FILED
SUPREME COURT
STATE OF WASHINGTON
9/30/2024
BY ERIN L. LENNON
CLERK

FILED
Court of Appeals
Division I
State of Washington
9/27/2024 4:17 PM

Case #: 1035080

IN THE SUPREME COURT

OF THE STATE OF WASHINGTON

Court of Appeals Division I Case No. 86630-3-I

ANNA G. BELL,

Plaintiff/Respondent,

v.

CANDACE K. SCHUPP,

Defendant/Appelant.

PETITION FOR REVIEW

Date: September 27th 2024.

Anna G. Bell,
Respondent pro se
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II. TABLE OF CONTENTS

inadvertently causes Bell to violate Washington law WAC 388-76-10000 "Abandonment"?

TABLE OF AUTHORITIES

STATUTES AND RULES

Page

III. IDENTITY OF PETITIONER

Petitioner Anna G. Bell pro se, a Plaintiff in the trial court and an Respondent in the Court of Appeals Division I ("the Court"), asks this Court to accept review of the Unpublished Opinion designated below. Bell prepared the motion herself, no other person or attorney assisted her in any way or provided legal advice. Bell asks this Court to hold her pro se pleadings to less stringent standards than formal pleadings drafted by attorneys, *Haines vs Kerner* 404 U.S. 519, 520, 1971. Bell software only has font Times New Roman in 12 or 14, no serif font. Bell used size 14 pursuant RAP 18.17.

IV. CITATION TO COURT OF APPEALS' DECISION

Respondent Anna G. Bell ("Bell") petitions this Court to review the Unpublished Opinion of the Court of Appeals Division I in the matter of Anna G. Bell v. Candace K. Schupp, et al., No. 86630-3-I, filed on July 29, 2024, which affirmed in part, reversed in part, and remanded the decision of the Superior Court of the State of Washington In and For Clark County. Bell's motion for reconsideration was denied on August 29, 2024. A copy of the Unpublished Opinion of the Court of Appeals Division I is attached as Appendix.

V. ISSUES PRESENTED FOR REVIEW

1. Whether Bell's incontrovertible evidence which was the basis for granting adverse possession as a matter of law in a bench trial should be allowed to be controverted by Schupp's excluded evidence, which was unduly delayed, a hearsay and

means to waste time pursuant ER 403, ER 801(c) and RCW 4.44.080?

2. Whether the Court's Opinion is a conflicting one because it has already affirmed Bell's adverse possession on page 5 of the Opinion but then reversed and remanded it on later pages?

3. Whether the Court of Appeals' Opinion vacating attorney fees and costs awarded to Bell is a significant question of law as it inadvertently causes Bell to violate Washington law WAC 388-76-10000 "Abandonment"?

VI. STATEMENT OF THE CASE

The Court of Appeals erred in its opinion that (i) Bell's adverse possession claim on Bell's only driveway and shoulder disputed by the defendant/appellant Candace Schupp ("Schupp") should not have been granted based on

incontrovertible evidence as a matter of law and (ii) the attorney fees and costs awarded to Bell should be vacated. In essence, the Court ruled that incontrovertible evidence should have been allowed to be controverted. Bell filed a motion for reconsideration arguing that (i) the trial court had incontrovertible evidence to use CR 50 in a bench trial, (ii) Schupp never controverted the same evidence when it was presented in the summary judgement and Schupp's unheard trial evidence was unduly delayed and meant to waste time, (iii) the trial court weighed all the evidence and testimonies including the summary judgement at the time it granted Bell's CR 50 motion and (iv) the attorney fees and costs awarded to Bell should not have been vacated. Bell's motion for reconsideration was denied without stating the reasons.

Bell and Schupp, immediate neighbors, share about 230 yards of common boundary which had an old wire-and-power-

poles fence for thirty-one years, installed by Schupp's predecessor in 1991 and removed by Schupp in 2022. Bell installed a new cattle-wire-and-poles fence in 2022 on Bell's side of and parallel to the old fence with plans to have farm animals and to prevent them and her dogs from going to Schupp's property. Bell's only driveway and shoulder ran/runs right along the new fence, just as it ran along the old fence.

In 2022 Schupp served Bell with documents demanding Bell remove Bell's new fence. Schupp and agents dug up Bell's only driveway (approximately 200 yards) which was used since 1974 and drove stakes in the middle of it preventing Bell's and her disabled mother's ingress and egress. Bell's driveway and shoulder historically encroached on Schupp's property since 1974. Schupp and her predecessors never used or claimed Bell's driveway and shoulder for thirty-one years, since 1991.

Schupp never used or claimed Bell's driveway and shoulder for sixteen years, since 2006 when she acquired her property.

Bell's use of her only driveway and shoulder (shoulder's use for the construction and delivery wider trucks) was/is an everyday necessity. Bell and her late husband Michael Wade ("Wade") used and improved the driveway and shoulder for fifteen years, since 2009 when Wade acquired the property. Bell's elderly disabled mother who lives with Bell often needs ambulance services which use Bell's only driveway and shoulder. Bell filed a Complaint in 2022 to regain the essential use and ownership of her driveway and shoulder. The trial took place in August 2023.

The trial was not the first bench trial in this case; it was preceded by a summary judgement where Schupp presented eight testimonies by her witnesses. Bell prevailed on the prescriptive easement claim on her driveway in the summary

judgement; it was decided as a matter of law based on incontrovertible evidence. Schupp appealed the trial court's prescriptive easement decision. The Court affirmed that decision.

During the summary judgement several elements of Bell's adverse possession claim on her driveway and shoulder needed clarification thus the trial court set it for a bench trial. In the bench trial the trial court granted Bell's CR 50 motion based on incontrovertible evidence that Bell has met *all* adverse possession elements in Bell's case-in-chief. Schupp appealed. The Court reversed and remanded the trial court's decision on adverse possession but not on prescriptive easement and the attorney fees awarded to Bell were vacated.

The Court ruled that a directed verdict, also known as a matter of law or CR 50, should have been applied exactly in the same manner in a bench trial as in a jury trial and Schupp and

her witnesses should have been allowed to controvert Bell's incontrovertible evidence despite the fact that Schupp has never controverted the evidence which prompted Bell's CR 50 motion; that exact same evidence was presented in the summary judgement, but Schupp and her witnesses did not controvert it.

Bell petitions pro se because of the financial circumstances. Bell is unemployed, receives a small fixed monthly income and taking care of two dependents and their life-saving medications on the small income. Bell's litigation up to her motion for reconsideration pro se was paid by her extended family and a family friend for over two years which is no longer possible.

Bell respectfully disagrees with the Court of Appeals' Opinion reversing the trial court's ruling on incontrovertible evidence and because Schupp's did not controvert the same key evidence when presented with it in the summary judgement.

Schupp claimed that she could controvert it only when she lost the trial making her evidence unduly delayed and meant to waste time, pursuant ER 403.

The Court's decision is in conflict with other Court' published and unpublished decisions, RAP 13.4 (b), GR 14.1(c), and the Court's decision involves a significant question of law, RAP 13.4 (b), as it would cause Bell inadvertently violate the law WAC 388-76-10000 "Abandonment" and cause abandonment of a vulnerable adult on the basis that Bell will not be able to return about $47,000 of attorney fees and costs to Schupp and at the same time pay for very costly lifesaving medication for her dependent, Bell's mother, to whom Bell is a 24/7 caregiver and a 100% provider.

These conflicts and a question of law involved create a consideration for review, RAP 13.4 (b). This Court should accept the review to consider these conflicts, RAP 13.4 (b).

Bell asks this Court to reinstate the attorney fees and costs awarded to Bell and to award her attorney fees on appeal pursuant RCW 7.28.083(3), RCW 4.84.185 and RAP 18.1.

VII. ARGUMENT

1. Whether Bell's incontrovertible evidence which was the basis for granting adverse possession as a matter of law in a bench trial should be allowed to be controverted by Schupp's evidence, which was unduly delayed, a hearsay and meant to waste time pursuant ER 403, ER 801(c) and RCW 4.44.080?

The trial court was aware that it was granting Bell's CR 50 motion before Schupp presented her evidence in a bench trial. The trial court considered Bell's incontrovertible

evidence, Schupp's unduly delayed, a hearsay and meant to waste time evidence after the trial and court's discretion on all questions of law including the admissibility of testimony, the facts preliminary to such admission such as prior summary judgement and other rules of evidence, RCW 4.44.080.

Bell had to meet all criteria or elements of adverse possession in her case-in-chief as reviewed by the Court on page 8:

> To acquire title to another's land under the doctrine of adverse possession, a person must "possess[] the property for at least 10 years in a manner that is '(1) open and notorious, (2) actual and uninterrupted, (3) exclusive, and (4) hostile.'" *Gorman v. City of Woodinville*, 175 Wn.2d 68, 71, 283 P.3d 1082 (2012) (quoting *ITT Rayonier, Inc. v. Bell*, 112 Wn.2d 754, 757, 774 P.2d 6 (1989)).

The trial court has concluded based on combined evidence and testimonies presented by both sides in the summary judgement and by Bell, Hayes and Temme in Bell's case-in-chief that Bell

and her predecessors have met all adverse possession requirements.

Once criteria have been met it cannot be un-met. For example, a child must be 4'8" tall to go on a certain ride at a state fair. If a child met the criterion for a ride that criterion could not be un-met. If Bell has met all the criteria of adverse possession, they could not be un-met by subsequent testimonies because they already have been met, which constituted preponderance of evidence making any further testimonies unnecessary. When the jury, in this case the trial court, has reached the conclusion on the matter it can deliver a verdict, in this case a decision as a matter of law CR 50 (a) and RCW 4.44.080. The CR 50 (a) (1) and (2) is specific in its wording "If, during a trial by jur[y]" and "A motion for judgment as a matter of law may be made at any time before submission of the case to the jury." which in a bench trial is a subject to RCW 4.44.080 beginning with "All questions of law [..]":

> All questions of law including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings, and other rules of evidence, are to be decided by the court, and all discussions of law addressed to it.

The trial court would have denied Bell's CR 50 motion if Bell's evidence were controvertible. The trial court saw Bell's evidence as incontrovertible and so conclusive that there could be no other truth about the matter, and it would overpower any contrary evidence by Schupp and her witnesses. Bell's evidence left no doubt as to the conclusion reached by the trial court about Bell's prescriptive easement and adverse possession claims on her driveway and shoulder.

Bell's evidence could not be controverted because of its nature. The aerial images from different decades and photographic timeline going back many years showed that Bell's driveway was in the same location for decades, Hayes' old fence separating Bell's and Schupp's properties was in

place for decades, Bell and Wade improved and rocked the driveway three times and maintained the driveway and shoulder year after year (Exhibits 4-11). Such evidence overpowers any contrary evidence and leaves no doubt as to a conclusion that Bell and Wade possessed their driveway and shoulder for at least 10 years in a manner that was (i) open and notorious, (ii) actual and uninterrupted, (iii) exclusive, and (iv) hostile. Bell's evidence was so extensive, comprehensive, detailed, in high resolution and well-organized that the trial court complemented Bell's former counsel on its organization at the closing of the trial. Bell's evidence was a story in pictures because she took/takes daily pictures and videos of her family's life including improving and maintenance of the property.

Schupp, on other hand, never maintained or improved the driveway and shoulder, never rocked the driveway, never used it for ingress or egress, going to a mailbox, walking dogs, parking cars or machinery. If Schupp or her witnesses would

have testified in trial that Schupp occasionally maintained it, which she did not, it would not change Bell meeting all the adverse possession requirement. A claimant's possession need not be absolutely exclusive in order to satisfy the exclusivity condition of adverse possession, *Crites v. Koch*, 49 Wash. App. 171,174, 741 P.2d 1005 (1987). An "occasional, transitory use by the true owner usually will not prevent adverse possession if the uses the adverse possession permits are such as a true owner would permit a third person to do as a 'neighborly accommodation." 17 WILLIAM B. STOEBUCK, Washington Practice Real Estate: Property Law 8.19 at 516 (1995). Therefore, Bell's adverse possession of her driveway and shoulder were incontrovertible.

Moreover, Schupp's appeal of Bell's prescriptive easement to Bell's only driveway was frivolous because prior to filing her appeal Schupp knew that Bell and her predecessors used it exclusively since 1974 and it was/is Bell's only

driveway for ingress and egress, as the Court's Opinion stated in affirming Bell's prescriptive easement on page 5:

> In support of her summary judgment motion, Bell provided evidence, including aerial photographs and surveys, showing that on or before 1974, a driveway was constructed on the southeast corner of the Bell Property that progressed northerly to structures located on the property. The driveway is the only means of ingress and egress to and from the Bell Property

On page 7:

> In sum, although Schupp disputes the precise boundary of the prescriptive easement, that is not a material dispute for purposes of Bell's claim and therefore does not preclude summary judgment in her favor.

And on page 13 in the footnotes:

> Because we remand for a new trial, we express no opinion on whether Bell is entitled to recover attorney fees and costs under RCW 7.28.083(3) in connection with her prescriptive easement claim. See Clark County v. W. Wash. Growth Mgmt. Hr'gs Review Bd., 177 Wn.2d 136, 145-47, 298 P.3d 704 (2013)

Since Bell prevailed on the prescriptive easement in both courts and Schupp's appeal challenged it unnecessary and frivolously requesting that Bell and her elderly disabled mother would have no means of ingress and egress and knowing that the driveway was always in the same place in the aerial images since 1974, the attorney fees and costs awarded to Bell after the trial should be reinstated pursuant RCW 4.84.185 and RCW 7.28.083(3) and the appeal's attorney fees should be awarded to Bell pursuant to RAP 18.1.

The adverse possession claim on Bell's driveway and shoulder is inseparable from the prescriptive easement claim and they share exactly the same elements, with additional ones for prescriptive easement. The Court's Opinion is in conflict with its own published decision RAP 18.1 in regard to awarding attorney fees and costs to a prevailing party in a trial or appeal. RAP 18.1 is the Court's published decision because it was decided, published and applied in appeals. The Court's decision

regarding vacating attorney fees and costs awarded to Bell and awarding no fees to Bell on appeal should be reversed.

The trial court has also concluded based on Bell key witness Mr. Norman Hayes' ("Hayes") identical testimonies (in the summary judgement and in the trial) that adverse possession of Bell's driveway and shoulder has been established in 1991-2001, prior to Bell's ownership of her property, when Mr. Hayes gifted the driveway and the shoulder to Mr. George Bourcier ("Bourcier"), Bell's predecessor. However, the Court concluded:

> Given that the trial court "focused primarily on the testimony of Norman Hayes" in ruling in Bell's favor, Price's testimony undermining Hayes' testimony could have provided a "legally sufficient evidentiary basis" for a reasonable fact finder to have found for Schupp on some or all of the elements of Bell's adverse possession claim.

That conclusion overlooked the fact that the trial court weighed that Schupp, Price and other witnesses *never controverted Mr.*

Hayes' exact same testimony in the summary judgement especially when they could not know whether the case would go to trial and should have presented their evidence if they had it.

Indeed, Hayes declared in the summary judgement, page 2 line 11-14 and 22 (Exhibit 1):

> [I] told George that as far as I was concerned, all that disputed property belonged to him because he was the person who has maintained it and used it all those years. About two years after that, in 1991 or so, I erected a fence on the part of the property that I thought was the true dividing line between our property and George's property. I used round power poles from Bonneville to erect the fence and I erected the same type of the fencing all around my property.[…] As far as I was concerned, all of the property west of the fence belonged to George Bourcie[r.]

Mr. Frederick A. Price ("Price"), Schupp's key witness and the perpetrator of Bell and Bell's young daughter (long-term protection order Bell v Price, Case No. 22-2-07844-06 Superior Court for Clark County WA) has never controverted these facts

in the summary judgement in his declaration when he had an opportunity. Only when Schupp lost the trial Price unexpectedly declared that he would controvert Hayes' testimonies. Price submitted a sworn declaration after the trial stating that Hayes (1) had never given or conveyed any portion of the Bell Property to Bourcier and (2) did not construct the fence separating the properties until "several years after" Bourcier's death in 1992. Price's testimony was hearsay because Price was not Hayes, who gifted his property and erected a fence cutting off that property from his own thus confirming his gift to Bourcier. Price's proposed evidence after the trial was unduly delayed, meant to waste time and was hearsay pursuant ER 403 and ER 801(c):

> Although relevant, evidence may be excluded if its probative value is substantially outweighed […] by considerations of undue delay, waste of time, or needless presentation of cumulative evidence[e].
>
> (c) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the

> trial or hearing, offered in evidence to prove the truth of the matter asserted.

Therefore, the trial court was correct in recognizing Hayes, not Price, as "the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." and in stating that "there would be no testimony adverse to that" as quoted in the Court's Opinion on page 10:

> Given that there would be no testimony to controvert Mr. Hayes' testimony during this ten-year period, the court does find that title vested in that 10-year time period from 1991 to 2001, and that title vested in Plaintiff's predecessors via adverse possession by 2001.The court found there would be no testimony adverse to that.

The Court' Opinion remanding and allowing Schupp's excluded evidence which was unduly delayed, meant to waste time and hearsay is in conflict with its published opinion where it upheld the exclusion of evidence pursuant ER 403 in the *State of Washington v. Donald*, Wash. App. Div I (2013). Therefore,

Schupp's excluded evidence should not be allowed and The trials court's decision and the attorney fees and costs awarded to Bell should be reinstated pursuant to RAP 18.1.

2. Whether the Court's Opinion is a conflicting one because it has already affirmed Bell's adverse possession on page 5 of the Opinion but then reversed and remanded it on later pages?

While at a first glance it may not be obvious, but the Court's Opinion affirmed Bell's adverse possession at the same time as it was reversing and remanding it. It happened in the first paragraph on page 5 where the Court reviewed the evidence on which it affirmed Bell's prescriptive easement and

in doing so affirmed that Bell met the criteria for adverse possession as well:

> Bell averred that after her late husband, Michael Wade, acquired title to the Bell Property in 2009, he consistently maintained both (a) the entire gravel driveway by rocking it, plowing snow, and driving vehicles over it and (b) the area between the driveway and the fence by mowing grass, spraying grass killer, removing weeds, and trimming bushes. Bell maintained the driveway and shoulder in a similar manner beginning in 2013 and continued to do so after Wade's death in 2020. This evidence, Bell argued, established that the use of the easement occurred over a uniform route.

The Court affirmed on the page 6-7 that the easement occurred over a uniform route and its premises that Bell and Wade

consistently maintained both (a) the entire gravel driveway by rocking it, plowing snow, and driving vehicles over it and (b) the area between the driveway and the fence by mowing grass, spraying grass killer, removing weeds, and trimming bushes for the period of 2009-2022.

It showed that Bell-Wade's maintenance and upkeep of the disputed property during this period was more than enough to establish adverse possession. There was nothing more that Bell and Wade could have done to establish ownership over the driveway and shoulder. Therefore, if the Court accepted the same evidence in its Opinion as the trial court in its decision, then the trial court was correct in granting Bell adverse possession of her driveway and shoulder. In that, the Court's Opinion is in conflict with its Unpublished Opinion in *Bell v. Schupp,* Wash. App. Div.1 (2024). *Bell* is an unpublished opinion, however, it may be cited and discussed when it is "necessary for a reasoned decision." GR 14.1(c). Bell's adverse possession and attorney fees and costs should be reinstated, and she should be awarded attorney fees on appeal pursuant RCW 7.28.083(3) and RAP 18.1.

3. Whether the Court of Appeals' Opinion vacating attorney fees and costs awarded to Bell is a significant question of law as it inadvertently causes Bell to violate Washington law WAC 388-76-10000?

The complaint, summary judgement, trial and appeal over Bell's use and ownership of her driveway and shoulder

would not have happened without Schupp's dispute over it and Schupp blocking Bell's ingress and egress by driving stakes in the middle of Bell's driveway in 2022. As Hayes, Bell's predecessor and key witness, declared on page 3 of his declaration in the summary judgement (Exhibit 1):

> This has never been a problem until Candace decided to make it a problem.[..] I am very surprised she is now disputing that the fence was the boundary line.

Bell is unemployed and has a small fixed monthly income on which she takes care of her two dependents – her young daughter who is homeschooled due to her needs and her 81-year-old mother who is disabled and lives with Bell. Bell's litigation was paid by the extended family and family friends, but it is no longer possible due to their extensive expenses.

Bell is a 100% provider and a 24/7 caregiver to her mother Ms. Tamara Lyskovskaia. Bell's mother has no income, pension, social security, assets, savings or health insurance (Exhibit 3). Bell's mother has several serious health conditions and is on thirteen life-saving medications for which Bell pays out-of-pocket. These medications include very costly Eliquis and Jardiance which cost $713 and $733 per month, respectively, out-of-pocket at the Walmart pharmacy, per prescription.

Bell will not be able to continue to provide life-saving medications to her mother due to the Court's decision which

vacated attorney fees and costs awarded to Bell of about $47,000 (Bell received only $6,000 in 2023, the rest was attorney fees kept by her former attorney). Because of this, Bell who has a duty of care for a frail elder, her mother, will have to abandon necessary health care, specifically Bell mother's life-saving medications and will inadvertently violate WAC 388-76-10000 "Abandonment" by constituting abandonment of health care:

> "Abandonment" means action or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

In this, the Court's Opinion inadvertently involves a significant question of law under the Constitution of the State of Washington. Bell asks this Court that attorney fees and costs awarded to Bell be reinstated so that Bell mother's health care will not be abandoned, can continue and there will be no inadvertent violation of WAC 388-76-10000.

Bell asks this Court to consider that Schupp's appeal challenged the prescriptive easement unnecessary and frivolously requesting that Bell and her disabled mother would have no means of ingress and egress and knowing that Bell's driveway was always in the same place in the aerial images since 1974, pursuant RCW 4.84.185 and RAP 18.1.

In addition, Bell would provide this Court with the record of her exact finances at any time upon request and, if possible, in a concealed manner from Schupp and Price. Price, against whom Bell has a standing long-term protection order, previously attempted to obtain Bell's finances and private documents for unknown reasons; it was on record. Bell is unemployed because she is a 24/7 caregiver to her mother and her daughter's teacher in homeschooling necessary to her daughter's needs. Bell petition for review's fees, if accepted, will be paid by a family friend so Bell does not have to disclose

her financial record to Schupp and Price in a fee waiver affidavit for the reasons stated above.

VIII. CONCLUSION

For the foregoing reasons in the Issues 1-3 which include the conflict with the Court of Appeals' published and unpublished decisions and a significant question of law involved, Petitioner Bell respectfully asks this Court to review the Court of Appeals' decision and reinstate the trial court's decision granting Bell's adverse possession claim of her driveway and shoulder used since 1974 and attorney fees and costs awarded to Bell pursuant RAP 13.4 (b), GR 14.1(c).

Bell respectfully asks this Court to reinstate the attorney fees and costs awarded to Bell and to award her attorney fees on

appeal pursuant RCW 7.28.083(3), RCW 4.84.185 and RAP 18.1. Bell became pro se after the Court of Appeal's Opinion, not before.

Bell asks the Court to hold her pro se pleadings to less stringent standards than formal pleadings drafted by attorneys, *Haines vs Kerner* 404 U.S. 519, 520, 1971.

NUMBER OF WORDS: 4,410

Dated: September 27th, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIENCE

I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct. This petition contains words 4,410, excluding the parts of the document exempted from the word count by RAP 18.17.

Dated this 27th day of September 2024, and signed at La Center, Washington.

Anna G. Bell
Respondent pro se
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CERTIFICATE OF ANNA G. BELL

I hereby certify that all documents and pleadings were prepared by me and that I understand that the court by entering a decree or other order does not relieve me of the responsibility for any omissions, defects, or inaccuracies in the file or matters presented or any consequences resulting therefrom.

Dated this 27th day of September 2024, and signed at La Center, Washington.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the date indicated below, I served true and correct copies of the foregoing *Respondent's Petition for Review* by certified mail and by electronic service to the following person(s) at the following mail and e-mail address(es):

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Dated this 27th day of September 2024, and signed at La Center, Washington.

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APPENDIX

FILED
8/29/2024
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

ANNA G. BELL, a single woman,

Respondent,

v.

CANDACE K. SCHUPP a single woman, and BANC OF AMERICA FUNDING CORPORATION 2007-1,

Appellant.

No. 86630-3-I

ORDER DENYING MOTION FOR RECONSIDERATION

The respondent, Anna Bell, has filed a motion for reconsideration. A majority of the panel has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

Feldman, J.
Judge

FILED
7/29/2024
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ANNA G. BELL, a single woman, Respondent, v. CANDACE K. SCHUPP a single woman, and BANC OF AMERICA FUNDING CORPORATION 2007-1, Appellant.	No. 86630-3-I DIVISION ONE UNPUBLISHED OPINION

FELDMAN, J. — Candace K. Schupp appeals the trial court's orders granting summary judgment in favor of Anna G. Bell on her claim for a prescriptive easement, granting Bell's CR 50 motion for a "directed verdict" on her claim for adverse possession,[1] and awarding attorney fees and costs to Bell as the prevailing party on her adverse possession claim. We affirm the trial court's order granting Bell's motion for summary judgment on the prescriptive easement claim, but we reverse its order granting Bell's CR 50 motion on the adverse possession claim and remand for a new trial. Because Bell is no longer the prevailing party on

[1] A motion for directed verdict is governed by CR 50. *See Mancini v. City of Tacoma*, 196 Wn.2d 864, 876-77, 479 P.3d 656 (2021). In 1993, CR 50 was rewritten to rename motions for "directed verdict" and "judgment notwithstanding the verdict" as motions for "judgment as a matter of law." *Guijosa v. Wal-Mart Stores, Inc.*, 144 Wn.2d 907, 915, 32 P.3d 250 (2001). For simplicity, we refer to Bell's motion as a "CR 50 motion."

her adverse possession claim, we also vacate the trial court's orders awarding attorney fees and costs in her favor.

I

This dispute concerns certain real estate situated on or near the eastern boundary of Bell's property (the Bell Property) and the western boundary of Schupp's adjacent property (the Schupp Property). The two properties were previously separated by a fence constructed in the 1990s by Norman Hayes, a previous owner of the Schupp Property. In 2022, independent surveys by both parties revealed that the fence was constructed east of the survey line and indicated that a portion of Bell's driveway located west of the fence encroached onto Schupp's property. Schupp then tore down the fence, and a boundary dispute arose between the parties regarding use and ownership of the strip of land between the location of the previous boundary fence and the western boundary of the Schupp Property as determined by the surveys (the Disputed Property).

In June 2022, Bell filed a complaint against Schupp seeking, among other claims, to quiet title to the Disputed Property based on adverse possession or, in the alternative, to establish a prescriptive easement over the portion of Bell's driveway within the Disputed Property. Schupp filed an answer asserting counterclaims for various forms of trespass and seeking to quiet title to the Disputed Property in her favor. Bell thereafter filed a motion for summary judgment arguing that undisputed evidence supports each of the elements of her two claims and that she is therefore entitled to judgment as a matter of law on both of the claims. The trial court granted Bell's motion with regard to her prescriptive

easement claim but denied her motion with regard to her adverse possession claim.

The case then proceeded to a bench trial on Bell's adverse possession claim. At the conclusion of Bell's case-in-chief, after she presented her evidence and before Schupp had presented her evidence, Bell orally moved for a "directed verdict" in her favor. The trial court granted the motion because Bell's evidence was at that time "uncontroverted." The trial court later entered a judgment in Bell's favor stating that her claim for adverse possession was "granted, and title and legal ownership to [the Disputed Property] is quieted, established and confirmed solely in [Bell]." The trial court further dismissed Schupp's counterclaims and ordered that Schupp is "forever barred from having or asserting any right, title, estate, lien, or interest in or to the [Disputed Property], or any part thereof, adverse to [Bell]."

Finally, Schupp filed a motion for reconsideration arguing that her "substantial right to present witness testimony was materially affected by the court's directed verdict in favor of [Bell], preventing her from having a fair trial." The trial court denied the motion and awarded attorney fees and costs in Bell's favor. Schupp appeals.

II

A

Schupp argues the trial court erred in granting summary judgment in Bell's favor on her prescriptive easement claim regarding the portion of her driveway located within the Disputed Property. We disagree.

"Summary judgment is warranted only when there is no genuine dispute of

material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). The facts and all reasonable inferences are viewed in the light most favorable to the nonmoving party." *Desranleau v. Hyland's, Inc.*, 10 Wn. App. 2d 837, 842, 450 P.3d 1203 (2019). "The moving party bears the initial burden 'to prove by uncontroverted facts that there is no genuine issue of material fact.'" *Welch v. Brand Insulations, Inc.*, 27 Wn. App. 2d 110, 115, 531 P.3d 265 (2023) (quoting *Jacobsen v. State*, 89 Wn.2d 104, 108, 569 P.2d 1152 (1977)). If the moving party satisfies its burden, then the burden shifts to the nonmoving party to "'set forth specific facts evidencing a genuine issue of material fact for trial.'" *Id.* (quoting *Schaaf v. Highfield,* 127 Wn.2d 17, 21, 896 P.2d 665 (1995)). We review "summary judgment orders de novo, engaging in the same inquiry as the trial court." *Desranleau*, 10 Wn. App. 2d at 842.

Our Supreme Court has stated the requirements to establish a prescriptive easement as follows:

> To establish a prescriptive easement, the person claiming the easement must use another person's land for a period of 10 years and show that (1) he or she used the land in an "open" and "notorious" manner, (2) the use was "continuous" or "uninterrupted," (3) the use occurred over "a uniform route," (4) the use was "adverse" to the landowner, and (5) the use occurred "with the knowledge of such owner at a time when he was able in law to assert and enforce his rights."

Gamboa v. Clark, 183 Wn.2d 38, 43, 348 P.3d 1214 (2015) (quoting *Nw. Cities Gas. Co. v. W. Fuel Co.*, 13 Wn.2d 75, 83, 85, 123 P.2d 771 (1942)). The sole issue on appeal is whether there are genuine issues of material fact as to the third element: that the use of the easement occurred over a uniform route.

In support of her summary judgment motion, Bell provided evidence, including aerial photographs and surveys, showing that on or before 1974, a driveway was constructed on the southeast corner of the Bell Property that progressed northerly to structures located on the property. The driveway is the only means of ingress and egress to and from the Bell Property. The southern portion of the driveway is situated west of the survey line between the properties, but as the driveway runs north it encroaches eastward onto the Schupp Property such that the survey line runs through the middle of the driveway. Bell averred that after her late husband, Michael Wade, acquired title to the Bell Property in 2009, he consistently maintained both (a) the entire gravel driveway by rocking it, plowing snow, and driving vehicles over it and (b) the area between the driveway and the fence by mowing grass, spraying grass killer, removing weeds, and trimming bushes. Bell maintained the driveway and shoulder in a similar manner beginning in 2013 and continued to do so after Wade's death in 2020. This evidence, Bell argued, established that the use of the easement occurred over a uniform route.

In response to Bell's motion and supporting evidence, Schupp argued that Bell had not satisfied the "uniform route" element for a prescriptive easement because she "failed to provide a legal description of the property claimed." Schupp noted that the surveyed legal description of the proposed easement that Bell provided with her summary judgment motion simply described the easement as "[a]ll of that portion of an existing gravel driveway lying East of the East line of the Bell parcel . . . and lying South of the North line of the Schupp parcel." Schupp

argued that because the edge of the gravel driveway was imprecise and Bell had not provided a survey showing the metes and bounds description of the easement, there was, at the very least, an issue of fact as to whether the use of the easement occurred over a uniform route.

The trial court granted Bell's motion for summary judgment as to the prescriptive easement because "[t]he driveway clearly encroaches on [Schupp's] property" and "[t]here was sufficient evidence presented through exhibits and declaration[s] to show that that driveway has historically encroached" on Schupp's property. On the issue of the easement's legal description, the court stated:

> We can dial in at a later hearing date on what exactly the metes and bounds [are], if it's needed, in order to evaluate what that portion of the driveway actually exists in [Schupp's] property for purposes of a prescriptive easement. . . . I don't see that as a significant barrier to granting summary judgment.

The court subsequently issued a written order stating that "[Bell's] Motion for Summary Judgment is granted as to prescriptive easement" and "[a] legal description of the easement shall be determined by survey to be done at a later date."

On this record, the trial court did not err in granting summary judgment in Bell's favor on her prescriptive easement claim regarding the portion of the driveway that encroaches on Schupp's property. While Schupp correctly observes that a prescriptive easement must be "uniform," she cites no authority requiring that the easement be described by metes and bounds. We, too, are unable to find such authority. *See* 17 WILLIAM B. STOEBUCK, WASHINGTON PRACTICE: REAL ESTATE: PROPERTY LAW § 2.7 at 100 (2004) ("Many times the Washington opinions

have said that the usage must be over a 'uniform' route, though no case has been found in which the existence of a prescriptive easement has been denied for lack of such uniformity."). Regardless, undisputed evidence shows that the driveway has followed the same or a virtually identical route for several decades. The precise boundary of this route was not material for purposes of deciding whether Bell was entitled to a prescriptive easement. Rather, Bell only needed to prove that the route was uniform. *See Roediger v. Cullen*, 26 Wn.2d 690, 707, 175 P.2d 669 (1946) (concluding that a prescriptive easement in the form of a footpath between the defendants' houses and a beach was uniform "to all reasonable intents and purposes" even though it "was changed at some points from time to time").[2] Schupp does not dispute that the route Bell and her predecessors drove across the Disputed Property has remained consistent over time. The undisputed facts are sufficient to establish the uniform use requirement here.

In sum, although Schupp disputes the precise boundary of the prescriptive easement, that is not a material dispute for purposes of Bell's claim and therefore does not preclude summary judgment in her favor. Moreover, consistent with the trial court's ruling that "We can dial in at a later hearing date on what exactly the metes and bounds [are], if it's needed," Bell later supplied the trial court with a metes and bounds legal description for the driveway. For these reasons, we reject Schupp's argument that the trial court erred in granting Bell's motion for summary

[2] In contrast, our supreme court held in *Wasmund v. Harm*, 36 Wn. 170, 177, 78 P. 777 (1904), that an easement is not uniform "if used over one route one year, and another the next." That did not occur here.

judgment on her prescriptive easement claim for the portion of Bell's driveway that encroaches on Schupp's property.

B

Schupp next argues the trial court erred in granting Bell's CR 50 motion on her adverse possession claim. We agree.

A motion for a directed verdict, now referred to as a motion for judgment as a matter of law, is governed by CR 50, which provides as follows:

> If, during a trial by jury, a party has been fully heard with respect to an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find or have found for that party with respect to that issue, the court may grant a motion for judgment as a matter of law against the party on any claim, counterclaim, cross claim, or third party claim that cannot under the controlling law be maintained without a favorable finding on that issue.

CR 50(a)(1). We review a trial court's ruling on a CR 50 motion de novo. *Williams v. Dep't of Soc. & Health Servs.*, 24 Wn. App. 2d 683, 697, 524 P.3d 658 (2022) (citing *Mancini*, 196 Wn.2d at 877).

Here, the trial court plainly erred in granting Bell's CR 50 motion. To acquire title to another's land under the doctrine of adverse possession, a person must "possess[] the property for at least 10 years in a manner that is '(1) open and notorious, (2) actual and uninterrupted, (3) exclusive, and (4) hostile.'" *Gorman v. City of Woodinville*, 175 Wn.2d 68, 71, 283 P.3d 1082 (2012) (quoting *ITT Rayonier, Inc. v. Bell*, 112 Wn.2d 754, 757, 774 P.2d 6 (1989)). In her case-in-chief, Bell presented testimony relating to each of these elements. Especially relevant here, Hayes (a former owner of the Schupp Property) testified that upon purchasing the property in 1989 he tore down a barbed wire fence separating the

properties that was situated in the middle of the driveway on the Bell Property and "g[a]ve the property" to George Bourcier, the former owner of the Bell Property. Hayes also testified that in 1991 he constructed the fence that separated the properties and that this fence remained in place until after Schupp purchased the property from him in 2006.

The record indicates that Schupp, if given the opportunity, would have presented contrary testimony. Indeed, Schupp's attorney told the trial court, after the close of Bell's case-in-chief, that he has a "long list of witnesses [who] will say exactly the opposite of what [Bell's] witnesses have said" and that Schupp intended to proceed on her counterclaims. Further, in support of her motion for reconsideration filed after trial, Schupp supplied a sworn declaration from Frederick Price—Bell's neighbor who was listed as a defense witness and was prepared to testify at trial—stating that Hayes (1) had never given or conveyed any portion of the Bell Property to Bourcier and (2) did not construct the fence separating the properties until "several years after" Bourcier's death in 1992.

Notwithstanding Schupp's protestations, the trial court orally granted Bell's CR 50 motion and thereby prevented Schupp from presenting controverting evidence in her case-in-chief. Worse, the trial court ruled in Bell's favor because it "found no contrary testimony presented during [Bell's] side of the case to say anything different" about whether the elements of adverse possession had been met. In its written findings of fact and conclusions of law issued after the trial, the court likewise stated that it "found no contrary testimony forthcoming to say anything different" to the testimony of Bell's witnesses. The court further stated:

> Given that there would be no testimony to controvert Mr. Hayes' testimony during this ten-year period, the court does find that title vested in that 10-year time period from 1991 to 2001, and that title vested in Plaintiff's predecessors via adverse possession by 2001. The court found there would be no testimony adverse to that.

In other words, the trial court faulted Schupp for failing to present adverse testimony even though, as a result of the court's ruling granting Bell's motion, Schupp was never afforded the opportunity to present such testimony.

CR 50 does not permit such a result. Under CR 50(a)(1), quoted above, a motion for judgment as a matter of law (as motions for directed verdict are now called) may be filed "during a trial by jury" after the nonmoving party "has been fully heard with respect to an issue." CR 50(a)(2) similarly states, "A motion for judgment as a matter of law may be made at any time before submission of the case to the jury." Here, contrary to CR 50(a)(1) and (2), the trial court granted Bell's motion at a bench trial, not a jury trial, and it granted the motion before Schupp had been fully heard with respect to the adverse possession claim. The trial court thus erred in granting Bell's motion.

Both before and after CR 50 was amended to replace motions for a directed verdict with motions for judgment as a matter of law, Washington courts repeatedly recognized that a litigant must be afforded an opportunity to dispute controverted issues before the trial court grants a CR 50 motion. *See e.g. Butson v. Dep't of Labor and Indus.*, 189 Wn. App. 288, 297, 354 P.3d 924 (2015) ("A CR 50 motion is properly granted after the nonmoving party presents its case and before the moving party presents its case."); *Smith v. Fourre*, 71 Wn. App. 304, 306, 858 P.2d 276 (1993) (error to grant defendant's motion to dismiss before plaintiff had

completed presenting her case because "[a] fundamental principle of law is that every litigant is entitled to be heard before his or her case is dismissed"); *State v. Reader's Digest Ass'n, Inc.*, 81 Wn.2d 259, 265, 501 P.2d 290 (1972) ("[A] plaintiff's motion to dismiss, made at the end of his own case, . . . should not be granted . . . if the defendant elects to proceed with the case.") (internal citations omitted).[3] That did not occur here.

Notably, in denying Bell's motion for summary judgment on her adverse possession claim, the trial court acknowledged that "[t]here's some issues here that I do think . . . might need to be addressed at trial" because "I remain somewhat concerned about some of . . . the evidence as far as do I have a clear basis at this time right now to say that there was a continuous, hostile use of that property for the requisite statutory [period]?" But by granting Bell's CR 50 motion at the close of her case-in-chief, the trial court prevented Schupp from addressing these issues by testifying at trial, calling witnesses, and presenting other evidence refuting Bell's claims and in support of her counterclaims. Given that the trial court "focused primarily on the testimony of Norman Hayes" in ruling in Bell's favor, Price's testimony undermining Hayes' testimony could have provided a "legally sufficient evidentiary basis" for a reasonable fact finder to have found for Schupp on some or all of the elements of Bell's adverse possession claim. *See* CR 50(a). For all

[3] *See also Clallam Title and Escrow v. Pronesti*, No. 57169-2-II, slip op. at 4-6 (Wa. Ct. App. Sept. 12, 2023) (unpublished), https://www.courts.wa.gov/opinions/pdf/D2%2057169-2-II%20Unpublished%20Opinion.pdf (error to grant CR 50 motion before nonmoving party could present its case). Although *Pronesti* is an unpublished opinion, we may properly cite and discuss unpublished opinions where, as here, doing so is "necessary for a reasoned decision." GR 14.1(c).

these reasons, we reverse the trial court's ruling granting Bell's CR 50 motion on her adverse possession claim and remand for a new trial on that claim.[4]

C

Following trial, the trial court issued an order granting Bell's motion for attorney fees and costs pursuant to RCW 7.28.083(3), which authorizes courts to award costs and reasonable attorney fees to "[t]he prevailing party in an action asserting title to real property by adverse possession." In its order, the court stated that it awarded attorney fees and costs to Bell because it "granted [Bell's] motion for a directed verdict during a bench trial, based on [Bell's] claim of adverse possession." The order further states, "RCW 7.28.083(3) allows for [Bell] to move for attorney fees and costs on a claim of adverse possession, but also for those fees and costs on claims that cannot be segregated from the claim of adverse possession." The trial court subsequently issued a second order on January 19, 2024, following its denial of Schupp's motion for reconsideration, awarding additional attorney fees to Bell pursuant to RCW 7.28.083(3) because the statute "allows for [Bell] to move for attorney fees and costs on a claim of adverse possession, including posttrial motion work related to the claim." Because we

[4] Because we hold that the trial court erred in granting Bell's CR 50 motion on her adverse possession claim, we need not reach her additional argument that the trial court abused its discretion in denying her motion for reconsideration under CR 59. Nonetheless, one of the enumerated grounds for reconsideration is "Irregularity in the proceedings of the court . . . or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial." CR 59(a)(1). Given our analysis and holding in the text above, the trial court abused its discretion by failing to grant Schupp's motion for reconsideration on this basis. *See Barefield v. Barefield*, 69 Wn.2d 158, 162-63, 417 P.2d 608 (1966) (trial court's summary award of custody to respondent at the conclusion of petitioner's case-in-chief in divorce hearing was an irregularity that deprived petitioner of a fair trial).

reverse the trial court's entry of judgment in favor of Bell on her adverse possession claim, we vacate the trial court's orders awarding prevailing party attorney fees and costs under RCW 7.28.083(3) because Bell is no longer a prevailing party on that claim.[5]

Lastly, both parties also request attorney fees on appeal pursuant to RAP 18.1 as a prevailing party under RCW 7.28.083(3). We have repeatedly held that "[w]here both parties prevail on major issues, neither is entitled to attorney fees." *Chiu v. Hoskins*, 27 Wn. App. 2d 887, 903, 534 P.3d 412 (2023) (quoting *Sardam v. Morford*, 51 Wn. App. 908, 911, 756 P.2d 174 (1988)). Here, Bell has prevailed on major issues relating to her prescriptive easement claim, while Schupp has prevailed on major issues relating to Bell's adverse possession claim. Thus, as in *Chiu*, neither party is entitled to recover prevailing party attorney fees on appeal.

Affirmed in part, reversed in part, and remanded.

Feldman, J.

WE CONCUR:

Chung, J.

Bowman, J

[5] Because we remand for a new trial, we express no opinion on whether Bell is entitled to recover attorney fees and costs under RCW 7.28.083(3) in connection with her prescriptive easement claim. *See Clark County v. W. Wash. Growth Mgmt. Hr'gs Review Bd.*, 177 Wn.2d 136, 145-47, 298 P.3d 704 (2013) (appellate courts "retain wide discretion in determining which issues must be addressed in order to properly decide a case on appeal" and "must address only those claims and issues necessary to properly resolving the case as raised on appeal by interested parties"). For similar reasons, we express no opinion on Schupp's argument that the trial court "erred in entering judgment of adverse possession where plaintiff Bell's predecessors in interest failed to exhaust administrative remedies."

EXHIBIT – 1

E-FILED
03-10-2023, 11:41
Scott G. Weber, Clerk
Clark County

3

IN THE SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

ANNA G. BELL, a single woman, Plaintiff, vs. CANDACE K. SCHUPP, a single woman, and BANC OF AMERICA FUNDING CORPORATION 2007-1. Defendants.	Case No.: 22-2-01457-06 DECLARATION OF NORMAN HAYES

I, NORMAN HAYES, hereby state as follows:

1. I am over the age of eighteen (18) and am competent to testify in this matter.

2. I make this Declaration based on my personal knowledge of the facts set forth herein.

3. My wife, Candy, and I previously owned and resided at the property located at 4404 NE 399th St. La Center, Washington. We purchased the property from James "Mike" Ford and Peggy Ford in 1989 and lived there for about 17 years. We sold the property in 2006 after we platted it. The person who ultimately got one of our platted parcels was Candace Schupp.

4. When we took title to our property originally, the property directly west of ours at 4400 NE 399th St. La Center, Washington was owned by an older gentleman named George

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Bourcier. George had a driveway leading up to his house. But I saw that our predecessor, Mike Ford, had put in steel post fence right down the middle of George's driveway. Mike Ford told me that he had had a survey crew come out to survey his property and they determined that the true western deed line was about 9 feet west of where Mike always thought his boundary line was. I understood that this 9 foot strip of property ("disputed strip") had always been maintained by George. But Mike went ahead and put up a fence right on George's driveway anyway where Mike's surveyors placed the true line. I did not think that was right.

5. A few weeks after my wife and I moved onto our property, I learned that George had maintained the disputed strip of property for about 35-40 years. I felt that it really belonged to George. So I tore up the posts and wire that Mike had put in George's driveway and approached George. I told George that as far as I was concerned, all that disputed property belonged to him because he was the person who had maintained it and used it all of those years.

6. About two years after that, in 1991 or so, I erected a fence on the part of the property that I thought was the true dividing line between our property and George's property. I used round power poles from Bonneville to erect the fence and I erected the same type of fencing all around my property. I worked at Bonneville for a time which is how I got the poles to build the fencing. I now understand that this fence that I erected is the fence that Candace has since torn down and claimed was never the boundary fence. This fence was always meant as the boundary fence between my property and George's property. I even told Candace this when she purchased the property. Candace knew that this fence was the dividing line between the two properties because I told her that.

7. As far as I was concerned, all of the property west of the fence belonged to George Bourcier. And he maintained his property up to that fence line as if that fence line marked the boundary between our two properties. And it did mark the boundary. I treated my property up to the fence the same way.

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to the fence the same way.

8. And George kept up his property immaculately, including the driveway and that area right up to the fence. He maintained that disputed strip the same way he had for all those years prior to our moving to our property.

9. George died around 1995, and his kids rented out his property for a few years after that. The renters continued to keep the property up to the fence line maintained. When George's kids sold the property to Brett Baskin around 2003, Brett mowed and maintained disputed strip up to the fence.

10. Simply put, the fence was the dividing line. George maintained that disputed property for many years prior to my wife and I getting our property. I gave that property back to George because it was his. I specifically erected that fence to mark the boundary between our two properties. This has never been a problem until Candace decided to make it a problem. When she bought the property, I spoke with her about the fence being the boundary marker. I told her what had happened with George. And she said something to the effect of "oh yeah, no problem with me." I am very surprised she is now disputing that the fence was the boundary line.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

SIGNED this 7 day of March, 2023, at (city), Arizona.

NORMAN HAYES

JACKSON, JACKSON & KURTZ, INC. PS
Attorneys At Law
PO Box 340 - 704 East Main Street, Suite 102
Battle Ground, Washington 98604
(360) 687-7105

EXHIBIT – 2

IN THE SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

ANNA G. BELL, a single woman, Plaintiff, vs. CANDACE K. SCHUPP, a single woman, and BANC OF AMERICA FUNDING CORPORATION 2007-1. Defendants.	Case No.: 22-2-01457-06 DECLARATION OF WILLIAM BRETT BASKIN

I, WILLIAM BRETT BASKIN, hereby state as follows:

1. I am over the age of eighteen (18) and am competent to testify in this matter.

2. I make this Declaration based on my personal knowledge of the facts set forth herein.

3. I previously owned and resided at the property located at 4400 NE 399th St. La Center, Washington. As I recall, my wife and I purchased this property in 2003 and we sold the property around 2009.

4. I recall that there was a driveway on my property which led from NE 399th Street all the way up to the house. The driveway was graveled and maintained. I always thought that the driveway was located on my property. This was never an issue to me.

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5. To the best of my recollection, I also recall that there was a fence east of my driveway. The fence extended from up where our house was down to the road, but the fence did not extend all the way south to NE 399th Street. There was a gap in between the fence and NE 399th St., where trees were located. This fence separated my property from the property to the east of ours. We viewed the fence as the boundary between our property and the property to the east. This was also never an issue.

6. Norman Hayes and his wife previously lived on the property now owned by Candace Schupp. My wife and I were very friendly with Norman and his wife. Our kids would go back and forth using a gate connected to the fence to visit Norm and his wife and play with their dogs. We viewed the fence between our two properties as the dividing line. It was never an issue between us and Norman because each of us treated our properties as if the fence was the true line.

7. To memory, on the eastern side of the driveway leading up to the fence was a grass shoulder. I regularly mowed this grass shoulder leading up to the fence, just as I regularly mowed the other side of the driveway. I thought this was part of my property, just as the driveway was part of my property. To the best of my recollection, I never saw Candace Schupp, or any other neighbor, mowing our grass shoulder or any part of our property.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

SIGNED this 08 day of March, 2023, at Houston, Texas.

William Brett Baskin
WILLIAM BRETT BASKIN

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EXHIBIT 3

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Anna G. Bell Respondent v. Candace K. Schupp, et al. Appelant	Court of Appeals Division I Case No. 86630-3-I **DECLARATION OF TAMARA LYSKOVSKAIA, BELL'S MOTHER**

This declaration is made by:
Name: Tamara Lyskovskaia
Age: 81

Relationship to the parties in this action: mother of Anna G. Bell, grandmother of Teuila Wade
I declare,

1. I am over the age of eighteen (18) and am otherwise competent to testify in this matter.
2. I am the above-named Tamara Lyskovskaia, and I make this Declaration based upon personal knowledge and records and facts in my possession.

I lived and currently live with my daughter Anna, her late husband Michael Wade and my granddaughter Teuila Wade at 4400 NE 399th St. La Center, WA 98629 since 2019. Anna takes complete care of me 24/7, she is my only provider and caregiver. She fully provides me with food and shelter, medications and medical supplies, hygiene care, mobility support, clothing, everyday care, transportation to medical appointments and all my needs. I have no income, pension, savings, assets, social security, Medicaid or any medical insurance.

Anna pays for all my medications and medical supplies out-of-pocket on her small monthly income while also taking care of her daughter's needs. I have several medical conditions and disabilities and am taking thirteen lifesaving medication for them. Unfortunately, some of these medications are very costly without insurance such as Eliquis and Jardiance, their costs are $733 and $713 for a month's supply, but they are prescribed by the doctor. Other medications and daily medical supplies are also costly in total because of their total number.

I can provide additional information if needed and requested.

Respectfully,

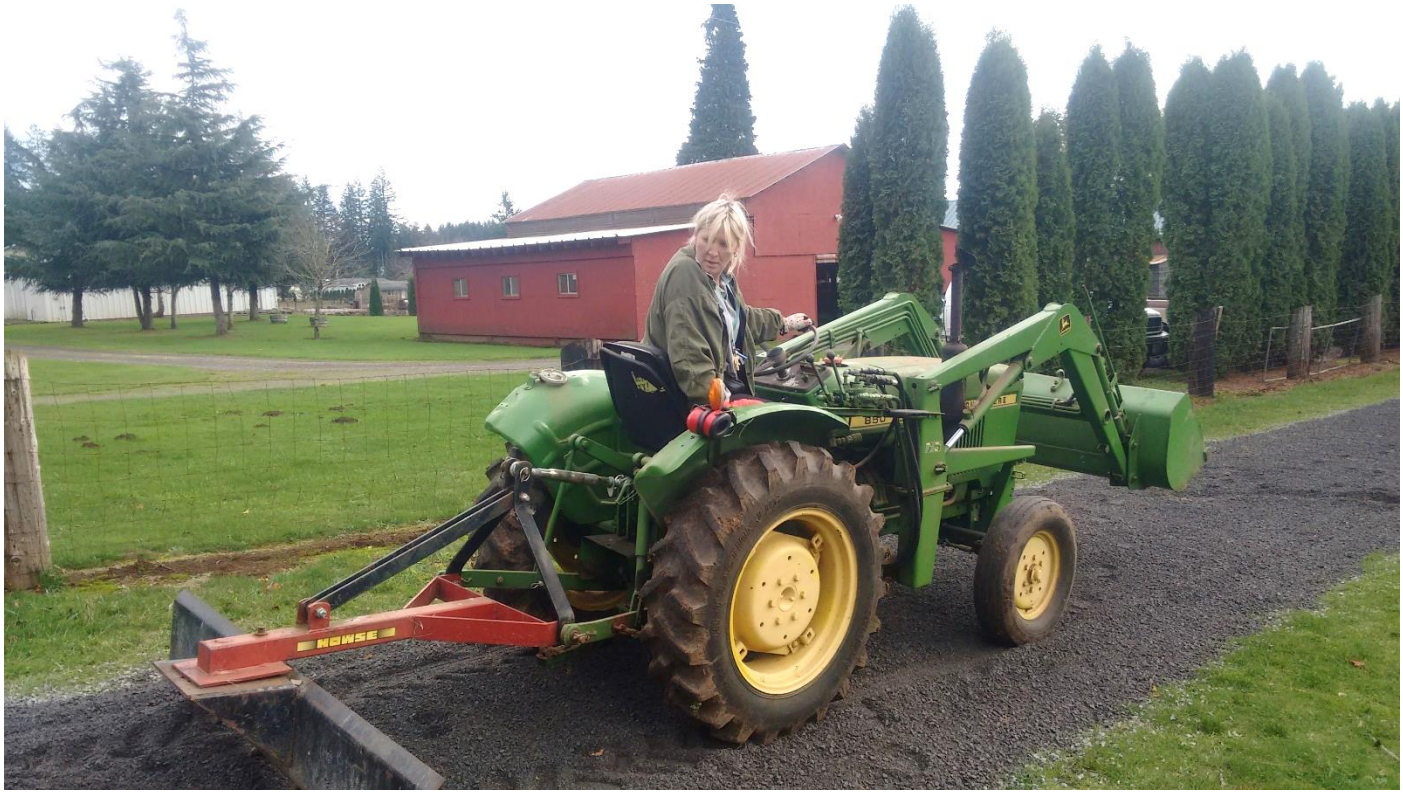
I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct. [ ] I have attached (*number of pages*)_____pages.

Signed at (*City*) La Center_____ (*State*) WA___ on (*Date*) September 27th 2024_____

_____ Tamara Lyskovskaia_____

Signature of Declarant *Print or Type Name*

EXHIBITS 4 - 11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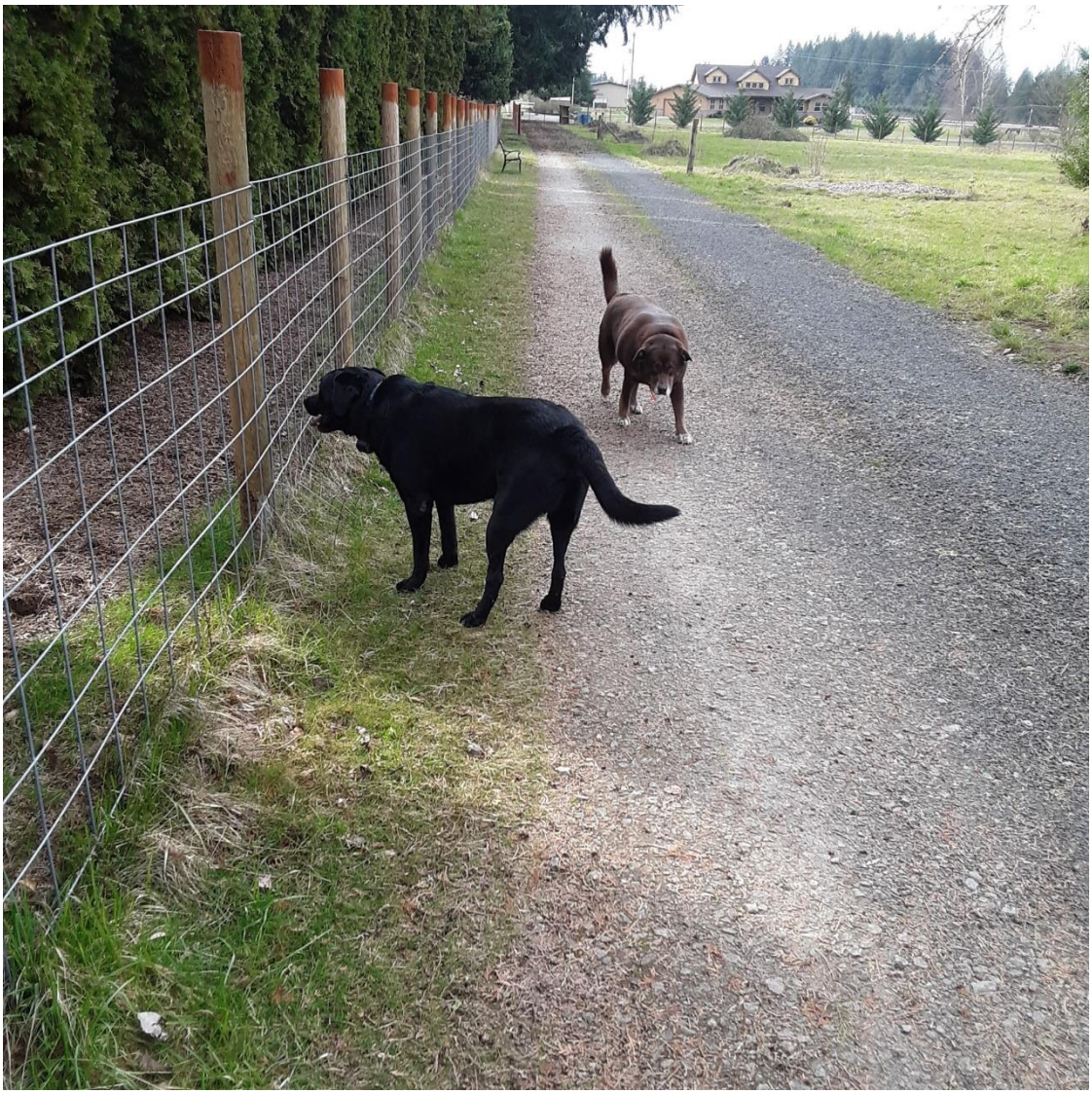

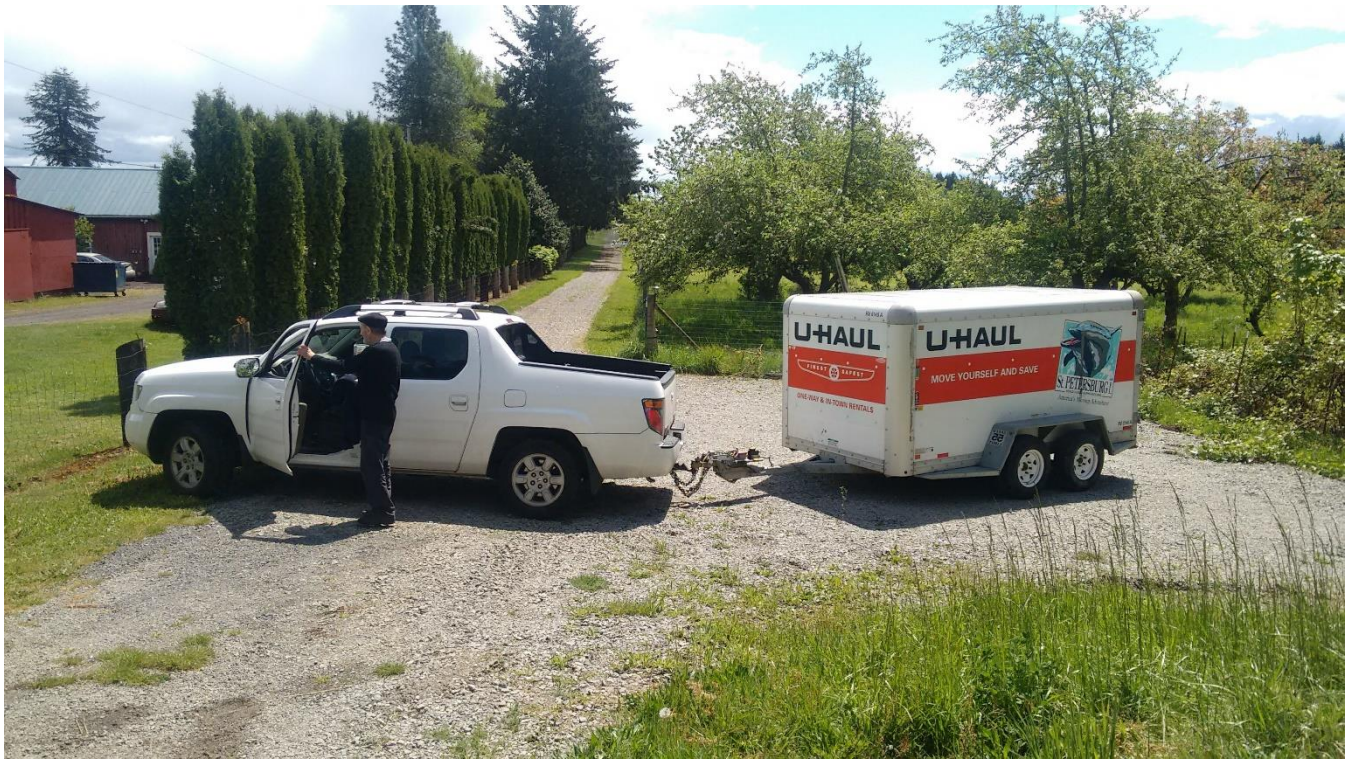
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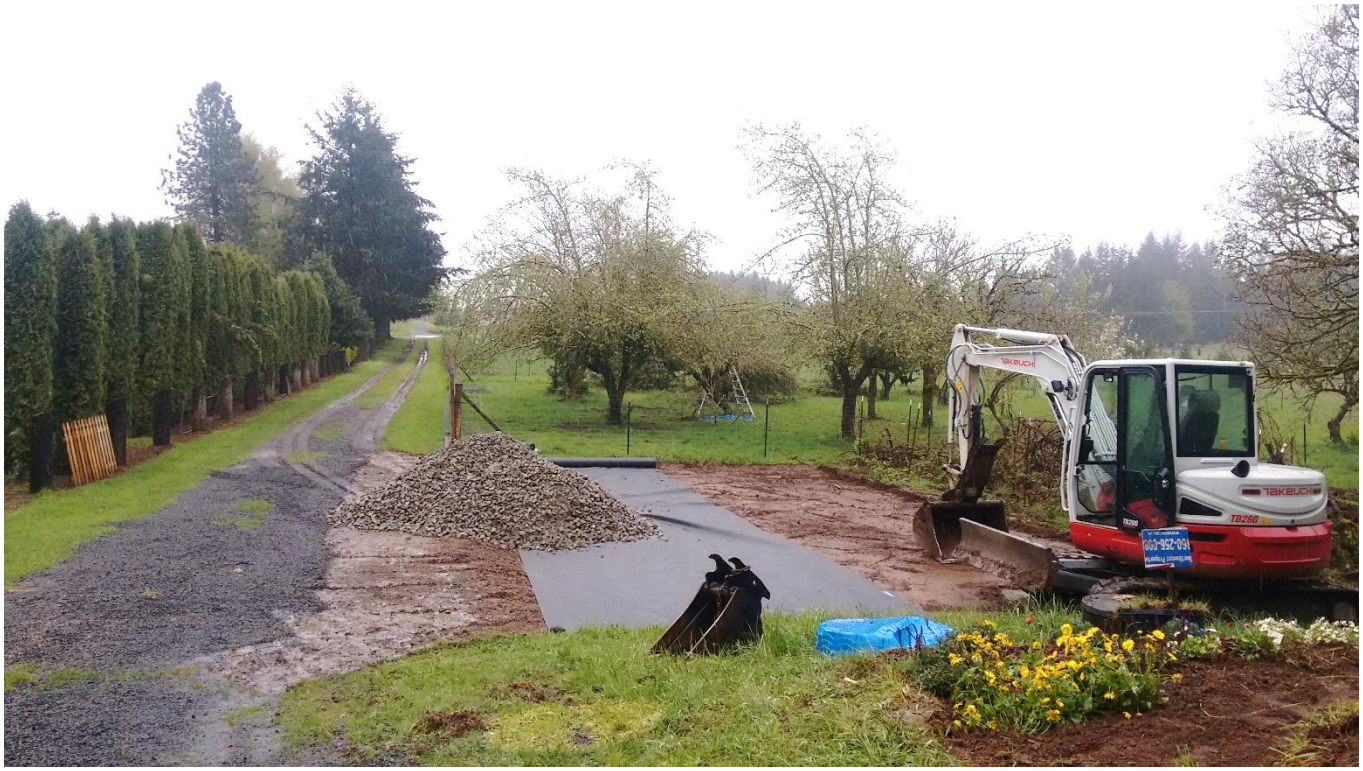
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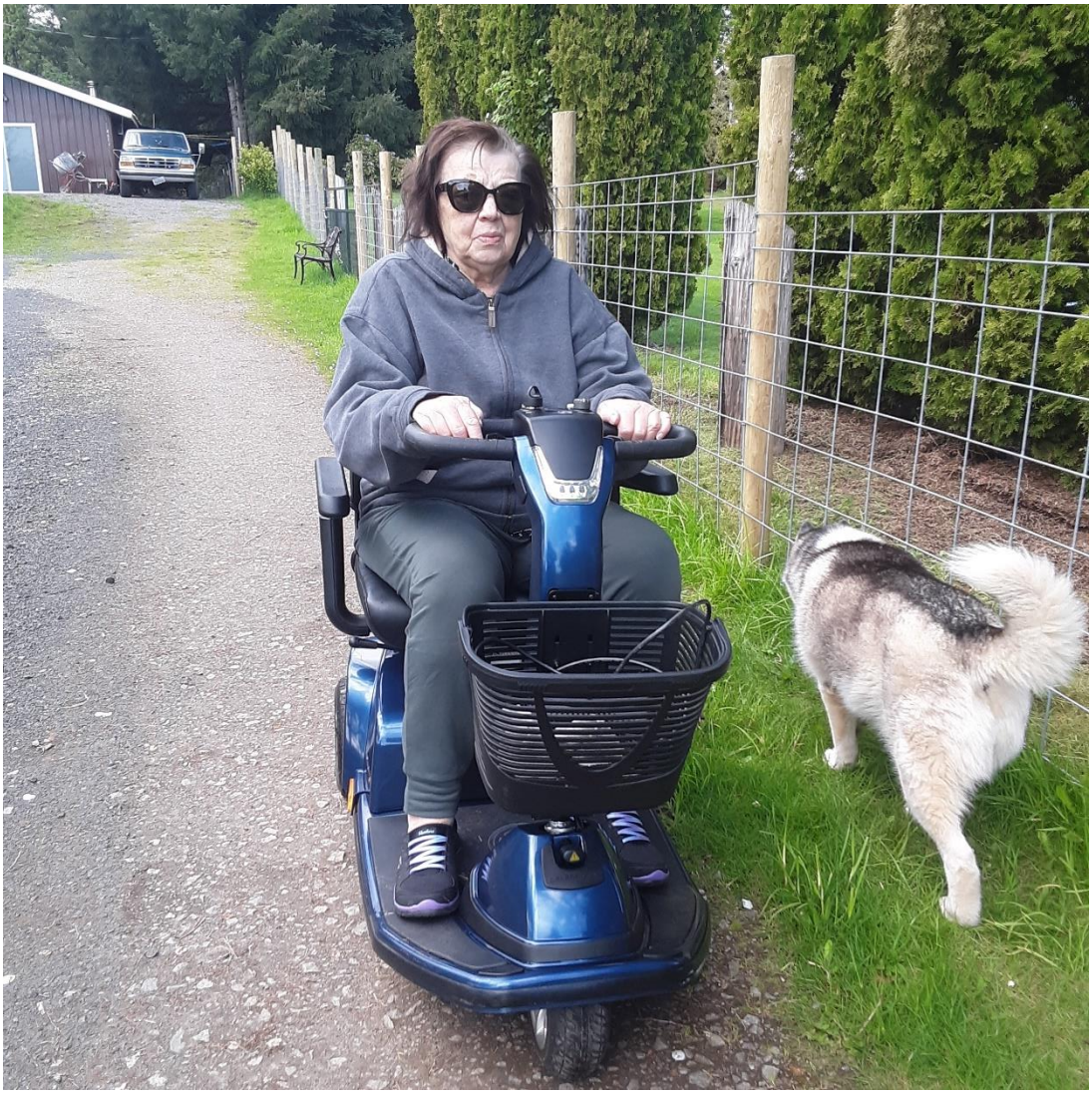

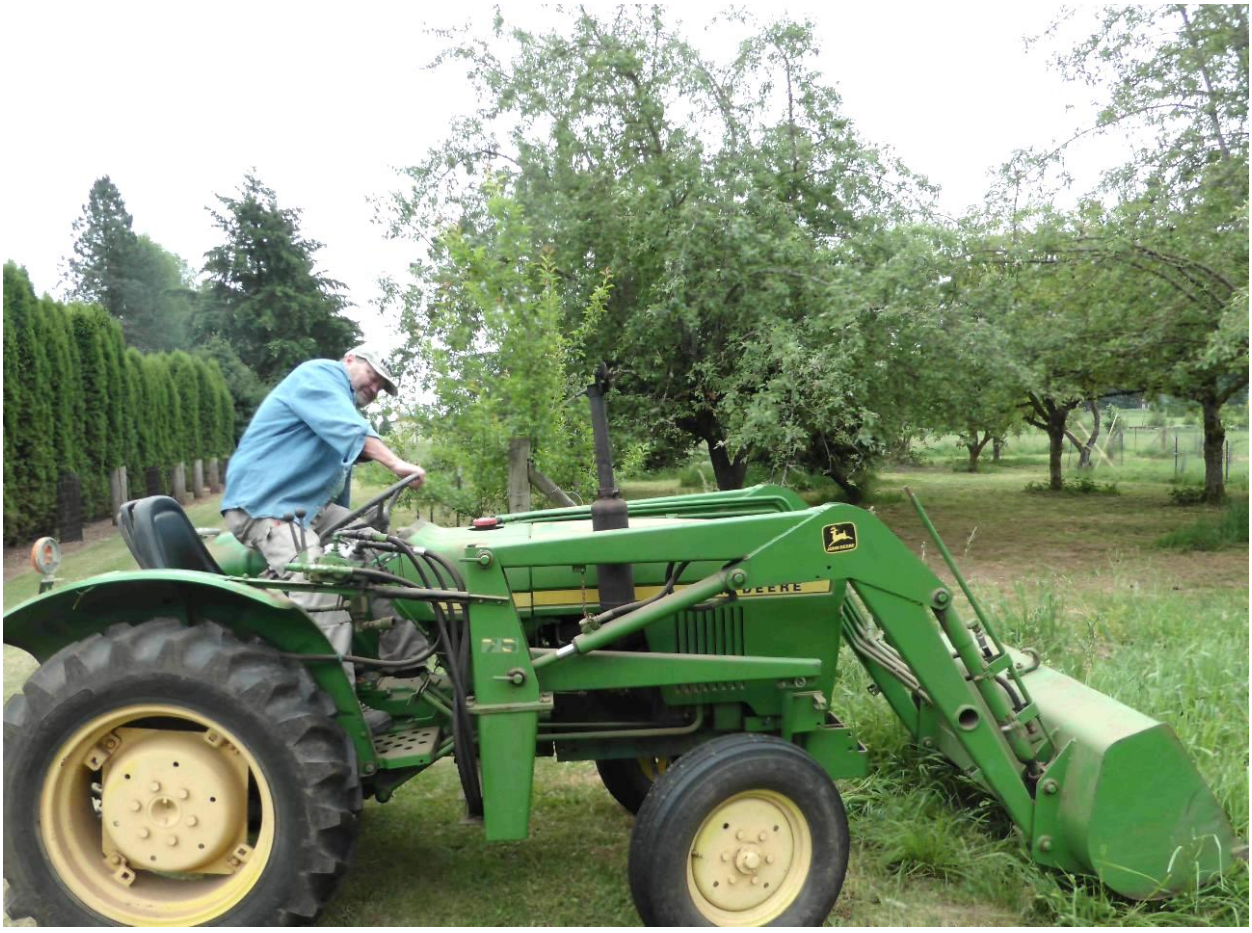
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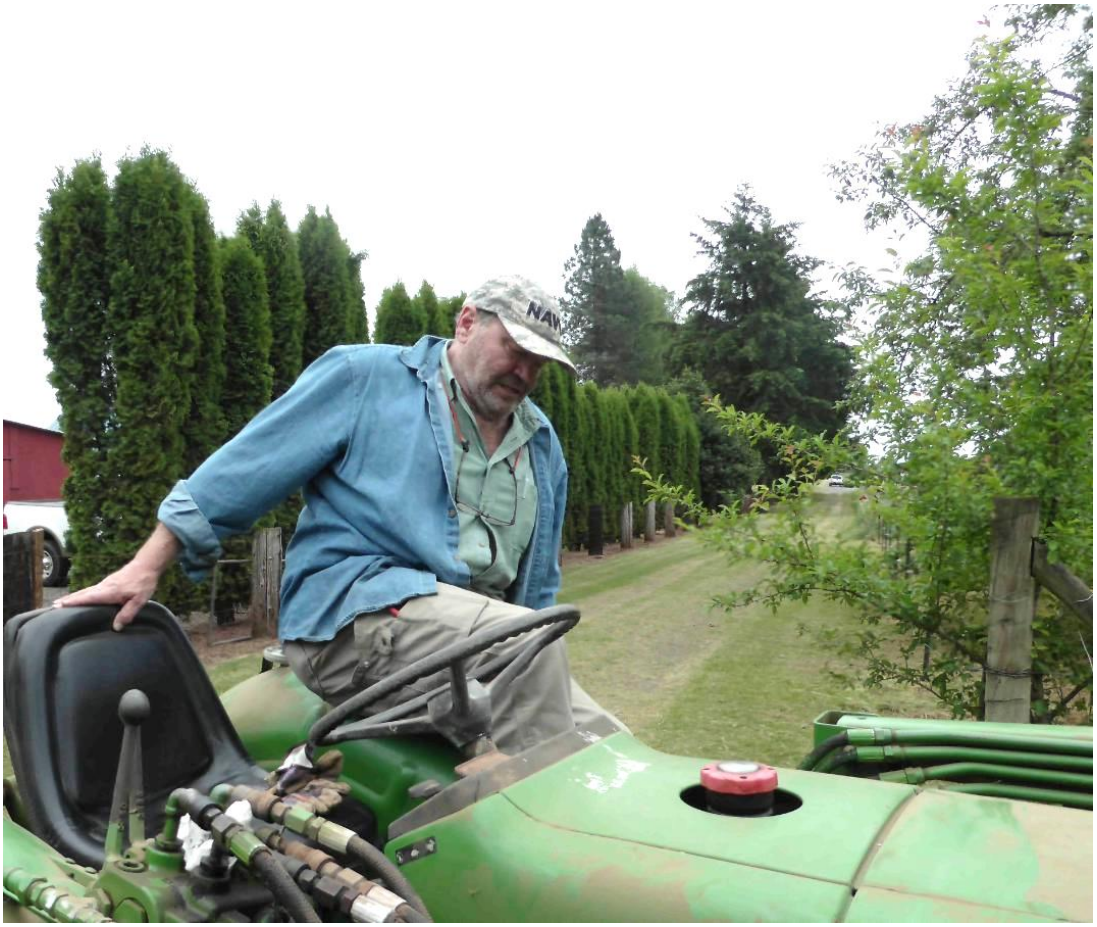

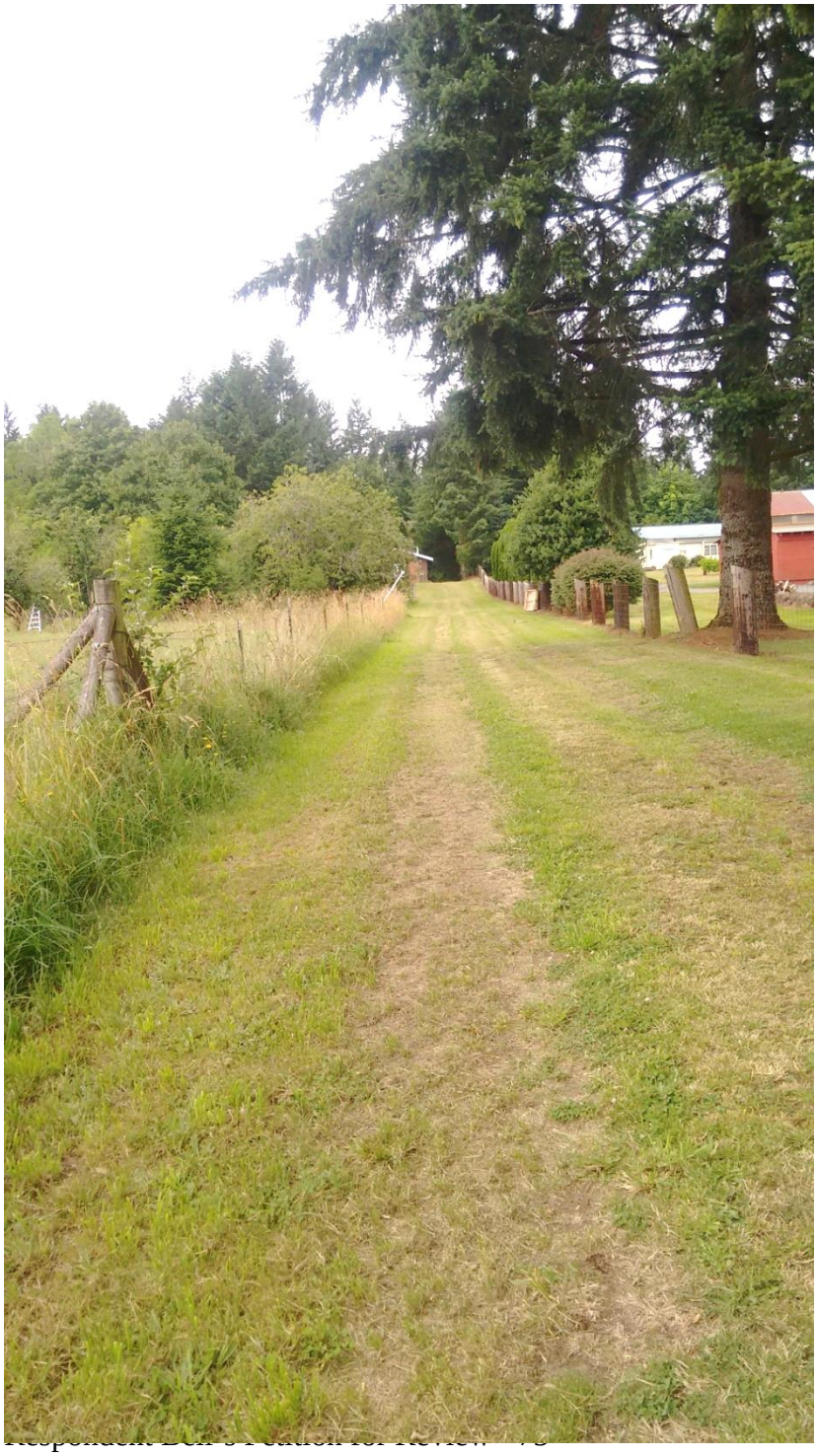

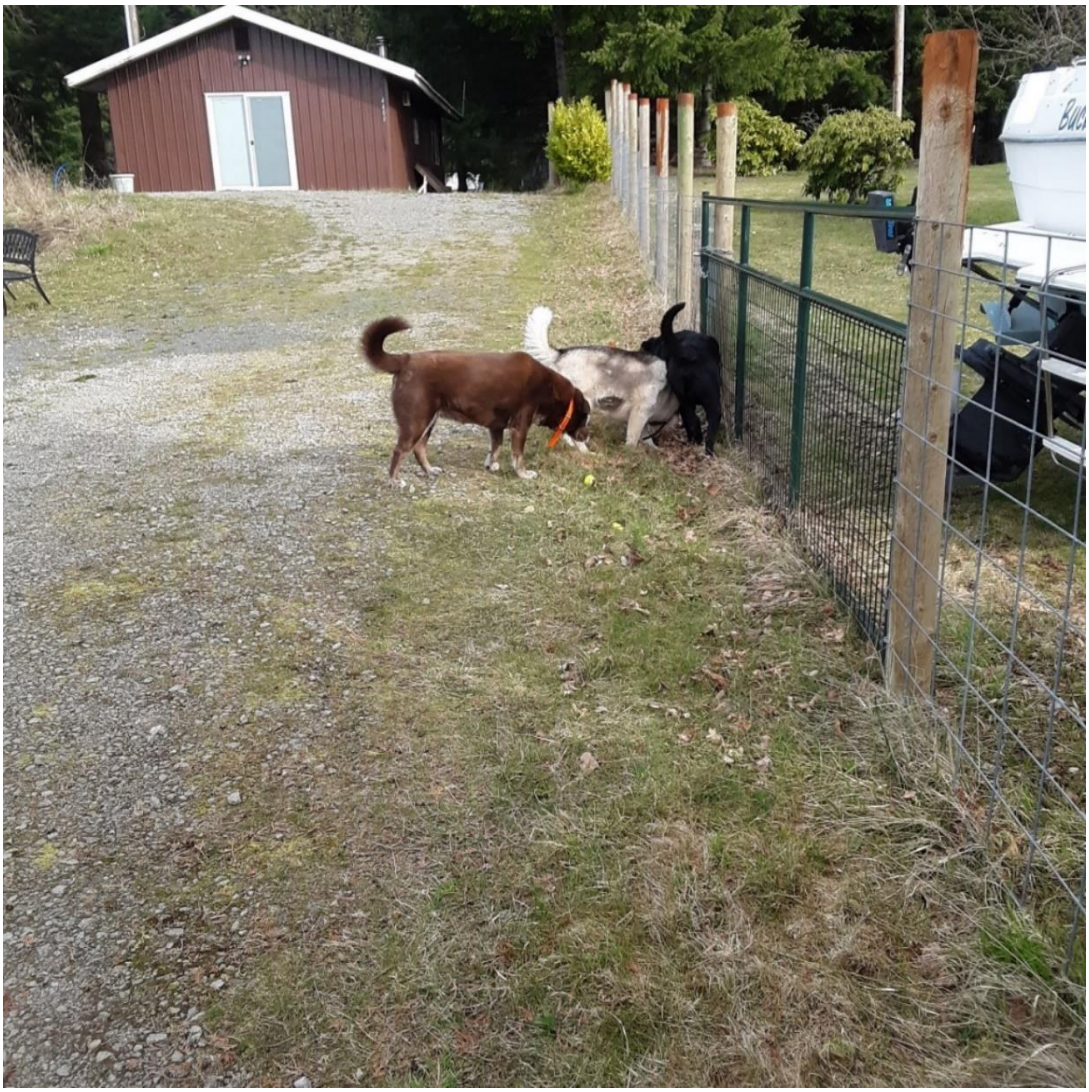

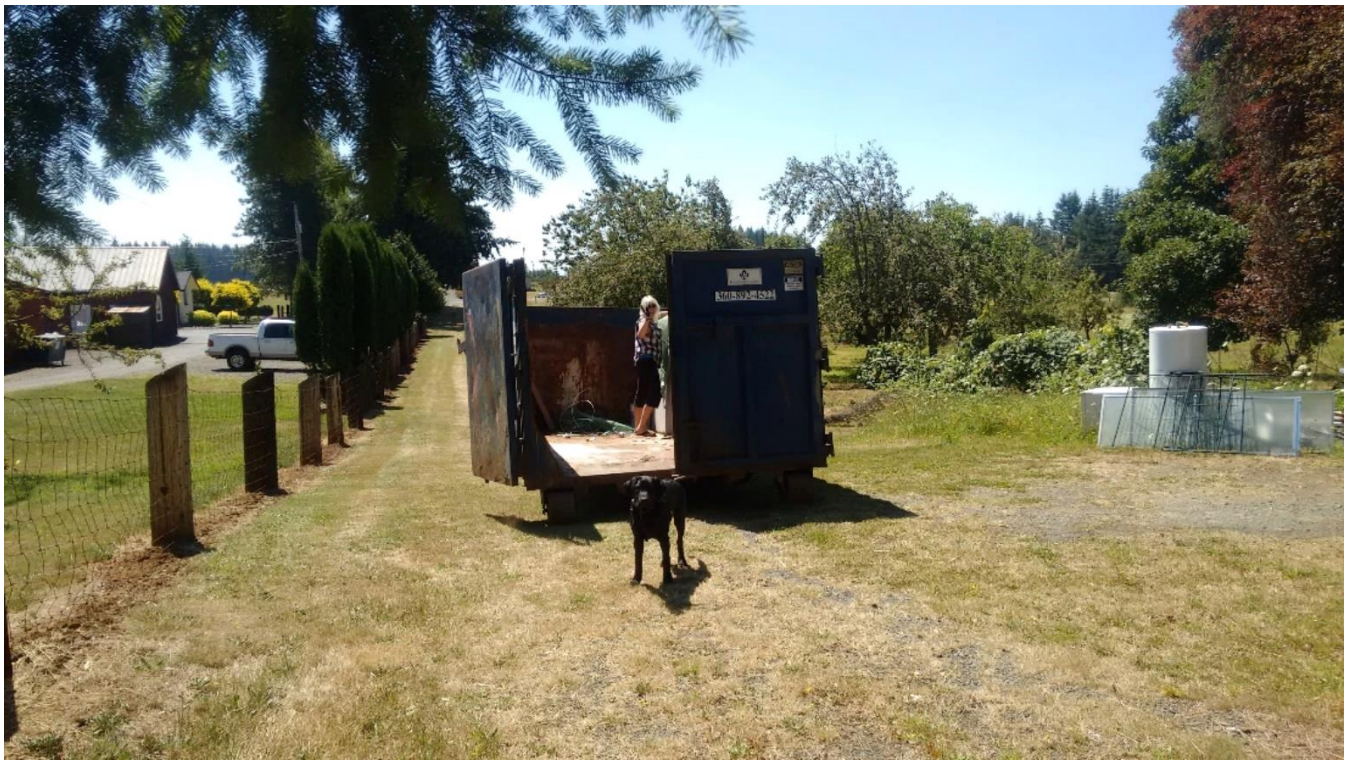

ANNA G BELL

September 27, 2024 - 4:17 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	86630-3
Appellate Court Case Title:	Anna G. Bell, Respondent v Candace K. Schupp, Appellant
Superior Court Case Number:	22-2-01457-5

The following documents have been uploaded:

- 866303_Petition_for_Review_20240927161151D1759353_9342.pdf
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