

E. ARGUMENT

(1) The Trial Court Erred By Rejecting the Adverse Possession Claim and Quieting Title in the Disputed Property in the Wrens

Blakey and Flying T first challenge the trial court's findings that the historic fence and the section/deed line were along the same line and that when Blakey repaired the fence in 2009 she relocated it west of that line. CP 89-90 (FF 17-20). They also challenge the trial court's findings that they did not adversely possess the disputed property because their activities were not actual, open and notorious, hostile, and uninterrupted for the required 10-year period. CP 88, 90 (FF 14, 21). Substantial evidence does not support the contested findings; accordingly, those findings do not support the trial court's legal conclusions (CL 3-8) and the judgment should be reversed.

Following a bench trial, this Court's review is limited to determining whether the trial court's factual findings are supported by substantial evidence and, if so, whether the findings support the trial court's conclusions of law and judgment. *Sunnyside Valley Irrigation Dist. v. Dickie*, 111 Wn. App. 209, 214, 43 P.3d 1277 (2002). "Substantial evidence" is evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise. *Ridgeview Props. v. Starbuck*, 96 Wn.2d 716, 719, 638 P.2d 1231 (1982).

Substantial evidence does not support the trial court's findings that the historic fence was located on the section/deed line. On the contrary, abundant evidence confirms that the historic fence was located west of the section/deed line. Russell Coffelt, PLS, surveyed Flying T's property in 1992. Ex. 53 (page identified by Vol. 2572 Page 2163 in the bottom right-hand corner). Coffelt's survey clearly depicts the fence located west of the section/deed line between what is now the Wrens' property and Flying T's property. *Id.* William Lloyd, PLS, surveyed the Wrens' property in 2010. Ex. 6.<sup>14</sup> Like Coffelt's survey, Lloyd's survey depicts the fence located west of the section/deed line. *Id.* A third land surveyor, Robert Huey, PLS, surveyed Flying T's property in 2013. CP 30. Huey's survey locates the fence west of the section/deed line. *Id.* All three surveyors agree that the fence is located west of the section/deed line.

The Wrens' photogrammetrist, Terry Curtis,<sup>15</sup> produced a series of exhibits based on historic aerial photographs of both properties. Exs. 8-27. He testified that fence posts were visible on the 1983 aerial

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<sup>14</sup> Blakey and Flying T had no way to know that the Wrens would be using exhibit 6 as a trial exhibit because the Wrens did not timely disclose their evidence. CP 79, 127-31; RP 32. Blakey and Flying T received the Wrens' evidence just a few days prior to trial. CP 79; RP 4. Although they moved in limine to exclude it, the trial court denied the motion. RP 43. They were left having to rebut the evidence on reconsideration. CP 79-80.

<sup>15</sup> Curtis is not a professional land surveyor. RP 154.

photo identified as exhibit 12.<sup>16</sup> RP 174. He superimposed a line representing his observation of the fence posts from exhibit 12 onto a number of the aerial photos, including exhibit 28, to show the location of the historic fence line. *See, e.g.*, RP 160, 162-68, 174; Exs. 8-24.

The problem with exhibit 28 is that it contains a number of significant errors. According to Curtis, the section/deed line and the historic fence coincided with each other. RP 206. To reach his flawed conclusion, Curtis superimposed an image he pulled from the Snohomish County Assessor's website (exhibit 24) onto the background image he pulled from exhibit 12 (the May 1983 aerial photo in which the historic fence posts are visible). RP 205. In the process of superimposing the two images, he conflated the historic fence and the section/deed line. Ex. 28. Curtis's conclusion that the section/deed line and the historic fence were in the same location is contrary to the findings of Coffelt, Lloyd, and Huey, all of whom are licensed surveyors and all of whom located the fence west of the section/deed line. Exs. 6, 53; CP 30. Exhibit 28 is the only exhibit presented at trial that showed the section/deed line in the same location as the historic fence line. As substantial evidence demonstrates, they are not.

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<sup>16</sup> Curtis's aerial photos also show a pattern of land use consistent with the location of the historic fence. RP 159-68, 205; Exs. 8-27.

Curtis compounded his location error by then overlaying the image he had created with Lloyd's sketch (exhibit 6), which made it appear that Blakey moved the fence west of its historic location and into the Wren's field. But the fence was never moved. Curtis admitted he had no way to verify that Lloyd's measurements were accurate and just assumed they were.<sup>17</sup> RP 206. Exhibit 28 was clearly erroneous and was the only evidence presented that showed the existing fence to be in a location other than its historic location.

Huey unequivocally established that historic fence and the existing fence are in the same location and that the section/deed line is east of the existing/historic fence location. CP 27, 32. The two exhibits attached to Huey's declaration are a recorded survey and a corrected version of exhibit 28.<sup>18</sup> CP 30, 32. Huey's corrected exhibit 28 shows the accurate location of the section/deed line, the historic fence, the existing fence, and Curtis' erroneous placement of the existing fence. CP 32. Curtis clearly erred when he located the section/deed line and the historic fence in the

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<sup>17</sup> Gerald Painter, PLS, testified for Blakey and Flying T that there was no way to tie the line depicted in Lloyd's sketch (exhibit 6) to the line Curtis depicted in exhibit 28. RP 367. In fact, doing so would be like comparing apples to oranges. *Id.* The only way to accurately superimpose Lloyd's sketch (exhibit 6) onto exhibit 12 (the aerial photo taken in May 1983) and generate exhibit 28 was if there were common elements on both. RP 368. But no common elements exist to link exhibit 6 to exhibit 12. *Id.*

<sup>18</sup> A color copy of the survey and Huey's corrections to exhibit 28 are included in the Appendix.

same location. Huey's narrative contains details to support his findings, including: old cedar posts, buried old barbed wire in debris and dirt, old steel posts and new steel posts, old and new barbed wire attached to those posts and embedded in trees up to one and one half inches. CP 30. He found evidence that the existing fence replaced and/or perpetuated a much older fence, which corresponds with Blakey's testimony. CP 30.

Exhibit 28 does not accurately reflect the section/deed line or existing fence location. Curtis's first misstep was to use the section/deed line from the Snohomish County image. As Painter testified, the section lines that Curtis superimposed onto exhibit 28 were inaccurate because the section line Curtis used was not located through a survey. RP 345. The section line on the 2007 Snohomish County image was just an approximation of where the line was between the properties; it was not a survey. *Id.* Painter also testified that Curtis did not tie his dimensions from the fence to any specific points. RP 342. Curtis's rendering "really doesn't tell you anything." *Id.* There is simply no way to tell the distance of the fence from the boundary line: "There's no way anybody could go out and rebuild that fence in the location shown, based on those dimensions. I couldn't go out and survey that line, replicate that line, based on that data." RP 343. Painter also noted that it would be difficult to relate the existing fence to the photo Curtis used as his starting point

(exhibit 12) because the images Curtis used to generate exhibit 28 were taken at different times. RP 349.

Blakey further confirmed Curtis's error. Curtis, who is not a surveyor, drew the fence veering off into the Wrens' field in exhibit 28. RP 449, 453. But the photographs that Blakey and Flying T introduced at trial unequivocally show that the fence remains *in the hedgerow, attached to the trees*.<sup>19</sup> Exs. 42-52.<sup>20</sup> Blakey nailed the barbed wire fence to the trees during her repairs in 1990; the trees have since grown around it. RP 401-02. Contrary to the trial court's findings, overwhelming evidence establishes that when Blakey repaired the fence again in 2009, she repaired it in the exact same spot where it had stood for more than 50 years.

The historic location of the fence has never been on the section/deed line line and the trial court erred by finding that it was. At a minimum, this Court should reverse and order the trial court to reestablish the boundary at the existing fence, which is its historic location.

Substantial evidence also does not support the trial court's finding that Blakey moved the fence in 2009. CP 89-90 (FF 17, 19-20). On the

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<sup>19</sup> Moreover, the distance between the alder tree and the cottonwood tree where Blakey ran the fence in 1990 and again in 2009 is 15 feet and not the 49.35 feet Curtis measured. RP 452-53; Exs. 58-59.

<sup>20</sup> The Wrens produced no photographic evidence to contradict the photos offered by Blakey and Flying T and admitted by the trial court.

contrary, Blakey and Flying T presented substantial evidence that the existing fence stands in its historic location and that it was not moved in 2009. That the fence was not located on the section/deed line in Lloyd's sketch (exhibit 6) is not evidence that Blakey moved it in 2009. Blakey testified that she repaired the fence in 1990 and again in 2009 *in its historic location, which is where she found it*. RP 422, 439. The only location change from Curtis's yellow historic fence line in exhibit 28 occurred when Blakey replaced approximately 50 feet at the north end of the properties *in 1990*. RP 411, 421-22, 432-33. Critically, Blakey was the *only* witness to testify that she saw the fence in the hedgerow between the properties and the only witness to testify that she physically worked the fence. *See, e.g.*, RP 62, 268, 416, 419. The Wrens and the Rollins testified that they could not see the fence through the hedgerow. RP 104, 238, 273. In fact, Reginald Wren testified that he did not see the fence until Blakey began clearing the hedgerow to the east of it for the repairs she undertook in 2009. RP 69, 73. Evidence from the three land surveyors and the photos offered by Blakey and Flying T confirm Blakey's testimony that she did not move the fence in 1990 or in 2009.<sup>21</sup>

Substantial evidence also does not support the trial court's finding that Blakey and Flying T did not adversely possess the disputed property.

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<sup>21</sup> That undisputed evidence also confirms that Blakey did not destroy the hedgerow on the Wrens' side of the fence as they claimed. *See, e.g.*, CP 30, Exs. 41-47.

CP 90 (FF 21). To establish ownership of the disputed property by adverse possession, Blakey and Flying T had to show possession for 10 years that was (1) exclusive, (2) actual and uninterrupted, (3) open and notorious,<sup>22</sup> and (4) hostile.<sup>23</sup> *Chaplin v. Sanders*, 100 Wn.2d at 863; *ITT Rayonier, Inc. v. Bell*, 112 Wn.2d 754, 757, 774 P.2d 6 (1989); RCW 4.16.020. They can also “tack” the possession of a predecessor-in-interest to establish the use required for adverse possession. *Roy v. Cunningham*, 46 Wn. App. 409, 413, 731 P.2d 526 (1986); RCW 4.16.020. Because the presumption of possession is in the holder of legal title, Blakey and Flying T had the burden of establishing the existence of each element by a preponderance of the evidence. *ITT Rayonier*, 112 Wn.2d at 757; *Teel v. Stading*, 155 Wn. App. 390, 394, 228 P.3d 1293 (2010). Title vests automatically in a claimant who satisfies all of these elements throughout the 10-year period. *Gorman v. City of Woodenville*, 175 Wn.2d 68, 72, 283 P.3d 1082 (2012).

Flying T possessed the disputed strip in an open and notorious manner, as did its predecessors-in-interest. For more than 50 years, the

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<sup>22</sup> Open and notorious requires a showing of use consistent with ownership. *Chaplin v. Sanders*, 100 Wn.2d 853, 863, 676 P.2d 431 (1984). The use and occupancy only needs to be like that of a true owner, considering the land’s nature and location. *Id.* at 861.

<sup>23</sup> Hostile requires a showing that the claimant treated the land as his own for the statutorily required period. *Chaplin*, 100 Wn.2d at 860-61.

fence has served as the clearly defined boundary between the properties. Ex. 40, pp. 26, 28; CP 333, 337. Despite the trial court's insinuation in the findings, Flying T need not have established a "blazed or manicured trail." *Lloyd v. Montecucco*, 83 Wn. App. 846, 854, 924 P.2d 927 (1996). Flying T, or its predecessors-in-interest, occupied, used exclusively, and maintained the property on Flying T's side of the fence for more than 50 years.

Flying T continued flying the flag of hostile ownership established by its predecessors. The disputed strip sat isolated by the fence in favor of Flying T for more than 50 years. Blakey, on behalf of Flying T, repaired and improved the fence not once, but twice, continuously walking across and taking advantage of the strip. So did Flying T's predecessors. This is an exercise of dominion over that property. More importantly, the Wrens presented no evidence that they, or their predecessors-in-interest, used or occupied any of the land to the east of the fence. The fence has demarcated the boundary between the properties for more than 50 years.

Where the court's findings are not supported by substantial evidence, it incorrectly concluded that Blakey and Flying T failed to establish adverse possession. The trial court erred by entering a judgment in favor of the Wrens; accordingly, this Court must reverse it. Where Blakey and Flying T adversely possessed the disputed property for more

than 50 years, they cannot be found to have trespassed or to have damaged the Wrens' property. If this Court reverses the judgment quieting title in the Wrens, it should also reverse the judgment as to the Wrens' trespass claim because that claim would not be supported by substantial evidence. CP 90-92 (FF 22-29; CL 2, 5-8). Should that occur, the Wrens are not entitled to an award of attorney fees and costs.

(2) The Trial Court Abused Its Discretion When it Awarded Attorney Fees and Costs to the Wrens

This Court engages in a two-step process when reviewing an award of attorney fees. *See Pub. Util. Dist. No. 1 of Klickitat County v. Int'l Ins. Co.*, 124 Wn.2d 789, 814, 881 P.2d 1020 (1994). First, the Court must determine whether the prevailing party was entitled to attorney fees. *Id.* Then, the Court must decide whether the amount of fees awarded was reasonable. *Id.*

Whether a party is entitled to attorney fees is a legal question which is reviewed de novo. *See Tradewell Group, Inc. v. Mavis*, 71 Wn. App. 120, 126, 857 P.2d 1053 (1993). By contrast, whether the amount of fees awarded was reasonable is reviewed under an abuse of discretion standard. *See, e.g., Boeing Co. v. Heidy*, 147 Wn.2d 78, 90, 51 P.3d 793 (2002) (citing *Brand v. Dep't of Labor & Indus.*, 139 Wn.2d 659, 665, 989 P.2d 1111 (1999)). A trial court abuses its discretion only when the

exercise of that discretion is manifestly unreasonable or based upon untenable grounds or reasons. *Id.*

Findings of fact and conclusions of law in support of an attorney fee award are mandatory. *See Mahler v. Szucs*, 135 Wn.2d 398, 435, 957 P.2d 632 (1998). This Court's task when reviewing a fee award is to review the trial court's findings of fact to determine whether they are supported by substantial evidence and, if so, whether they support the trial court's conclusions of law. *See Ridgeview*, 96 Wn.2d at 719. "Substantial evidence" is evidence sufficient to persuade a fair-minded, rational person of the truth of the declared premise. *See Holland v. Boeing Co.*, 90 Wn.2d 384, 390-91, 583 P.2d 621 (1978).

The trial court abused its discretion here because it failed to enter appropriate findings of fact and conclusions of law to support the fee award. But even if it did, the amount of fees awarded was unreasonable and excessive because it failed to segregate fees.

- (a) The trial court failed to enter appropriate findings of fact and conclusions of law to support the fee award

It is firmly settled under Washington law that a trial court must make an adequate record to support its fee award. *Mahler*, 135 Wn.2d at 435; *Skimming v. Boxer*, 119 Wn. App. 748, 755, 82 P.3d 707, *review*

*denied*, 152 Wn.2d 1016 (2004). “This record must be adequate to permit appellate review.” *Rhinehart v. The Seattle Times, Inc.*, 59 Wn. App. 332, 342, 798 P.2d 1155 (1990). The trial court must issue findings of fact and conclusions of law in support of its fee award to establish an adequate record. *Mahler*, 135 Wn.2d at 652. Cursory findings are insufficient. *In re Marriage of McCausland*, 159 Wn.2d 607, 620, 152 P.3d 1013 (2007) (cursory findings of fact, even when supported by the record, are insufficient); *In re Marriage of Horner*, 151 Wn.2d 884, 896-897, 93 P.3d 124 (2004) (conclusory findings are insufficient because the basis for the trial court’s decision is unclear and the appellate courts cannot review it).

Here, the trial court’s order granting the Wrens’ fee request is deficient because it lacks *any* findings of fact or conclusions of law. CP 17. The trial court’s separately filed findings and conclusions do not cure the defect. CP 92 (FF 30). For example, the court did not make any findings evaluating the reasonableness of the rate charged or the hours claimed by the Wrens’ counsel, which of the Wrens’ claims merited a fee award and which did not, or addressing the challenges by Blakey and Flying T to the fees claimed.<sup>24</sup> CP 17, 92. The court’s failure to enter the

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<sup>24</sup> The trial court’s single conclusion of law relating to the fee award merely states the Wrens are entitled to an award of their “reasonable costs, including but not limited to investigative costs and reasonable attorneys’ fees and other litigation-related costs, all to be determined by the Court.” CP 93 (CL 8). This is insufficient to support the award.

necessary findings was error. *Mahler*, 135 Wn.2d at 435; *Mayer v. City of Seattle*, 102 Wn. App. 66, 82, 10 P.3d 408 (2000).

Where, as here, the trial court fails to make the findings and conclusions required to support a fee award and the record is therefore insufficient to permit appellate review, remand is appropriate for the entry of findings. *Just Dirt, Inc. v. Knight Excavating, Inc.*, 138 Wn. App. 409, 157 P.3d 431 (2007); *Doe v. Spokane & Inland Empire Blood Bank*, 55 Wn. App. 106, 112, 780 P.2d 853 (1989). It was the Wrens' duty as the prevailing party to procure formal written findings supporting their position; they must "abide the consequences" of their failure to fulfill that duty. *Peoples Nat'l Bank v. Birney's Enters., Inc.*, 54 Wn. App. 668, 670, 775 P.2d 466 (1989). Accordingly, if this Court does not agree that the entire award against Blakey and Flying T must be reversed, this issue must still be remanded to the trial court for the entry of appropriate findings and the calculation of fees using the lodestar method.

(b) The trial court failed to segregate fees

Even assuming without agreeing that the record is adequate to support review, the Court should still reverse the fee award. The amount of attorney fees the trial court awarded to the Wrens is unreasonable under the abuse of discretion standard because it failed to properly segregate fees.

Washington law commands the trial court to take an active role in the calculation of attorney fees. The court should not simply be the instrumentality of the successful party. *Scott Fetzer Co. v. Weeks (Fetzer II)*, 122 Wn.2d 141, 151, 859 P.2d 1210 (1993) (reducing award of \$180,914 to \$22,454.28). Washington courts have thus adopted the “lodestar” approach when assessing reasonable attorney fees. *See Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 587-98, 675 P.2d 193 (1983). A lodestar award is arrived at by multiplying the number of hours reasonably worked by a reasonable hourly rate. *Id.* at 593. *See also Mahler*, 135 Wn.2d at 433-34 (expanding on the methodology established in *Bowers*). The first step when calculating the lodestar amount is to determine whether the attorney spent a reasonable number of hours securing his client’s successful recovery. *See Mahler*, 135 Wn.2d at 434. Necessarily, this decision requires the Court to exclude any wasteful or duplicative hours and any hours pertaining to unsuccessful theories or claims. *Fetzer II*, 122 Wn.2d at 151. *See also, Pham v. City of Seattle*, 159 Wn.2d 527, 538, 151 P.3d 976 (2007) (noting unproductive hours, hours associated with unsuccessful motions, and hours not sufficiently related to the successful claim must be excised). Counsel must provide contemporaneous records documenting the hours worked; however, such documentation need not be exhaustive or provided in minute detail.

*Bowers*, 100 Wn.2d at 597.

The next step is to determine the reasonableness of the attorney's hourly rate at the time he actually billed the client for the services. *Fisher Props., Inc. v. Arden-Mayfair, Inc.*, 115 Wn.2d 364, 377, 798 P.2d 799 (1990) (outside civil rights context, contemporaneous rates actually billed rather than current rates or contemporaneous rates adjusted for inflation will be employed).<sup>25</sup>

If attorney fees are recoverable for only some of a party's claims, the award "must properly reflect a segregation of the time spent on issues for which attorney fees are authorized from the time spent on other issues." *Dash Point Village Assocs. v. Exxon Corp.*, 86 Wn. App. 596, 611, 937 P.2d 1148, 971 P.2d 57 (1997) (quoting *Hume v. Am. Disposal Co.*, 124 Wn.2d 656, 672, 880 P.2d 988 (1994), *cert. denied*, 513 U.S. 1112 (1995)). Furthermore, if an award of attorney fees is authorized for only some of the claims, the award must properly reflect segregation between time spent on issues for which attorney fees are authorized and time spent on other issues. *Gaglidari v. Denny's Restaurants, Inc.*,

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<sup>25</sup> The final step would allow the Court to adjust the fee upward or downward to reflect other factors. *See, e.g., Fetzer II*, 122 Wn.2d at 150 (other factors include the difficulty of the questions involved, the skill required, customary charges of other attorneys, the benefit to the client, and the contingency or certainty in collecting the fee). *See also Mahler*, 135 Wn.2d at 433 n.20 (noting the factors in RPC 1.5(a) may be used to supplement a lodestar award). This step is not necessary here because the Wrens did not request a multiplier and the trial court did not consider it.

117 Wn.2d 426, 450, 815 P.2d 1362 (1991). Segregation is required even if the claims overlap or are interrelated. *Loeffelholz v. Citizens for Leaders with Ethics and Accountability Now (C.L.E.A.N.)*, 119 Wn. App. 665, 690, 82 P.3d 1199 (2004). But the trial court is not required to segregate the time if it determines that the various claims in the litigation are “so related that no reasonable segregation of successful and unsuccessful claims can be made.” *Hume*, 124 Wn.2d at 673.

In this case, the Wrens sought: (1) a decree quieting title; (2) a judgment for trespass (3) a judgment for timber trespass; and (4) a judgment for damages resulting from the escape of their cattle. CP 362-63. Although they prevailed on the majority of their claims at trial,<sup>26</sup> only the trespass claim permits the award of fees. RCW 4.24.630. The trial court apparently awarded attorney fees on this basis.<sup>27</sup>

The Wrens then requested \$69,859.63 in fees and costs. CP 376. Blakey and Flying T argued in response that the trial court should segregate time spent on the Wrens unsuccessful claims and claims for which no award is permitted from the time spent on their successful

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<sup>26</sup> The Wrens did not prevail on their timber trespass claim or their claim for damages resulting from the escape of their cattle because they did not assert those claims at trial. RP 299, 302.

<sup>27</sup> The trial court did not specify the basis for its fee award in its memorandum opinion, the findings of fact and conclusions of law, or the order quieting title and judgment, CP 12, 17, 92; however, the Wrens specifically requested attorney fees and costs under RCW 4.24.630. CP 373.

trespass claim. CP 449-536. But the trial did not segregate the fees it awarded to the Wrens for their successful claim from the fees attributable to their unsuccessful claims. CP 17, 92 (FF 30). Nor did it segregate the fees incurred for their successful claim from any claims that did not permit a fee award. *Id.* Instead, it awarded the Wrens all of the fees and costs they claimed.<sup>28</sup> CP 92 (FF 30). The trial court abused its discretion by failing to segregate the time spent.

*Manna Funding, LLC v. Kittitas County*, 173 Wn. App. 879, 295 P.3d 1197 (2013) and *Clausen v. Icicle Seafoods, Inc.*, 174 Wn.2d 70, 272 P.3d 827 (2012) are not only illustrative, but dispositive of the issue. In *Manna Funding*, the Kittitas County Board of County Commissioners twice denied Manna’s application for site-specific rezoning of its rural acreage near Roslyn. Manna sought relief under the Land Use Petition Act, chapter 36.70C RCW, and the trial court ordered Kittitas County (“the County”) to grant the rezone. Manna additionally sued the County for a claimed violation of RCW 64.40.020 and 42 U.S.C. § 1983, and for tortious interference with a business expectancy/tortious delay.

The trial court dismissed Manna’s lawsuit on summary judgment. The County then filed a motion and accompanying affidavit of counsel requesting an award of \$21,496.50 in attorney fees and \$1,665.99 in costs.

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<sup>28</sup> Despite finding the Wrens had incurred \$69,859.63 in attorney fees and costs, the trial court imposed only \$65,497.13. CP 14, 17, 92 (FF 30).

The County's attorney did not attempt to segregate fees attributable solely to the statutory claim. Manna argued that the County was required to do so and that any fee award must be limited to those the County could actually demonstrate were related to the statutory claim. The trial court's order awarding attorney fees stated, in its entirety:

Kittitas County, as the prevailing party under RCW 64.40.020, is awarded judgment for \$21,496.50 in attorney fees. The request for costs is denied because the costs requested do not qualify as court costs.

*Manna Funding*, 173 Wn. App. at 902.

The Court of Appeals, Division III affirmed the summary judgment order, but vacated the attorney fee award because the trial court failed to require the County to segregate out its attorney's time unrelated to its statutory claim. Relying on *Mayer*, Division III reiterated that if attorney fees are recoverable for only some of a party's claims, the award must properly reflect a segregation of the time spent on issues for which fees are authorized from time spent on other issues. *Id.* It then remanded to the trial court with instructions to award the County its attorney fees attributable solely to the RCW 64.40.020 claim.

In *Clausen*, 174 Wn.2d at 70, Clausen brought a maritime claim for maintenance and cure after suffering serious injuries while working aboard the vessel *Bering Star*. When he encountered persistent difficulties

in getting Icicle Seafoods and its adjusting firm to meet its obligation to pay him maintenance and cure during his recovery, he filed suit seeking damages for Icicle's negligence under the Jones Act, 46 U.S.C. § 30104, unseaworthiness of the *Bering Star*, and wrongful withholding of maintenance and cure.

After a favorable jury verdict, Clausen filed a post-trial motion requesting attorney fees. Icicle opposed the request and also argued for a reduction in the amount of attorney fees sought. The trial court determined that under federal maritime law, Clausen could recover attorney fees and costs only for time spent on his maintenance and cure claim. Because Clausen's three claims were intertwined, making the hours spent on each claim difficult to segregate, the trial court reduced his total fees and costs by 10 percent and awarded \$387,558.00 in fees and \$40,547.57 in costs. Icicle appealed, challenging among other things the amount awarded.

The Washington Supreme Court affirmed the fee award, holding that it was proper for the trial court to segregate hours spent on the maintenance and cure claim from other claims based on a generalized percentage reduction rather than on actual hourly records. In so holding, the *Clausen* court noted that permitting the use of a percentage reduction

to segregate fees is appropriate when “the specifics of the case make segregating actual hours difficult.” *Id.* at 82.

Like the trial courts in *Manna* and *Clausen*, the trial court here should have segregated time because the Wrens’ claims did not all relate to the same fact pattern but simply allege different bases for recovery. The case was primarily about a boundary dispute between the Wrens and Flying T, and the vast majority of time at trial was spent on that issue. The Wrens’ remaining claims, including their successful trespass claim, were secondary and relied on different evidence. Where the Wrens’ claims did not involve the same core facts or involve related legal theories, the trial court abused its discretion by failing to segregate the time spent.<sup>29</sup>

(3) The Trial Court Erred In Holding Blakey Personally Liable

Even if the trial court correctly quieted title to the disputed property in the Wrens, it erred by entering a judgment holding Blakey personally liable, jointly and severally with Flying T, for their damages. To the extent the trial court may have based its decision to hold Blakey personally liable on piercing the corporate veil,<sup>30</sup> it erred by doing so in the absence of the factual findings requisite to veil piercing.

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<sup>29</sup> Importantly, the trial court never found that the Wrens’ claims involved the same core facts. Nor did it find that distinguishing between their successful claims and unsuccessful claims was difficult.

<sup>30</sup> The trial court’s basis for holding Blakey personally liable is unclear because it was not documented in the findings of fact and conclusions of law. CP 92 (FF 30).

A corporation exists as an organization distinct from the personality of its shareholders. *State v. Northwest Magnesite Co.*, 28 Wn.2d 1, 182 P.2d 643 (1947). Its purpose is to limit liability. *Meisel v. M & N Modern Hydraulic Press Co.*, 97 Wn.2d 403, 410-11, 645 P.2d 689 (1982)). As a general rule, a corporate entity and the limitations on liability afforded by corporate structure will be respected by the courts. *Culinary Workers v. Gateway Cafe, Inc.*, 91 Wn.2d 353, 366, 588 P.2d 1334 (1979). *See also, Frigidaire Sales Corp. v. Union Props., Inc.*, 88 Wn.2d 400, 405, 562 P.2d 244 (1977) (holding that when shareholders conscientiously keep the affairs of their corporation separate from their personal affairs, the corporation's separate entity should be respected). Only in certain exceptional cases will the courts disregard a corporate entity and look through the form to the reality of the relations between persons and corporations. *Id.* *See also, Rapid Settlements, Ltd.'s Application for Approval of Transfer of Structured*, 166 Wn. App. 683, 692, 271 P.3d 925 (2012) (citations omitted) (holding that the corporate separateness that shields a shareholder from liability may be disregarded under certain conditions).

A corporate entity will be disregarded and liability assessed against shareholders in the corporation when the corporation has been intentionally used to violate or evade a duty owed to another. *Culinary*

*Workers*, 91 Wn.2d at 366. This may occur either because the liability-causing activity did not occur for the benefit of the corporation or because the liable corporation has been gutted and left without assets by those controlling the corporation in order to avoid actual or potential liability. See, e.g., *J. I. Case Credit Corp. v. Stark*, 64 Wn.2d 470, 392 P.2d 215 (1964); *W.G. Platts, Inc. v. Platts*, 49 Wn.2d 203, 298 P.2d 1107 (1956); *Harrison v. Puga*, 4 Wn. App. 52, 480 P.2d 247 (1971).

For a court to pierce the corporate veil, two separate, essential factors must be established. *Columbia Asset Recovery Group, LLC v. Kelly*, \_\_\_ Wn. App. \_\_\_, 312 P.3d 687 (2013). “First, the corporate form must be intentionally used to violate or evade a duty.” *Meisel*, 97 Wn.2d at 410. Second, the fact-finder must establish that disregarding the corporate veil is necessary and required to prevent an unjustified loss to the injured party. *Id.*

With regard to the first element, the trial court must find an abuse of the corporate form. *Id.* Typically, the injustice that dictates piercing the corporate veil involves fraud, misrepresentation, or some form of manipulation of the company to the member’s benefit and creditor’s detriment. *Id.*; *Truckweld Equip. Co., Inc. v. Olson*, 26 Wn. App. 638, 644-45, 618 P.2d 1017 (1980). With regard to the second element, wrongful corporate activities must actually harm the party seeking relief

so that disregard is necessary. *Meisel*, 97 Wn.2d at 410. Intentional misconduct must be the cause of the harm that disregarding the corporate form seeks to prevent. *Id.* Harm alone does not create corporate misconduct subject to corporate disregard. *Id.* at 410-11.

This Court reviews the facts underlying corporate disregard for substantial evidence, *Truckweld Equip.*, 26 Wn. App. at 643, and reviews de novo the legal conclusions that support corporate disregard. *Rogerson Hiller Corp. v. Port of Port Angeles*, 96 Wn. App. 918, 924, 982 P.2d 131 (1999), *review denied*, 140 Wn.2d 1010 (2000). The trial court's findings of fact and conclusions of law are insufficient to justify corporate disregard in this case.

Here, the trial court found that Blakey and Flying T, "or either of them, are the owners" of the real property adjoining the Wrens'. CP 85 (FF 6). It continually referred to Blakey and Flying T collectively as "the Defendants" and found that their actions damaged the Wrens. *See, e.g.*, CP 87-90 (FF 7-8, 9-12, 15-17, 20-22, 28-29). Substantial evidence does not support the trial court's decision to effectively pierce the corporate veil and hold Blakey personally liable for the Wrens' damages.

Here, the evidence establishes that Flying T is a duly registered Washington corporation and that it holds title to the property adjoining the Wrens' property. CP 48. Blakey serves as president and sole shareholder

of Flying T. CP 48, 51. She has never personally owned the property adjoining the Wrens' nor has she ever resided on it. CP 48, 51. That she is Flying T's sole stockholder is not enough to justify disregarding the corporate entity. *Nursing Home Bldg. Corp. v. DeHart*, 13 Wn. App. 489, 495, 535 P.2d 137 (1975) (holding a corporation's separate legal identity is not lost merely because all of its stock is held by one person). While there is no doubt that Blakey controlled Flying T, she did so only in her capacity as an officer. The Wrens produced no evidence that Blakey's activities were done for anything other than the benefit of Flying T and its interest in the property.

Despite the undisputed evidence, the trial court entered a judgment imposing joint and several liability on Blakey and Flying T. CP 92 (FF 30). But while the trial court included Blakey as a debtor liable for the judgment, it made no affirmative findings of fact on her personal liability and did not enter any conclusions of law to support her personal liability.<sup>31</sup> For example, the trial court did not find that Blakey failed to observe corporate formalities or that she overtly intended to disregard the corporate entity. Nor did it find that disregarding the corporate veil was necessary and required to prevent an unjustified loss to the Wrens. The

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<sup>31</sup> The trial court could not enter any findings or conclusions addressing the basis for Blakey's personal liability because the Wrens produced no evidence and made no arguments at trial to support such findings or conclusions.

trial court chose to disregard Flying T's corporate form and, without explanation, make Blakey and Flying T jointly and severally liable. This is not sufficient to pierce the corporate veil.

The burden was on the Wrens as plaintiffs to demonstrate why they were entitled to judgment against Blakey personally, when she does not hold title to the property east of the fence line and any acts attributable to her were done on behalf of Flying T. *See generally Navlet v. Port of Seattle*, 164 Wn.2d 818, 858, 194 P.3d 221 (2008). If the trial court fails to enter a finding on a material factual issue, this Court presumes that the party with the burden of proof failed to sustain his or her burden on that issue. *State v. Armenta*, 134 Wn.2d 1, 14, 948 P.2d 1280 (1997). Here, the trial court did not enter findings on the matter of Blakey's personal liability. Accordingly, the Wrens failed to sustain their burden of proof that Blakey should be personally liable for the award of attorney fees and costs. This Court should reverse the award of judgment against Blakey jointly and severally in her personal capacity.<sup>32</sup>

---

<sup>32</sup> The trial court denied Blakey and Flying T's motion for reconsideration on June 27, 2013. CP 19-20. The court entered a supplemental judgment on July 23, 2013 awarding additional fees and costs to the Wrens. CP 1-3. Once again it made no findings of fact or conclusions of law that established Blakey's personal liability for the Wrens' damages. CP 1-3.

F. CONCLUSION

Where the trial court's findings of fact are not supported by substantial evidence and fail to support the conclusions of law, that court's decision is erroneous. Accordingly, this Court should reverse the trial court's judgment rejecting Blakey and Flying T's adverse possession claim and instead quieting title to the disputed property in the Wrens and remand for further proceedings consistent with the Court's opinion.

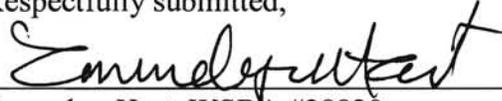
Assuming *arguendo* that attorney fees and costs were properly imposed jointly and severally against Blakey and Flying T, the trial court erred by failing to issue findings of fact and conclusions of law to support the award. Meaningful appellate review is therefore precluded. This Court should therefore vacate the fee award and remand for entry of appropriate findings of fact and conclusions of law. The trial court should be directed to abide by the principles governing the creation of a record to support a fee award and the principles requiring segregation.

Even if the record is sufficient to support review of the fee award, the trial court abused its discretion by awarding the Wrens an unreasonable and excessive amount of attorney fees because it failed to properly segregate fees. Consequently, this Court should reverse the fee award and remand to the trial court with instructions to award the Wrens attorney fees solely attributable to their successful trespass claim.

Costs on appeal should be awarded to Blakey.

DATED this 20<sup>th</sup> day of December, 2012.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Emmelyn Hart", written over a horizontal line.

Emmelyn Hart, WSBA #28820

Talmadge/Fitzpatrick

18010 Southcenter Parkway

Tukwila, WA 98188

(206) 574-6661

Attorneys for Appellants

Tammy S. Blakey and Flying T Ranch, Inc.

# Appendix



1 perhaps as much as seventy feet wide. The fence posts were still visible from the air, in places,  
2 in 1983, but it was otherwise completely occluded by the brush.

3 The defendant purchased the farm on the east side of the fence in 1989. In 1990, she  
4 used a backhoe to run over the blackberries, crushing them. In the course of this, she destroyed  
5 some of the fence. She replaced the fence with new barbed wire and steel t-posts, she said, right  
6 where she found it. The blackberries grew back. Except for that incident, the area on each side  
7 of the fence was left to the blackberries. Grazing, haying and crop-raising on each side took  
8 place at a considerable distance.

9 The plaintiffs purchased the farm on the west side of the fence in 2004. There, they  
10 raised hay and also pastured horses. Relations between the parties were peaceful until 2009,  
11 when the defendant hired a man named Mr. Floe to tear up the blackberries and put a new fence  
12 in. Initially, Mr. Floe sought out the plaintiffs and inquired where the boundary was. Using a  
13 survey, Mr. Wren showed him both on paper and on the land, as best he could, from a former  
14 railroad grade that passed both properties just north of the hedgerow.

15 Within a couple of weeks, Mr. Floe returned and, using machinery, destroyed the  
16 hedgerow and began placing a new fence on what Mr. Wren considered to be his property. His  
17 attention was caught by the noise and the sight of the scrub trees coming down. He went out to  
18 the site and demanded that Mr. Floe stop. The defendant appeared as well and ordered him to  
19 continue. Predictably, an ugly confrontation ensued between land owners. In the course of this,  
20 the defendant said, among other things, that she now owned the land through adverse possession.  
21 She invited the plaintiffs to sue her and they did. The defendant's fence, constructed of barbed  
22 wire upon metal posts, was completed in the fall of 2009.

23 Evidence from the plaintiffs consisted of a deed and a survey, indicating they owned the  
24 parcel some of which the defendant either did or did not adversely possess. They also produced,  
25 among other evidence, testimony and exhibits from an aerial photogrammatrist tending to show

1 that the surveyed boundary was the same as the historical fence line as demonstrated by its fence  
2 posts in 1983, via stereoptic aerial photographs of the unmistakable fence posts. A survey  
3 obtained by the plaintiffs demonstrates that the 2009 fence constructed by the defendant, in a line  
4 from south to north, curves westward upon the plaintiff's side until, where it reaches the  
5 abandoned railroad grade, it is nearly fifty feet from the actual boundary. Testimony from  
6 witnesses who lived on one side or the other of the historical fence tends to show that the 2009  
7 fence is considerably west of what they believed to be the historical boundary.

8 From all of this it was apparent that there is a roughly triangular disputed area between  
9 the 2009 fence and the historical boundary on the east and west, and bounded by the former  
10 railroad grade on the north. There only remained to determine whether the defendant had proved  
11 the elements of adverse possession by a preponderance of the evidence. On this point, there was  
12 very little presented by the defendant: The only evidence presented on the subject of possession  
13 of the land in the disputed area by anybody in the last fifty years was the 1990 incursion and  
14 fence destruction and replacement undertaken by the defendant. The area being then left to the  
15 blackberries, the plaintiff's activities do not amount to actual possession and the plaintiff has not  
16 begun to make out a case of adverse possession.

17 As an initial matter, this Court was required to decide what sort of a case this was. It was  
18 pleaded, by the defendant, as one of adverse possession. In testimony, however, she claimed that  
19 she never moved the fence line. Contrary to all other witnesses, the defendant said the fence  
20 installed by Mr. Floe in 2009 went right where the historic fence had been all along. However,  
21 she did not call Mr. Floe to testify and so it is not clear that his testimony would have been  
22 helpful to her and this Court will not assume that it would have been. The defendant also argued  
23 that the 2009 fence was actually straight, contrary to the plaintiffs' survey and contrary to the  
24 testimony of other witnesses. She also testified that the historical fence was not straight prior to  
25 her destroying it. However, she did not present any survey evidence of her own, nor did she

1 explain why she did not. Her position turned out to be, to the surprise of the Court, that the  
2 disputed area was not disputed at all; that she was not seeking to own it and was not in  
3 possession of it. Asked by the Court why this was an adverse possession case rather than a case  
4 about the location of a boundary, she explained through counsel that she was seeking to  
5 adversely possess a strip of land which she believes exists between the historical and current  
6 fence line and the true boundary line which she believes to be several feet to the east.

7       It is not an easy thing for the defendant to redefine the issue. If the disputed strip were,  
8 as the plaintiff argued through counsel, a strip between two parallel lines, then her fence would  
9 likewise be straight. She has utterly failed to prove by a preponderance that her fence is straight.  
10 In fact, the evidence is clear and convincing that her fence curves to the west. She has also failed  
11 to prove by a preponderance that the true boundary line and the historical fence, which she  
12 herself obliterated, aren't on the same line. The Court concludes that this is not a case about a  
13 historical fence that either is or is not on a boundary line. It is about a 2009 fence that was  
14 placed west of the true boundary line, and a disputed area to the east of the fence and to the west  
15 of the boundary line. The issue is a matter of whether the plaintiff adversely possessed the  
16 disputed area or did not. And the Court concludes she did not.

17       It would make no difference if the issue were framed as the defense now frames it. Even  
18 if the 2009 fence had been placed on the same line as the historic fence, and each fence stood  
19 several feet to the west of the true boundary, the defendant would still have to show she  
20 adversely possessed the area between her fence and the true boundary. She did not show this,  
21 either. Either way, the defendant's claim of adverse possession fails. The installation of the  
22 barbed wire fence in 2009 was a trespass. The fence must be removed and the boundary restored  
23 according to the Lloyd survey.

24       The plaintiffs claim treble damages under RCW 4.24.630, the Intentional Trespass  
25 statute. The statute awards treble damages where one "goes onto the land of another and

1 ...wrongfully causes waste or injury to the land, or wrongfully injures personal property or  
2 improvements to real estate on the land." RCW 4.24.630(1). Here, the damage to the land, if  
3 there was any, was to a hedgerow made up of blackberry bushes. The hedgerow was not built by  
4 any human, so it amounts neither to personal property nor to an improvement. It is merely a  
5 feature on the land, produced by nature. On the other hand, where its destruction caused the land  
6 to be less useful to the plaintiff, there still may be injury to the land. Here, the uncontroverted  
7 evidence is that the hedgerow served a useful function in that it contained all livestock as easily  
8 as a fence. Unlike a fence, it did not owe its existence to maintenance, being self-maintaining.  
9 Its thorns discouraged animals from going near it, so it wasn't even apt to be damaged by  
10 livestock. Because the land in the disputed area formerly contained livestock and, following the  
11 destruction of the hedgerow, it no longer can, the land has been injured.

12 The statute also requires that the plaintiff prove the waste or injury was wrongful. A  
13 person acts wrongfully if the person "intentionally and unreasonably commits the act or acts  
14 while knowing, or having reason to know, that he or she lacks authorization to so act." RCW  
15 4.24.630. Here, the defendant's statement that she owned the property by adverse possession  
16 amounts to an acknowledgement that she did not have rightful possession of the property.  
17 Therefore, her occupation of a portion of the Wren's farm was intentional. Also, the incursion  
18 took place in the face of opposition and was accompanied by confrontation and also taunting,  
19 where the plaintiff told Mr. Wren "sue me." The trespass was therefore unreasonable as well as  
20 intentional. Based on these things, the Court finds the destruction of the plaintiff's hedgerow to  
21 be wrongful.

22 When the injury to the land is not permanent and restoration is possible, the measure of  
23 damages is the reasonable expense of restoration. *Pepper v. J.J. Welcom Construction Co.*, 73  
24 Wn. App. 523, 871 P.2d 601 (1994). In this case, it is not practical to replace and regrow a  
25 hedgerow that took years to become a useful livestock barrier, so the Wrens are entitled to a

1 reasonable replacement. The Court should grant a measure of damage that "makes the injured  
2 party as whole as possible without conferring a windfall." *Pugel v. Monheimer*, 83 Wn. App.  
3 688, 692, 922 P.2d 1377 (1996). The defendant has argued that, in the event she lost, the  
4 plaintiffs would be entitled to the installation of a barbed wire fence.

5 The overwhelming evidence bearing on what kind of fence would constitute a reasonable  
6 replacement is that a barbed wire fence will not do. The plaintiffs keep horses, and horses are  
7 apt to be injured on barbed wire even though cattle can safely be contained by it. The fence must  
8 serve the same purpose as the destroyed hedgerow. The hedgerow was effective at discouraging  
9 horses from entering it yet it did not have any ability to injure them. The plaintiffs are entitled to  
10 a wooden fence of some sort to contain their horses long enough for the hedgerow to grow back.

11 The plaintiffs have argued that they are entitled to a fence constructed of six-by-six posts  
12 instead of four-by-six posts or 5 or 6-inch round treated posts. The reason why is that the four-  
13 by-six or five or six-inch posts aren't strong enough to contain horses. There was no evidence  
14 bearing on how long each fence lasts. Presumably, horses may push over a weaker fence as it  
15 ages. But the fence need not last as long as the former fence stood, which was more than fifty  
16 years. It only needs to last until the hedgerow grows back. By all accounts, the hedgerow grows  
17 quickly. Installation of a more expensive fence that will survive long after being buried in the  
18 newly re-grown hedgerow is unnecessary and may constitute a windfall. The plaintiffs are  
19 entitled to a fence constructed of five or six-inch posts, costing \$9,182.25, and this is the measure  
20 of their damages for the restoration of the land.

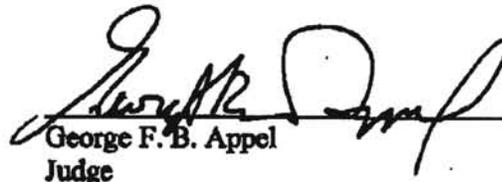
21 The plaintiffs also claim as damages the cost of hay to feed their horses while the horses  
22 were pastured on other property. This was necessary because the defendant had installed a  
23 barbed wire fence in the disputed area, and the plaintiffs were reasonably concerned that their  
24 horses would injure themselves on it.

1 The plaintiffs' testimony was that, prior to the 2009 barbed wire fence being installed on  
2 their property, they would mow the field in May and then pasture their horses on it through  
3 October. The plaintiffs would bale and sell the hay and their horses would eat the hay that grew  
4 up following that first cut. In this way, they did not need to buy hay to feed their horses for  
5 several months.

6 Once the barbed wire fence went up, the plaintiffs said, they were forced to keep their  
7 horses in a safe location away from the barbed wire fence. Because the horses were not  
8 pastured, the plaintiffs were compelled to buy hay to feed them at the rate of two bales a day, for  
9 five months out of the year. The hay cost them a grand total of \$4,284 for the years 2010 and  
10 2011. The plaintiffs have proved that the defendant's barbed wire fence trespass cost them this  
11 amount.

12 The total damages proved amounts to \$13,466.25. Trebled, the amount comes to  
13 \$40,398.75. Plaintiffs are entitled to a judgment in this amount plus their reasonable costs,  
14 including investigative costs, and reasonable attorney's fees and other litigation-related costs.

15  
16 Dated this 28th day of February 2013

17  
18   
19 George F. B. Appel  
20 Judge  
21  
22  
23  
24  
25

FILED

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SNOHOMISH CO. WASH

Judge: The Honorable George F. Appel  
Date of Hearing: June 3, 2013  
Time of Hearing: 9:00 a.m



CL15916399

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SNOHOMISH

REGINALD K. WREN and BRENDA M.  
WREN, husband and wife,

Plaintiffs,

vs.

TAMMY S. BLAKEY, an unmarried  
person, and FLYING T RANCH, INC., a  
Washington corporation,

Defendants.

NO. 10-2-03262-1

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

REGINALD K. WREN and BRENDA M.  
WREN, husband and wife,

Defendants as to  
Counterclaim and  
Third Party Plaintiffs,

and

ROBERT J. ROLLINS and WINNIE J.  
ROLLINS, husband and wife,

Third Party Defendants.

**THIS MATTER** having come on regularly for trial before the Honorable George  
F. Appel, Judge of the above-entitled Court on the 12th day of February, 2013; the

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

HUTCHISON & FOSTER  
Attorneys at Law  
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1 Plaintiffs appearing by and through their attorney, William B. Foster of Hutchison &  
2 Foster; the Defendants appearing by and through their attorney, Russell James  
3 Jensen; the Court having heard and considered the testimony of the witnesses, having  
4 considered the exhibits, and heard the argument of counsel; and considering itself fully  
5 advised in the premises; the Court now makes and enters the following:

6 **FINDINGS OF FACT**

7 1. That the Plaintiffs are the owners in fee simple of the real property  
8 described as follows, to wit:

9 **PARCELA:**

10 All that portion of the Southeast quarter of the Northeast  
11 quarter of Section 20, Township 32 North, Range 6 East,  
12 W.M., lying Northwesterly of the Northern Pacific Railway  
right of way;

13 EXCEPT that portion described as follows:

14 Beginning at the Northwest corner of said subdivision;

15 THENCE South 87°54'26" East along the North line of said  
subdivision a distance of 524.00 feet;

16 THENCE South 0°27'11" East parallel with the West line of  
said subdivision a distance of 239.79 feet;

17 THENCE in a Westerly direction in a straight line to a point  
on the West line of said subdivision a distance of 407.32  
feet South of the Northwest corner thereof;

18 THENCE North 0°27'11" West along said West line 407.32  
feet to the point of beginning; and EXCEPT that portion  
described as follows:

19 Beginning at the Northwest corner of said subdivision;

20 THENCE South 87°54'26" East along the North line of said  
subdivision a distance of 524.00 feet to the true point of  
beginning;

21 THENCE continuing South 87°54'26" East a distance of  
22 759.83 feet to the West boundary of the Burlington  
Northern Railroad;

23 THENCE South 56°30'00" West along said West boundary  
a distance of 74.30 feet to a point at the intersection of an  
old fence line projected to said West railroad boundary;

24 THENCE North 89°26'44" West to a point South 0°27'11"  
25 East of the true point of beginning;

26 THENCE North 0°27'11" West a distance of 57.9 feet to  
27 the true point of beginning;  
28

1 EXCEPT county road on the West side.

2 PARCEL B:

3 That portion of the Southeast quarter of the Northeast  
4 quarter of Section 20, Township 32 North, Range 6 East,  
5 W.M., lying Southerly of the right of way of the Northern  
Pacific Railway Company; excepting roads.

6 PARCEL C:

7 That portion of the Northeast quarter of the Southeast  
8 quarter of Section 20, Township 32 North, Range 6 East,  
9 W.M., in Snohomish County, Washington, lying  
10 Northwesterly of Highway 1-E, as granted to State Of  
11 Washington under Auditor's File Number 1594576; and  
EXCEPT road along the West line; also EXCEPT the  
following described tract:

12 Beginning at a point on the South line of the Northeast  
13 quarter of the Southeast quarter of Section 20, Township  
14 32 North, Range 6 East W.M. where it intersects with the  
15 Northwest right of way boundary of State Highway No. 530;  
16 THENCE Northeasterly along said right of way line 288  
feet to true point of beginning;  
17 THENCE Northwesterly at right angles to said right of way  
for 175 feet;  
18 THENCE Northeasterly and parallel with said road right of  
way 300 feet;  
19 THENCE Northwesterly at right angles to said right of way  
for 75 feet;  
20 THENCE Northeasterly to a point on the East line of said  
Section 20 which is 80 feet due North from the intersection  
21 of the Northwesterly right of way line of said secondary  
State Highway 1-E and the East line of said section;  
22 THENCE South 80 feet to the Northwesterly right of way  
line of said secondary State Highway 1-E;  
23 THENCE Southwesterly along said right of way to true  
point of beginning.  
24 (Also known as Parcel 2 of Snohomish County Short Plat  
25 #SP87 (4-74) recorded under Auditor's File Number  
26 2340489).



1 to the execution of the said Deed by Kroeze, Kroeze was the owner of the real  
2 property described in the said Deed, and was in actual possession of the real property  
3 described in the said Deed.

4 4. That the Kroeze acquired a portion of the real property above-described  
5 by Real Estate Contract dated March 31, 1964, executed by Milka Klein (hereinafter  
6 collectively referred to as "Milka"). Upon fulfillment of the terms and conditions of the  
7 said Real Estate Contract the property was conveyed to Kroeze by Statutory Warranty  
8 Deed dated the 21st day of September, 1976, which Deed was recorded on the 22nd  
9 day of September, 1976, under Snohomish County Auditor's File No. 7609220085.  
10 That at all times prior to the execution of the said Real Estate Contract by Milka, Milka  
11 was the owner of the real property described in the said Real Estate Contract, and was  
12 in actual possession of the real property described in the said Real Estate Contract.

13 5. That the Kroeze acquired a portion of the real property above-described  
14 by Real Estate Contract dated October 1, 1964, executed by Elmer R. Klein and Betty  
15 J. Klein, husband and wife (hereinafter collectively referred to as "Klein"). Upon  
16 fulfillment of the terms and conditions of the said Real Estate Contract the property  
17 was conveyed to Kroeze by Statutory Warranty Deed dated the 6th day of November,  
18 1968, which Deed was recorded on the 7th day of September, 1976, under Snohomish  
19 County Auditor's File No. 7909070096. That at all times prior to the execution of the  
20 said Real Estate Contract by Klein, Klein was the owner of the real property described  
21 in the said Real Estate Contract, and were in actual possession of the real property  
22 described in the said Real Estate Contract.

23 6. That the Defendants, TAMMY S. BLAKEY, an unmarried person, and  
24 FLYING T RANCH, INC., a Washington corporation, or either of them, are the owners  
25 of the real property described as follows, to wit:

26 Parcel A:

27 The SW ¼ NW ¼ of Section 21, Township 32 North Range  
28 6 East of the Willamette Meridian; EXCEPT the Burlington

1 Northern right of way; AND EXCEPT the State Highway  
2 right of way and all of Government Lot 3, Section 21,  
3 Township 32 North, Range 6 East of the Willamette  
4 Meridian lying South of the Burlington Northern right of way;  
5 and that portion of the E ½ W ½ NW ¼ SW ¼ and the E ½  
6 NW ¼ SW ¼, all in Section 21, Township 32 North, Range  
7 6 East of the Willamette Meridian lying north of the State  
8 Highway right of way.

9 Parcel B:

10 That portion of the NE ¼ of Section 21, Township 32 North,  
11 Range 6 East of the Willamette Meridian lying southeasterly  
12 of State Highway 530; EXCEPT that portion of the N ½ of  
13 said NE ¼ lying North of a line drawn parallel to and distant  
14 1,200 feet south of the North line of said N ½ NE ¼ of  
15 Section 21; AND EXCEPT that portion of the SW ¼ NE ¼  
16 lying West of Creek.

17 Parcel C:

18 That part of the SW ¼ SE ¼ of Section 12, Township 32  
19 North, Range 6 East of the Willamette Meridian lying and  
20 being South of the Arlington and Darrington Branch of the  
21 Burlington Northern Inc. right of way ; EXCEPT secondary  
22 State Highway 1-E; ALSO, all of Government Lot 1 of  
23 Section 13, Township 32 North, Range 6 East of the  
24 Willamette Meridian. ALSO all of Government Lot 5 of  
25 Section 13, Township 32 North, Range 6 East of the  
26 Willamette Meridian; EXCEPT the following triangular piece  
27 or parcel of land, to-wit: beginning at a point on the North  
28 bank of the Stillaguamish River 828 feet South of the center  
of the NE ¼ of said Section 13; thence North 828 feet to the  
center of said NE ¼ of said Section 13; thence South 14°30'  
West 690 feet to the North bank of the Stillaguamish River;  
thence Southeasterly along the river to the point of  
beginning.

Parcel D:

Beginning at the Northwest corner of the NE ¼ SW ¼ of  
Section 12, Township 32 North, Range 6 East of the  
Willamette Meridian; thence West 297 feet; thence South  
660 feet; thence West 33 feet; thence South to the South  
line of the Burlington Northern Inc. right of way, the true  
point of beginning; thence South to the North bank of the

1 Stillaguamish River; thence Easterly along said bank to the  
2 West boundary of Government Lot 1; thence North to the  
3 South line of the Burlington Northern, Inc. right of way;  
4 thence Westerly along the Southerly line of said right of way  
5 to the true point of beginning.

6 Parcel E:

7 Government Lot 1, in Section 12, Township 32 North,  
8 Range 6 East of the Willamette Meridian; EXCEPT that  
9 portion lying North of the Burlington Northern Inc. right of  
10 way; and EXCEPT Burlington Northern Inc.

11 All situate in the County of Snohomish, State of  
12 Washington.

13 7. That the said Defendants acquired the afore-mentioned real property by  
14 Sheriff's Deed recorded on the 24th day of October, 1991, which Deed was recorded  
15 in the office of the Snohomish County Auditor on the 24th day of October, 1991, under  
16 Snohomish County Auditor's File No. 9110240227.

17 8. The Plaintiffs' and Defendants' property share a common boundary line.  
18 Both the Plaintiffs' and Defendants' properties have historically been used as farms,  
19 either for the purpose of raising livestock or crops.

20 9. During the ownership of the Plaintiffs' property by both Kroeze and  
21 Rollins, the property was used as a dairy farm, or for the purpose of raising dairy cattle  
22 and operating a dairy farm. In connection with the use of the property as a dairy farm,  
23 both Kroeze and Rollins raised some crops on the property, which crops were  
24 primarily used for the feeding of the livestock raised on the property.

25 10. The owner of the Defendants' property prior to the Defendants was  
26 Edwin Tannis. Tannis used the property for agricultural purposes. From the late 1980's  
27 up until the property was subjected to a judgment execution and subsequently  
28 acquired by the Defendants at a Sheriff's Sale, Tannis leased the property now owned  
by the Defendants to Rollins. During the period of the time that the Tannis property  
leased by Rollins it was farmed by Rollins. The farming operation was for the purpose  
of raising corn or green chop, which was used to feed the Rollins' dairy herd.

1 11. Following the Defendants' acquisition of the property in 1991, and  
2 continuing through 1998, Rollins leased the property from the Defendants. During this  
3 period of time Rollins continued to farm the property to raise feed for their dairy herd.

4 12. The Plaintiffs' and Defendants' properties were historically separated by  
5 a barbed wire fence, strung along cedar fence posts, installed in the 1930s. Years of  
6 neglect caused the fence line to be overgrown with blackberries and scrub trees until  
7 the fence actually disappeared in a huge bramble berm or hedgerow that was  
8 approximately twelve (12) feet high and as much as seventy (70) feet in width. The  
9 fence posts upon which the original barbed wire fence was installed were still visible in  
10 places in aerial photographs taken in 1983, but were otherwise were completely  
11 obscured by the brush along the fence line.

12 13. During the ownership of either property by Kroeze, Rollins or Tannis,  
13 each owner or lessee farmed each parcel up to the edge of the hedgerow, the actual  
14 area of cultivation of either parcel depended upon the width of the hedgerow at the  
15 time.

16 14. In 1990 the Defendant used a backhoe to crush the blackberries that had  
17 grown upon along the fence line, and made some repairs to the fence in its historic  
18 location. Afterwards, the blackberries and brush grew back. This action was the only  
19 incursion into the area near the historical fence by anyone in the last fifty years. Except  
20 for this sole incident in 1990 the area on each side of the fence line was left to the  
21 blackberries. After the 1990 fence repair, grazing, haying and crop raising on each  
22 side of the fence line took place at a considerable distance from the fence line as  
23 dictated by the width of the hedgerow at any given time, which width fluctuated.

24 15. In September of 2009, the Defendants' employee, Andrew Floe, was  
25 hired to install a new fence. Initially, Mr. Floe sought out the Plaintiffs and inquired as  
26 to the location of the boundary line between the two properties. Mr. Wren showed Mr.  
27 Floe the location of the boundary line using both a survey of the property, and a visual  
28 inspection from the railroad grade that abutted both properties north of the hedgerow.

1           16. A couple of weeks later Mr. Floe returned to the property and, using  
2 machinery, destroyed the hedgerow and began placing a fence on what Mr. Wren  
3 considered his property. Mr. Wren ordered Mr. Floe to stop the work, and the  
4 Defendants ordered Mr. Floe to continue the work. In the course of this confrontation  
5 between the parties, the Defendants, through Ms. Blakey, said that she owned the  
6 property where Mr. Floe was installing the fence by adverse possession. The  
7 Defendants did not cease the work of installing the fence. The fence, which consisted  
8 of barbed wire and metal posts, was completed in the fall of 2009.

9           17. After the Defendants had completed the installation of the fence in 2009  
10 the Plaintiffs engaged the services of a surveyor who prepared a drawing showing the  
11 location of the boundary line between the two properties, and the fence that was  
12 installed in 2009 (Exhibit 6 admitted). The exhibit clearly shows that the fence installed  
13 in 2009 was located west of the boundary line between the two properties, ranging  
14 from 0.00 feet west of the boundary line at the southerly end to 49.35 feet west of the  
15 boundary line at the northerly end. The fence as installed in 2009 by the Defendants  
16 makes a wide swing to the west commencing at approximately the northerly one-half  
17 of the boundary line to its northern end.

18           18. The aerial photography evidence, and the interpretation thereof from the  
19 aerial photogrammatrist, demonstrates that the historical fence line and boundary line  
20 were the same location as indicated by the fence posts that are visible in the 1983  
21 aerial photographs. The location of the historic fence line is ascertained from the  
22 stereoptic aerial photographs from 1983 and the unmistakable fence posts shown in  
23 that aerial photograph.

24           19. According to the testimony of other witnesses who lived on, or farmed,  
25 property on either side of the historical fence shows that the 2009 fence is  
26 considerably west of what they considered to be the historic boundary, and also  
27 considerably west of the location of the historic fence line. Also, according to these  
28 same witnesses the historic fence line was a straight line north and south, as

THE NORTHERN BOUNDARY OF THE PROPERTY,

1 compared to the fence installed in 2009 by the Defendants which veered significantly  
2 to the west. Trees that were located west of the historic fence were now east of the  
3 fence installed by the Defendants in 2009. The historic fence that was located between  
4 the properties of the parties was a straight line located on the actual boundary line  
5 between the properties.

6 20. <sup>CONSISTING OF APPROXIMATELY 692 FEET FROM THE POPE CORNER TO</sup> The historical fence<sub>SA</sub> was located on the boundary between the two  
7 properties. The fence installed by the Defendants in 2009 was not located on the  
8 boundary between the two properties, but instead was west of the location of both the  
9 boundary line and the historic fence.

10 21. That the Defendants have failed to establish that they possessed any of  
11 the Plaintiffs' property west of either the boundary between the parties property, or  
12 west of the historic fence line. The only evidence presented on the Defendants' claim  
13 of possession was the 1990 incursion, fence destruction and replacement/repair, after  
14 which the area returned to the overgrown state that existed prior to this incursion. The  
15 Defendants' activities during the 1990 incursion and thereafter do not constitute  
16 possession of the property that is actual, open and notorious, hostile and uninterrupted  
17 for a ten (10) year period of time prior to the commencement of this action.

18 22. The hedgerow that existed on the boundary between the two properties  
19 was destroyed by the Defendants in 2009, and was a feature on the Plaintiffs' property  
20 that was useful to the Plaintiffs as it contained livestock on the Plaintiffs' property as  
21 easily as a fence according to the uncontroverted evidence. Unlike a fence, the  
22 hedgerow did not require maintenance, but instead was self-maintaining. Its thorns  
23 discouraged animals from going near it so it was not subject to damage from the  
24 livestock it contained. The destruction of this feature on the Plaintiffs' property  
25 constitutes injury to the Plaintiffs' property.

26 23. At the time of the installation of the fence by the Defendants in 2009, and  
27 the confrontation that ensued, the Defendants' statement that she owned the property  
28 by adverse possession is an acknowledgement that she did not have rightful

1 possession of the property. The Defendants knew at this time that they were entering  
2 upon property that was owned by the Plaintiffs, and therefore the Defendants actions  
3 in entering upon the property of the Plaintiffs was intentional.

4 24. The Defendants incursion upon the Plaintiffs' property in 2009 occurred  
5 in the face of opposition from the Plaintiffs and met with confrontation and taunting  
6 from the Defendants.

7 25. The removal of the hedgerow and the installation of a fence in 2009  
8 constitute a trespass upon the land of the Plaintiffs.

9 26. The trespass upon the Plaintiffs' property by the Defendants was  
10 unreasonable and intentional, and therefore was wrongful.

11 27. The Plaintiffs are entitled to the reasonable replacement of the natural  
12 barrier that existed between the properties wrongfully removed by the Plaintiffs, and it  
13 is not practical to replace the hedgerow that took years to grow. The Plaintiffs are  
14 entitled to the replacement of the barrier that existed between the two properties. The  
15 construction of a wooden fence is a reasonable replacement of the natural barrier  
16 removed by the Defendants.

17 28. The replacement of the barrier with a barbed wire fence is not  
18 appropriate since the Plaintiffs keep horses on their property. Barbed wire fencing is  
19 not appropriate for horses as they are apt to be injured by barbed wire. A wooden  
20 fence is the appropriate barrier to replace the hedgerow. The wooden fence that would  
21 adequately make the Plaintiffs as whole as possible without conferring a windfall upon  
22 them would be the installation of a wood fence constructed of five or six inch posts at a  
23 cost of \$9,182.25 plus Washington State Sales Tax in the amount of \$707.05, for a  
24 total cost of \$9,889.57.

25 29. As a result of the Defendants' removal of the hedgerow and the  
26 installation of the barbed wire fence that could endanger the Plaintiffs' horses, the  
27 Plaintiffs were unable to pasture their horses for two years. As a result the Plaintiffs  
28 were required to purchase hay to feed their horses at a cost of \$4,284.00.



1 4. That the Defendants have failed to establish any right, title or interest in  
2 any portion of the Plaintiffs' property, and any claim thereto by the Defendants' shall be  
3 dismissed with prejudice.

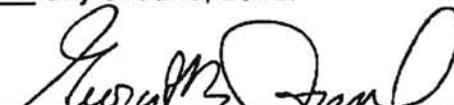
4 5. That the Defendants have intentionally trespassed upon the property of  
5 the Plaintiffs in contravention of the provisions of RCW 4.24.630. That the trespass by  
6 the Defendants was intentional and wrongful as defined in the said statute.

7 6. That the Plaintiffs have been damaged as the direct and proximate result  
8 of the Defendants' trespass, the reasonable measure of the Plaintiffs' damage is the  
9 sum of \$14,173.57.

10 7. That by virtue of the provisions of RCW 4.24.630 the Plaintiffs are  
11 entitled to treble the damages, for a total of \$42,520.71.

12 8. That the Plaintiffs are further entitled to an award of the Plaintiffs'  
13 reasonable costs, including but not limited to investigative costs and reasonable  
14 attorneys' fees and other litigation-related costs, all to be determined by the Court.

15 **DONE IN OPEN COURT** this 3<sup>rd</sup> day of June, 2013.

16   
17 \_\_\_\_\_  
18 The Honorable George F. Appel, Judge

19 Presented by:

20   
21 \_\_\_\_\_  
22 William B. Foster, WSBA #8270  
23 of Hutchison & Foster  
24 Attorneys for Plaintiffs

25 Approved for Entry, ~~Notice of~~  
26 ~~Presentation Waived:~~

*as to form / copy received*

27 ~~Russell James Jensen, WSBA #40475~~  
28 ~~of Mukilteo Law Offices~~  
~~Attorneys for Defendants, Blakey and Flying T Ranch~~

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

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J. D. Bristol, WSBA #29820  
of Gourley | Bristol | Hembree  
Attorneys for Defendants, Blakey and Flying T Ranch

---

Steven J. Peiffle, WSBA #14704  
of Bailey, Duskin & Peiffle  
Attorneys for Defendants, Rollins

Judge: The Honorable George F. Appel  
Date of Hearing: June 3, 2013  
Time of Hearing: 9:00 a.m

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SNOHOMISH

REGINALD K. WREN and BRENDA M.  
WREN, husband and wife,

Plaintiffs,

vs.

TAMMY S. BLAKEY, an unmarried  
person, and FLYING T RANCH, INC., a  
Washington corporation,

Defendants.

NO. 10-2-03262-1

ORDER QUIETING TITLE AND  
JUDGMENT

REGINALD K. WREN and BRENDA M.  
WREN, husband and wife,

Defendants as to  
Counterclaim and  
Third Party Plaintiffs,

and

ROBERT J. ROLLINS and WINNIE J.  
ROLLINS, husband and wife,

Third Party Defendants.

**JUDGMENT SUMMARY:**

1.	Judgment Creditor:	Reginald K. Wren and Brenda M. Wren
2.	Judgment Debtor(s):	TAMMY S. BLAKEY, an unmarried person; and FLYING T RANCH, INC., a

ORDER QUIETING TITLE  
AND JUDGMENT

HUTCHISON & FOSTER  
Attorneys at Law  
4300 - 19th Street SW  
P.O. Box 69  
Lynnwood, WA 98046-0069  
Telephones (425) 776-8147  
Facsimiles (425) 776-8140

		Washington corporation
3.	Principal Judgment Amount:	\$42,520.71
4.	Interest to Date of Judgment:	\$0.00
5.	Attorneys Fees:	\$65,497.13
6.	Costs:	NIL.
7.	Other Recovery Amounts:	None
8.	Principal Judgment Amount Shall Bear Interest at 12% per annum.	
9.	Attorneys Fees, Costs, and Other Recovery Amounts Shall Bear Interest at 12% per annum.	
10.	Attorney for Judgment Creditor:	William B. Foster
11.	Attorney for Judgment Debtor:	Russell James Jensen

\* \* \* ORDER AND JUDGMENT \* \* \*

**THIS MATTER** having come on regularly for trial before the Honorable George Appel, Judge of the above-entitled Court on the 12th day of February, 2013; the Plaintiffs appearing by and through their attorney, William B. Foster of Hutchison & Foster; the Defendants appearing by and through their attorney, Russell James Jensen; the Court having made and entered its Findings of Fact and Conclusions of Law, **IT IS NOW, THEREFORE**

**ORDERED, ADJUDGED AND DECREED** that all right, title and interest of the Plaintiffs in the following described real property, to wit:

PARCEL A:

ALL THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 20, TOWNSHIP 32 NORTH, RANGE 6 EAST, W.M., LYING NORTHWESTERLY OF THE NORTHERN PACIFIC RAILWAY RIGHT OF WAY;  
EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:  
BEGINNING AT THE NORTHWEST CORNER OF SAID SUBDIVISION;  
THENCE SOUTH 87°54'26" EAST ALONG THE NORTH LINE OF SAID SUBDIVISION A DISTANCE OF 524.00 FEET;

ORDER QUIETING TITLE  
AND JUDGMENT

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Attorneys at Law  
1300 - 198<sup>th</sup> Street SW  
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Lynnwood, WA 98048-0069  
Telephone: (425) 776-3147  
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THENCE SOUTH 0°27'11" EAST PARALLEL WITH THE WEST LINE OF SAID SUBDIVISION A DISTANCE OF 239.79 FEET;  
THENCE IN A WESTERLY DIRECTION IN A STRAIGHT LINE TO A POINT ON THE WEST LINE OF SAID SUBDIVISION A DISTANCE OF 407.32 FEET SOUTH OF THE NORTHWEST CORNER THEREOF;  
THENCE NORTH 0°27'11" WEST ALONG SAID WEST LINE 407.32 FEET TO THE POINT OF BEGINNING; AND EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:  
BEGINNING AT THE NORTHWEST CORNER OF SAID SUBDIVISION;  
THENCE SOUTH 87°54'26" EAST ALONG THE NORTH LINE OF SAID SUBDIVISION A DISTANCE OF 524.00 FEET TO THE TRUE POINT OF BEGINNING;  
THENCE CONTINUING SOUTH 87°54'26" EAST A DISTANCE OF 759.83 FEET TO THE WEST BOUNDARY OF THE BURLINGTON NORTHERN RAILROAD;  
THENCE SOUTH 56°30'00" WEST ALONG SAID WEST BOUNDARY A DISTANCE OF 74.30 FEET TO A POINT AT THE INTERSECTION OF AN OLD FENCE LINE PROJECTED TO SAID WEST RAILROAD BOUNDARY;  
THENCE NORTH 88°26'44" WEST TO A POINT SOUTH 0°27'11" EAST OF THE TRUE POINT OF BEGINNING;  
THENCE NORTH 0°27'11" WEST A DISTANCE OF 57.9 FEET TO THE TRUE POINT OF BEGINNING;  
EXCEPT COUNTY ROAD ON THE WEST SIDE.

PARCEL B:

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 20, TOWNSHIP 32 NORTH, RANGE 6 EAST, W.M., LYING SOUTHERLY OF THE RIGHT OF WAY OF THE NORTHERN PACIFIC RAILWAY COMPANY; EXCEPTING ROADS.

PARCEL C:

THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 20, TOWNSHIP 32 NORTH, RANGE 6 EAST, W.M., IN SNOHOMISH COUNTY, WASHINGTON, LYING NORTHWESTERLY OF HIGHWAY 1-E, AS GRANTED TO STATE OF WASHINGTON UNDER AUDITOR'S FILE NUMBER 1594576; AND EXCEPT ROAD ALONG THE WEST LINE; ALSO EXCEPT THE FOLLOWING DESCRIBED TRACT:

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BEGINNING AT A POINT ON THE SOUTH LINE OF THE  
NORTHEAST QUARTER OF THE SOUTHEAST  
QUARTER OF SECTION 20, TOWNSHIP 32 NORTH,  
RANGE 6 EAST W.M. WHERE IT INTERSECTS WITH  
THE NORTHWEST RIGHT OF WAY BOUNDARY OF  
STATE HIGHWAY NO. 530;  
THENCE NORTHEASTERLY ALONG SAID RIGHT OF  
WAY LINE 288 FEET TO TRUE POINT OF BEGINNING;  
THENCE NORTHWESTERLY AT RIGHT ANGLES TO  
SAID RIGHT OF WAY FOR 175 FEET; THENCE  
NORTHEASTERLY AND PARALLEL WITH SAID ROAD  
RIGHT OF WAY 300 FEET; THENCE NORTHWESTERLY  
AT RIGHT ANGLES TO SAID RIGHT OF WAY FOR 75  
FEET;  
THENCE NORTHEASTERLY TO A POINT ON THE EAST  
LINE OF SAID SECTION 20 WHICH IS 80 FEET DUE  
NORTH FROM THE INTERSECTION OF THE  
NORTHWESTERLY RIGHT OF WAY LINE OF SAID  
SECONDARY STATE HIGHWAY 1-E AND THE EAST  
LINE OF SAID SECTION;  
THENCE SOUTH 80 FEET TO THE NORTHWESTERLY  
RIGHT OF WAY LINE OF SAID SECONDARY STATE  
HIGHWAY 1-E;  
THENCE SOUTHWESTERLY ALONG SAID RIGHT OF  
WAY TO TRUE POINT OF BEGINNING.  
(ALSO KNOWN AS PARCEL 2 OF SNOHOMISH COUNTY  
SHORT PLAT #SP87 (4-74) RECORDED UNDER  
AUDITOR'S FILE NUMBER 2340489).

PARCEL D:

THAT PORTION OF THE WEST HALF OF THE WEST  
HALF OF THE NORTHWEST QUARTER OF THE  
SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP  
32 NORTH, RANGE 6 EAST, W.M., IN SNOHOMISH  
COUNTY, WASHINGTON, LYING NORTHWESTERLY OF  
HIGHWAY 1-E AS GRANTED TO STATE OF  
WASHINGTON UNDER AUDITOR'S FILE NUMBER  
1594576.

PARCEL E:

THAT PORTION OF THE SOUTHEAST QUARTER OF  
THE SOUTHEAST QUARTER OF SECTION 20,  
TOWNSHIP 32 NORTH, RANGE 6 EAST, W.M., LYING  
WEST OF SECONDARY STATE HIGHWAY 1-E, AS

ORDER QUIETING TITLE  
AND JUDGMENT

**HUTCHISON & FOSTER**  
Attorneys at Law  
4300 - 198<sup>th</sup> Street SW  
P.O. Box 69  
Lynnwood, WA 98046-0069  
Telephone: (425) 776-2177  
Facsimile: (425) 776-2140

1 CONVEYED TO THE STATE OF WASHINGTON BY  
2 DEED RECORDED UNDER AUDITOR'S  
3 FILE NUMBER 1611613.

4 PARCEL F:

5 THAT PORTION OF THE SOUTHWEST QUARTER OF  
6 THE SOUTHEAST QUARTER OF SECTION 20,  
7 TOWNSHIP 32 NORTH, RANGE 6 EAST, W.M., LYING  
8 EAST OF COUNTY ROAD SURVEY 1513.

9 SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF  
10 WASHINGTON.

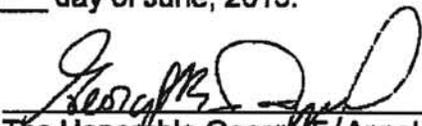
11 shall be, and the same is hereby, quieted in the Plaintiffs, REGINALD K. WREN and  
12 BRENDA M. WREN, husband and wife, free from any claim or interest of the  
13 Defendants, TAMMY S. BLAKEY, an unmarried person, and FLYING T RANCH,  
14 INC., a Washington corporation, or any person, persons or entity claiming through any  
15 of the said Defendants; and it is further

16 **ORDERED, ADJUDGED AND DECREED** that the Plaintiffs, REGINALD K.  
17 WREN and BRENDA M. WREN, husband and wife, shall have, and they hereby are  
18 awarded judgment against the Defendants, TAMMY S. BLAKEY, an unmarried  
19 person, and FLYING T RANCH, INC., a Washington corporation, jointly and  
20 severally, in the principal sum of \$42,520.71, together with the Plaintiffs' reasonable  
21 costs, including but not limited to investigative costs and reasonable attorneys' fees  
22 and other litigation-related costs in the amount of \$ 65,497.13, for a total  
23 judgment in the amount of \$ 108,017.84, which judgment shall bear interest  
24 at the rate of twelve percent (12%) per annum from the date hereof until paid; and it is  
25 further

26 **ORDERED, ADJUDGED AND DECREED** that all the claims of the Defendants,  
27 howsoever denominated shall be, and they are hereby, dismissed with prejudice.  
28

ORDER QUIETING TITLE  
AND JUDGMENT

1 **DONE IN OPEN COURT** this 3<sup>rd</sup> day of June, 2013.

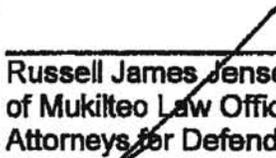
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4 The Honorable George F. Appel, Judge

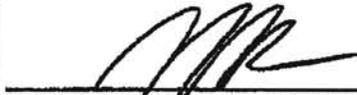
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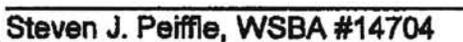
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6 William B. Foster, WSBA #8270  
7 of Hutchison & Foster  
8 Attorneys for Plaintiffs

9 Approved for Entry, <sup>As To Form</sup> ~~Notice of~~  
10 ~~Presentation Waived:~~

11  
12   
13 Russell James Jensen, WSBA #40475  
14 of Mukilteo Law Offices  
15 Attorneys for Defendants, Blakey and Flying T Ranch

16   
17 J. D. Bristol, WSBA #29820  
18 of Gouley | Bristol | Hembree  
19 Attorneys for Defendants, Blakey and Flying T Ranch

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21 Steven J. Peiffle, WSBA #14704  
22 of Bailey, Duskin & Peiffle  
23 Attorneys for Defendants, Rollins

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ORDER QUIETING TITLE  
AND JUDGMENT

**RECEIVED**  
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SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH.

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SNOHOMISH**

**REGINALD K. WREN and BRENDA M. WREN,**  
husband and wife,

**Plaintiff,**

**vs.**

**TAMMY S. BLAKEY, an unmarried person, and  
FLYING T. RANCH, a Washington Corporation,**

**Defendant.**

**No. 10-2-03262-1**

**ORDER DENYING  
DEFENDANT'S MOTION FOR  
RECONSIDERATION**

**REGINALD K. WREN AND BRENDA M. WREN,**  
husband and wife,

**Defendant as to Counterclaim and Third- Party  
Plaintiffs,**

**vs.**

**ROBERT J. ROLLINS AND WINNIE J. ROLLINS,**  
husband and wife,

**Third-Party Defendants.**

**THIS MATTER having come on defendant's motion for reconsideration, and this  
Court having read the briefs and materials submitted by the parties and then having**

considered the arguments contained in the briefs, NOW THEREFORE the motion is, and the same shall be, hereby DENIED.

DATED THIS 27<sup>th</sup> day of June, 2013.

  
JUDGE

FILED

Judge: The Honorable George F. Appel  
Without Oral Argument

2013 JUL 23 AM 9: 26

SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH



CL16471525

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SNOHOMISH

REGINALD K. WREN and BRENDA M.  
WREN, husband and wife,

Plaintiffs,

vs.

TAMMY S. BLAKEY, an unmarried  
person, and FLYING T RANCH, INC., a  
Washington corporation,

Defendants.

NO. 10-2-03262-1

SUPPLEMENTAL ORDER AND  
JUDGMENT FOR ATTORNEY'S FEES

REGINALD K. WREN and BRENDA M.  
WREN, husband and wife,

Defendants as to  
Counterclaim and  
Third Party Plaintiffs,

and

ROBERT J. ROLLINS and WINNIE J.  
ROLLINS, husband and wife,

Third Party Defendants.

JUDGMENT SUMMARY

1.	Judgment Creditor:	Reginald K. Wren and Brenda M. Wren
2.	Judgment Debtor(s):	TAMMY S. BLAKEY, an unmarried

SUPPLEMENTAL ORDER AND  
JUDGMENT FOR ATTORNEY'S FEES

133

		person; and FLYING T RANCH, INC., a Washington corporation
3.	Principal Judgment Amount:	\$0.00
4.	Interest to Date of Judgment:	\$0.00
5.	Attorneys Fees:	\$5,411.25
6.	Costs:	\$0.00
7.	Other Recovery Amounts:	None
8.	Principal Judgment Amount Shall Bear Interest at 12% per annum.	
9.	Attorneys Fees, Costs, and Other Recovery Amounts Shall Bear Interest at 12% per annum.	
10.	Attorney for Judgment Creditor:	William B. Foster
11.	Attorney for Judgment Debtor:	Justin Bristol

\* \* \* ORDER AND JUDGMENT \* \* \*

**THIS MATTER** having come on regularly for hearing before the Honorable George Appel, Judge of the above-entitled Court on the Plaintiffs' request for the award of additional attorney's fees; the Plaintiffs appearing by and through their attorney, William B. Foster of Hutchison & Foster; the Defendants appearing by and through their attorney, Justin D. Bristol; the Court having read and considered the Defendants' post-trial motions, and having denied each and every one of the Defendants' post-trial motions; and the Court having read and considered the Plaintiffs' response to the Defendants' post-trial motions, including the Plaintiffs' request for a supplemental award of attorney's fees incurred in responding to Defendants' post-trial motions; and the Court considering itself fully advised in the premises; **IT IS NOW, THEREFORE**

**ORDERED, ADJUDGED AND DECREED** that the Plaintiffs, **REGINALD K. WREN and BRENDA M. WREN**, husband and wife, shall have, and they hereby are awarded a supplemental judgment against the Defendants, **TAMMY S. BLAKEY**, an unmarried person, and **FLYING T RANCH, INC.**, a Washington corporation, jointly

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and severally, for the Plaintiffs' reasonable attorneys' fees incurred as a result of the Defendants' filing post-trial motions in the amount of \$5,411.25, which judgment shall bear interest at the rate of twelve percent (12%) per annum from the date hereof until paid; and it is further

**ORDERED, ADJUDGED AND DECREED** that the judgment entered hereby shall be, and it is, in addition to the relief granted in the Order and Judgment entered in this action on the 3rd day of June, 2013.

**DONE IN OPEN COURT** this 23<sup>rd</sup> day of July, 2013.

  
\_\_\_\_\_  
The Honorable George F. Appel, Judge

Presented by:

  
\_\_\_\_\_  
William B. Foster, WSBA #8270  
of Hutchison & Foster  
Attorneys for Plaintiffs

Approved for Entry, Notice of  
Presentation Waived:

\_\_\_\_\_  
J. D. Bristol, WSBA #29820  
of Gourley | Bristol | Hembree  
Attorneys for Defendants, Blakey and Flying T Ranch

**Survey for: The Flying T Ranch**

IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 32 NORTH, RANGE 6 EAST, SNOHOMISH COUNTY, WASHINGTON.

**Huey Surveying & Land Consulting, Inc.**  
 23407 135th Avenue Northeast  
 Arlington, Washington 98223  
 Tel: (860) 474-9845

**SURVEYOR'S CERTIFICATE:**

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY SUPERVISION IN COMPLIANCE WITH THE REQUIREMENTS OF THE PUBLIC LANDS ACT AND THE REQUIREMENTS OF THE FLYING T RANCH, THIS 15TH DAY OF JUNE, 2013.

*Robert B. Huey*  
 ROBERT B. HUEY  
 REGISTRATION NO. 41223  
 DATE

**RECORDING CERTIFICATE**

THIS MAP WAS RECORDED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_ AT \_\_\_\_\_ O'CLOCK (P. M.) AND RECORDED IN VOLUME \_\_\_\_\_ OF SURVEYS, OR PLATS (S) \_\_\_\_\_ SNOHOMISH COUNTY, WASHINGTON.

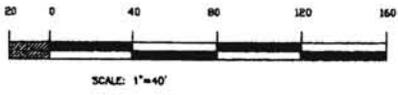
COUNTY AUDITOR \_\_\_\_\_ DEPUTY AUDITOR \_\_\_\_\_

**MAP SCALE: 1" = 40'**

DATE: JUNE 12, 2013  
 DRAWN BY: R. B. HUEY  
 CHECKED BY: R. B. HUEY  
 FIELD BOOK: 179  
 SHEET: 1 OF 1  
 JOB NUMBER: 1664

THIS SURVEY MONUMENTS AND SUPERSEDES THAT SURVEY RECORDED UNDER AUDITOR'S FILE NUMBER 92094036001.

LINE	BEARING	LENGTH
L1	N00°15'23"E	2.01
L2	N00°15'23"E	21.53
L3	N00°15'23"E	47.10
L4	N00°15'23"E	24.26
L5	N00°15'23"E	51.80
L6	N00°15'23"E	57.00
L7	N00°15'23"E	26.41
L8	N00°15'23"E	28.87
L9	N00°15'23"E	29.74
L10	N00°15'23"E	31.55
L11	N00°15'23"E	65.87
L12	N00°15'23"E	33.91
L13	N00°15'23"E	85.53
L14	N00°15'23"E	55.37
L15	N00°15'23"E	40.49
L16	N00°15'23"E	27.85
L17	N00°15'23"E	28.55
L18	N00°15'23"E	8.74



**SURVEYOR'S NARRATIVE:**

THIS SURVEY SHOWS THE RELATIONSHIP OF A WILD BLACKBERRY HEDGE AND STANDING BARBED WIRE FENCE AND ITS EARLIER REMNANTS AS EXISTING ON MARCH 28, 2013, TO THE WEST DEED BOUNDARY OF THE FLYING T RANCH PROPERTY UNDER SNOHOMISH COUNTY ASSESSOR'S PARCEL NUMBER 32082100201000. SAID WEST BOUNDARY IS A PORTION OF THE WEST LINE OF A PORTION OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 32 NORTH, RANGE 6 EAST, W.M. I MADE SURVEY TIES TO THE WEST QUARTER CORNER (A REFERENCE MONUMENT TO THE QUARTER CORNER, SINCE THE CORNER FALLS IN A DITCH) AND THE NORTHWEST CORNER OF SAID SECTION TO ESTABLISH THE LOCATION OF THIS LINE. THIS WAS THEN LINKED TO SURVEY TIES I MADE TO THE FENCING, ETC.

I FOUND EVIDENCE THAT I BELIEVE SUPPORTS THE PREMISE THAT THE ABOVE FENCE REPLACES AND/OR PERPETUATES MUCH OLDER FENCE LINES OR A SINGLE FENCE LINE ON OR VERY NEAR THE LOCATION OF THE PRESENT FENCE.

THIS EVIDENCE INCLUDES:

- 1) A HEAVY GROWTH OF A BLACKBERRY "HEDGE" ALONG MOST OF THE FENCE'S LENGTH WITH HEIGHTS BETWEEN 4 AND 12 FEET. THE SIZE OF THE GAMES OF THE BLACKBERRIES INDICATE TO ME THAT THE HEDGE HAS EXISTED FOR OVER 10 YEARS IN SOME PLACES. CONTRIBUTING EVIDENCE IN THIS AREA IS THAT THERE EXISTS A NUMBER OF WILD CHERRY TREES ALONG THE BLACKBERRIES THAT ARE UP TO 18 INCHES IN DIAMETER.

- 2) THERE ARE A NUMBER OF VERY OLD CEDAR FENCE POSTS LYING ALONG THE FENCE LINE. THESE ARE MADE FROM OLD GROWTH RED CEDAR WITH THEIR BASES ROTTED OFF. BY EXPERIENCE WITH DURABILITY OF THIS TYPE OF FENCE AND THE LOCATION OF THE DOWNED POSTS LEADS ME TO BELIEVE THAT THE PRESENT FENCE IS ON OR VERY CLOSE TO A MUCH OLDER BARBED WIRE FENCE WHICH DECAYED AWAY.
- 3) EVIDENCE OF A SECOND FENCE (THE CEDAR POST FENCE BEING THE FIRST, AND A STILL STANDING GREEN "T" POST FENCE BEING THE THIRD) ALSO EXISTS LONG THE PRESENT FENCE LINE. ITS POSTS ARE VERY RUSTY ROSTER STEEL "T" POSTS MEASURING 1.25" X 1" ACROSS THE TOP OF THE "T" INDICATING A DIFFERENT MANUFACTURE, AND PROBABLE DATE OF PLACEMENT.

- 4) THE PRESENTLY STANDING FENCE CONSISTS MAINLY OF STEEL GREEN "T" POSTS WITH BETWEEN 4 AND 8 STRANDS OF BARBED WIRE (AND IN PLACES A HEAVY GAUGE OF "HOG WIRE" TYPE FENCING) STILL SOLIDLY ATTACHED. THE GREEN "T" POSTS ARE LESS WEATHERED THAN THE REDDISH ONES AND THE POSTS MEASURE 1.38" X 1.25" ACROSS THE TOP OF THE "T" INDICATING A DIFFERENT MANUFACTURE, AND PROBABLE DATE OF PLACEMENT.
- 5) THE BARBED WIRE STRANDS IN THE EXISTING PRESENT FENCE ARE MOSTLY GALVANIZED. THE EXCEPTION APPEARS TO BE A SINGLE STRAND OF RUSTED AND WEATHERED BARBED WIRE WHICH HAS BEEN INCLOSED IN MOST OF THE STANDING FENCE. THIS STRAND CLOSELY MATCHES RUSTED STRANDS OF BARBED WIRE WHICH RUN ALONG A LARGE PORTION OF THE EXISTING FENCE LINE, EITHER JUST ON THE SURFACE OR JUST UNDER IT, BURIED UP TO 3 INCHES BY DIRT AND DEBRIS.

- 6) IN 3 PLACES THE BARBED WIRE OF THE FENCE HAS BEEN ATTACHED TO WILD CHERRY, ALDER AND COTTONWOOD TREES. IN THESE PLACES THE TREES HAVE GROWN OVER SOME OF THE STRANDS, BURYING THE STRANDS BY AS MUCH AS 1.5 INCHES INDICATING THE LENGTH OF TIME SINCE THE WIRE WAS NAILED TO THE TREES.

**METHOD OF SURVEY:** COMBINATION CLOSED G.P.S. TRAVERSE USING TOPCON HiperLite SURVEY GRADE G.P.S. EQUIPMENT AND CONVENTIONAL RANDOM TRAVERSE USING TOPCON ITS-1 1" TOTAL STATION INSTRUMENT & OCEANIC 800 3" ROBOTIC INSTRUMENT.

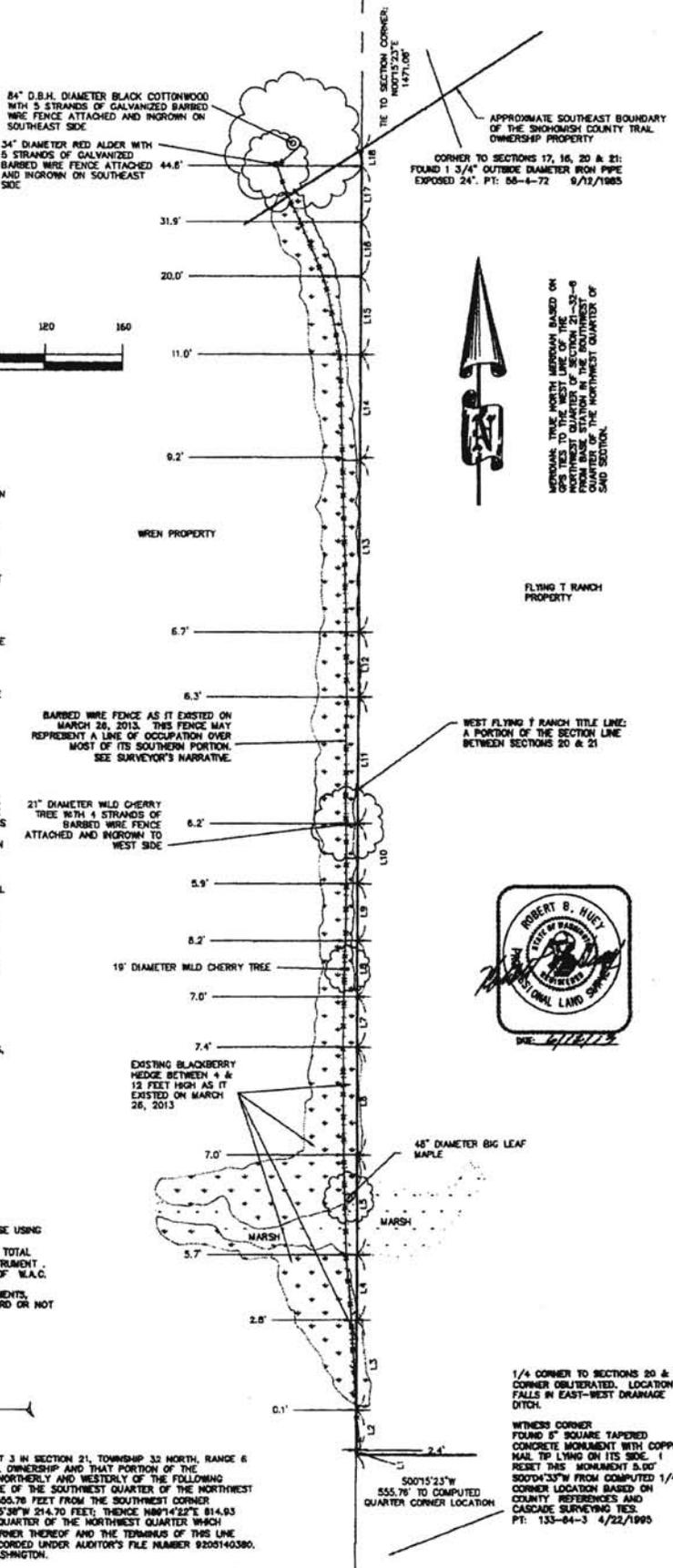
THIS SURVEY MEETS OR EXCEEDS THE REQUIREMENTS OF W.L.A.C. 332-130-090 AND THE STATE SURVEY RECORDING ACT.

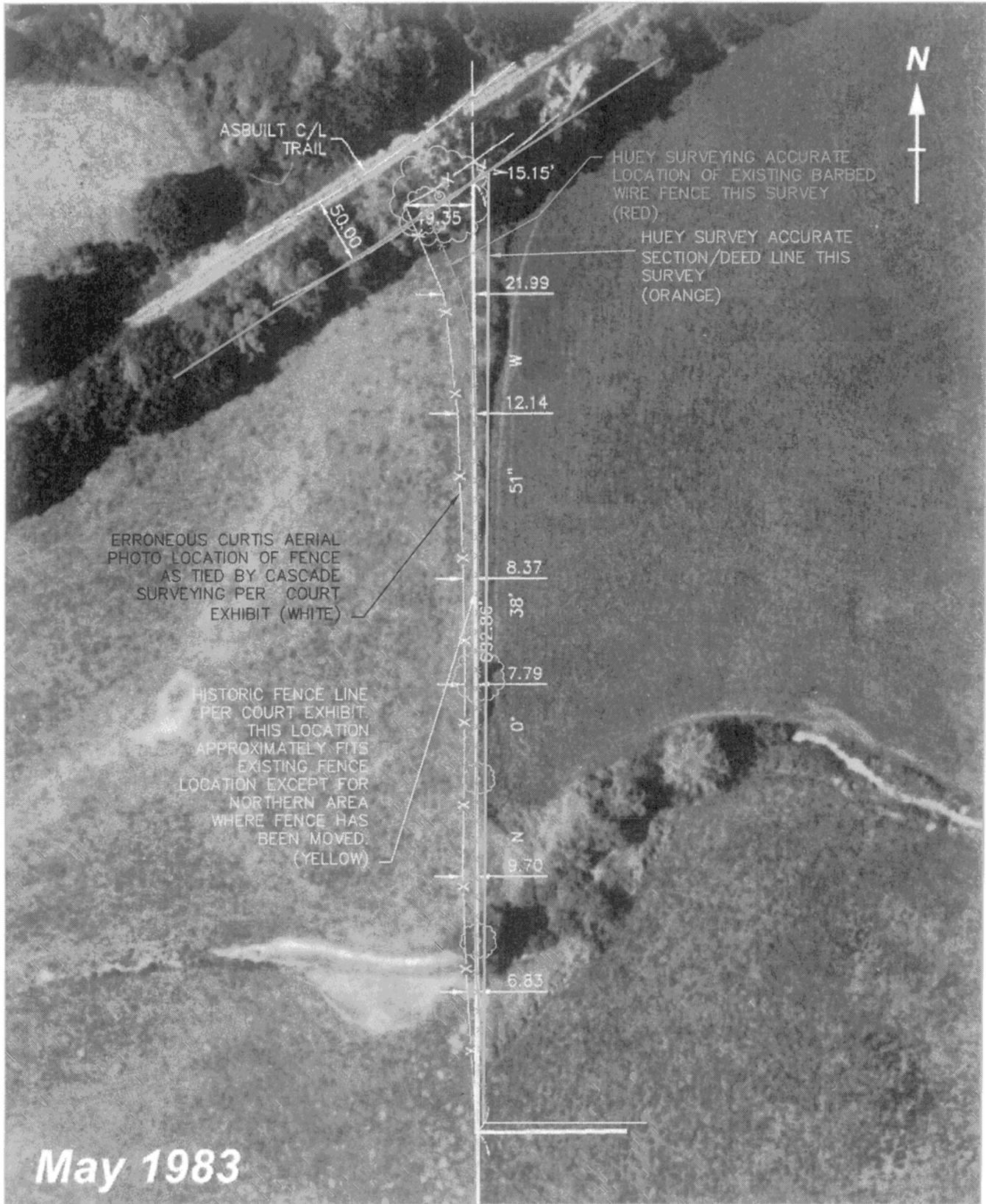
THIS SURVEY DOES NOT PURPORT TO SHOW ALL EASEMENTS, RESTRICTIONS, RESERVATIONS, OR ENCUMBRANCES OF RECORD OR NOT OF RECORD.

**LEGAL DESCRIPTION**

FLYING T RANCH

THE WEST LINE OF THAT PORTION OF GOVERNMENT LOT 3 IN SECTION 21, TOWNSHIP 32 NORTH, RANGE 6 EAST, BEING SOUTH OF THE SNOHOMISH COUNTY TRAIL OWNERSHIP AND THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER LYING NORTHERLY AND WESTERLY OF THE FOLLOWING DESCRIBED LINE: BEGINNING AT A POINT ON THE WEST LINE OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 21 WHICH BEARS N00°45'30"W 555.76 FEET FROM THE SOUTHWEST CORNER THEREOF; THENCE N89°14'22"E 713.28 FEET; THENCE N00°45'30"W 214.70 FEET; THENCE N89°14'22"E 814.63 FEET TO A POINT ON THE EAST LINE OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER WHICH BEARS N00°45'43"W 788.73 FEET FROM THE SOUTHWEST CORNER THEREOF AND THE TERMINUS OF THIS LINE DESCRIPTION PER BOUNDARY LINE ADJUSTMENT 022-82 RECORDED UNDER AUDITOR'S FILE NUMBER 9209140380. SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.





DECLARATION OF SERVICE

On said day below I emailed a courtesy copy and deposited in the U.S. Postal Service for service a true and accurate copy of the Brief of Appellants in Court of Appeals Cause No. 70691-8-I to the following:

William B. Foster, III [x] sent by email only  
PO Box 69  
Lynnwood, WA 98046-0069

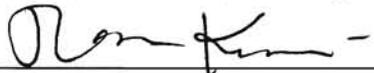
Steven James Peiffle  
PO Box 188  
Arlington, WA 98223-0188

Original and a copy delivered by ABC messenger:

Court of Appeals, Division I  
Clerk's Office  
600 University Street  
Seattle, WA 98101

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

DATED: December 20, 2013, at Tukwila, Washington.

  
\_\_\_\_\_  
Roya Kolahi, Legal Assistant  
Talmadge/Fitzpatrick