

Sometimes it helps to get back to basics.

Adverse possession is as old as the hills, and the common law is very specific about what a claimant need prove. A recent case brings this home once again. Anderson v. Hudak, 80 Wash. App. 398 (1995).

The Hudaks were involved in a boundary dispute with their neighbor Anderson regarding a narrow strip of property on the border between the two families' properties. The Andersons had planted a strip of trees along the alleged boundary, but they conducted no routine maintenance or any other activity in the disputed strip.

The court noted the standards of adverse possession, as follows. "In order to establish a claim of adverse possession, there must be possession for ten years that is: 1) Open and notorious, 2) actual and uninterrupted, 3) exclusive, and 4) hostile...Hostility does not import enmity or ill will; rather, it requires only that the claimant treat the land as his own as against the world throughout the statutory period."

The party claiming adverse possession has the burden of establishing the existence of each element.

The Court of Appeals held that Anderson never watered, pruned, trimmed or cared for the trees. The only evidence regarding activity on the trees themselves was that the family planted the trees in the 1960s.

The Court further held that the necessary occupancy and use of the property need only be of the character that a true owner would assert in view of its nature and location. Since Anderson did nothing to take care of the trees, Anderson failed the burden of proving hostile possession.

Regarding the open and notorious elements, the standards are met if 1) the true owner has actual notice of the adverse use throughout the statutory period, or 2) the claimant uses the land so that any reasonable person would assume that the claimant is the owner. Since Anderson produced no evidence that any of the neighbors had actual notice of any adverse possession claim, nor did Anderson use the land so that any reasonable person would assume that she was the owner, Anderson failed the test. With no evidence of affirmative acts of ownership, Anderson's claim failed.

In other words the nature of possession is determined objectively by the manner in which the claimant treats the land; the claimant's subjective belief regarding the claimant's true interest in the land and intent to dispossess or not dispossess another is irrelevant to determine whether

hostility has been established. The intent issue was a sticky wicket for many years, until 1984 when our state's Supreme Court settled the matter once and for all.

Adverse possession claims are very common whenever rural lands change ownership and development pressures escalate, a common occurrence in Thurston and neighboring counties. Moreover, boundary disputes tend to be emotionally charged issues, the real property equivalent of family law. However, in family law after the spouses divorce, usually one spouse moves away. In real property boundary disputes, the property owners continue to live next door to each other. Moreover, the value of the property in dispute is generally less than the cost in legal fees, at least for local residential property. In other words the dispute is usually not worth litigating. Alternative dispute resolution is much advised.

**Limited Liability Companies, revisited.** An issue has arisen regarding whether Limited Liability Companies(LLC) allow a husband and wife as the only members of an LLC. Although the statute allows an LLC so formed, some practitioners advise against, based on tax rather than legal considerations. Consult your tax expert when considering formation of a business entity.