IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

DENNIS WALKER & SANDRA WALKER, a marital community, Appellants, v. JEFFREY PLUMMER & KELLI PLUMMER, a marital community, Respondents.	No. 40864-3-II UNPUBLISHED OPINION

Quinn-Brintnall, J. — In this quiet title action, Dennis and Sandra Walker appeal the trial court's declaratory judgment quieting title to a disputed area in favor of their neighbors, Jeff and Kelli Plummer. The Walkers contend that the trial court erred by striking a portion of the Plummers' predecessor, Lorri Tipton's,[1] video deposition testimony as inadmissible hearsay. The Walkers argue that the evidentiary error resulted in the trial court erroneously concluding that they failed to prove their adverse possession, mutual recognition and acquiescence, common grantor, and estoppel claims. Because the Walkers invited the alleged evidentiary error, they waived any challenge to the stricken portion of Tipton's deposition. We hold that the trial court

[1] Tipton's current name is Lorri Hodgkinson. For clarity and uniformity with the parties' briefs and trial court findings, we refer to her as Tipton.

did not err in concluding that the Walkers failed to prove their adverse possession, mutual recognition and acquiescence, common grantor, and estoppel claims and affirm.

FACTS

On August 25, 1989, Jack Januska purchased approximately 10 acres of land in Vancouver, Washington. Januska did not live on the property. Instead, Januska owned and lived on a parcel immediately to the south of the 10-acre parcel. Januska used the 10 acres for grazing his livestock year-round. He reinforced an old, dilapidated fence running north-south near the center of the property to keep his cattle close to his home.

On December 23, 1992, Januska divided the 10 acres and sold the eastern 5-acre parcel to Tipton. At the time, Januska did not consider the old, dilapidated barbed wire fence to be the boundary between the eastern and western parcels. The old fence ran north-south the entire length of the property, approximately 86 feet from the deed line at the northern end and approximately 65 feet at the southern end. Januska did not refer to the fence as the deed line when he sold the property to Tipton.

Two wells sat on Tipton's eastern parcel. Well #184, the well closest to the western parcel, was built in 1970. Well #181, the well on the eastern side of Tipton's parcel, was built in 1980. Tipton stated that when she purchased her property, there was an old well house servicing well #181 located about 100 feet from the main house. Tipton stated that well #184 was "maybe eight feet from the property line," meaning that the well was eight feet into what she believed to be the western parcel. Br. of Appellant, App. (Tipton Dep. at 24). Tipton stated she never thought she owned or had permission to use well #184.

Tipton stated that because she planned to raise llamas, she installed field fencing "all the

way around property." Br. of Appellant, App. (Tipton Dep. at 13-14). Tipton used a "written out description" of her property and "survey markers"[2] to determine where to install her fence. Br. of Appellant, App. (Tipton Dep. at 16). Tipton stated that she tore down the old dilapidated fence between her parcel and the western parcel when she built her new fence. Tipton stated that the old dilapidated fence was not on the property line. Tipton used the "survey markers" to determine that the true boundary line was approximately three feet east of the old fence; the western parcel gained those three feet. Tipton stated that once she built her new fence, she considered it the boundary line of her property. The area between the eastern and western parcels' deed line and Tipton's fence is the disputed area in this case.

Prior to November 1997, Januska's cattle sporadically and noncontinuously grazed in the disputed area. On November 18, 1997, Januska sold the western parcel to the Walkers ("Walker parcel"). During negotiations for the sale, Januska made representations to the Walkers that well #184 served the property and requested well-water testing because the sale was contingent on the test. The Walkers' realtor testified he also thought well #184 was part of the Walker parcel.

In June 1998, the Plummers moved onto Tipton's eastern parcel to make sure the property complied with all codes before purchasing the property. Tipton stated that she met with the Plummers before they purchased her property. Tipton stated that she walked the Plummers along her boundary fence and discussed with them "where the property lines were" and about "the markers." Br. of Appellant, App. (Tipton Dep. at 65). Tipton stated that she told the Plummers there was "just the one" well, well #181, on her property. Br. of Appellant, App. (Tipton Dep. at

[2] Nothing in the record supports a finding that the property had ever been surveyed or that the "markers" Tipton used were in fact survey markers. Tipton stated she did not have the property surveyed herself and that she did not know whether it had ever been surveyed.

67). Tipton stated that she told the Plummers they could use well #181 to service the house they planned to build at the top of the hill near the Walker parcel.[3] Tipton sold her property to the Plummers ("Plummer parcel") on March 1, 1999.

Sometime before the Plummers purchased the property, Tom Davis, a neighbor to the south of the Plummer parcel, told Kelli Plummer that Tipton's fence was not the boundary line and that their property extended past the fence. Beginning in the summer of 1999, Kelli Plummer went to the fence every day to oversee excavation and construction as the Plummers prepared to move their new house onto the property. In the fall of 2000, the Plummers took part of the fence down to move their house onto the property. The front door of the house was approximately 45 feet from the fence and the garage door was approximately 30 feet from the fence. A different neighbor fixed the fence after the Plummers finished moving their house.

The Walkers had well #184 serviced in November 2001. When Kelli Plummer saw the service worker at the well, she approached him and he told her, "I don't understand. This well is not listed on this property." 2 Report of Proceedings (RP) at 367. Kelli Plummer replied, "That's because . . . it's our well." 2 RP at 367.

The Walkers did not live on the Walker parcel before 2002. Between 1999 and 2002, the Walkers occasionally had picnics in the disputed area, cut trails in a grove in the disputed area, and allowed neighbors to graze livestock and salvage fallen trees from the disputed area. The Walkers began building their house on the Walker parcel in April 2002. They trenched and connected their house to well #184. The Walkers also removed trees, leveled the property,

[3] Our understanding of the record is that the Walker and Plummer parcels meet at the top of a very large, forested hill. Tipton's house on the Plummer parcel was located on the bottom of that hill.

planted and mowed grass, built irrigation lines, and planted and mulched trees along the fence. These tasks occurred in the disputed area.

On July 24, 2007, Dennis Walker called Jeff Plummer and said that he had discovered the deed line was farther west than the fence. Dennis Walker offered to pay the Plummers $3,000 to offset the inconvenience of legal proceedings. Dennis Walker clarified that he was not asking to move the fence toward the Plummers' house and agreed that Jeff Plummer could move the fence one foot west, toward the Walkers' house. Jeff Plummer told Dennis Walker he would have to speak with Kelli Plummer before agreeing to accept the $3,000. Kelli Plummer later called Dennis Walker to inform him that the Plummers would not give the Walkers title to the disputed property. Dennis Walker replied that the Walkers would pursue legal title.

The Plummers tore down part of the fence on August 1, 2007. Dennis Walker observed Kelli Plummer mowing the disputed area. The same day, the Walkers went to the Plummers' house to discuss the disputed area. According to Dennis Walker, when asked why they took part of the fence down, Kelli Plummer responded, "[B]ecause you told [Jeff Plummer] we could put up a new fence." 1 RP at 97. Dennis Walker testified that the next comments the Plummers made to him were "because it's our fence" and "because our attorney told us to take it down and seize possession of the land." 1 RP at 98. Kelli Plummer testified that she "had no problem with [the Walkers] using [well #184]" because the Plummers were not using it. 2 RP at 389.

On September 13, the Walkers filed a complaint against the Plummers seeking declaratory judgment quieting title to the disputed area, damages for trespass, a permanent injunction, and equitable relief for damages resulting from the Plummers' interference with the Walkers' use of the disputed area. The Plummers answered and filed a counterclaim also seeking declaratory

judgment quieting title to the disputed property.

During bench trial, the Walkers' counsel directed Dennis Walker to read into the record a letter[4] written by Januska's wife which stated that "[a]t some point, my husband, Jack, put in a fence. . . . We just wanted to keep the cows in sight from our house. He was not thinking that it was a property or boundary line." 1 RP at 71. Januska purportedly signed the letter. Neither party objected to the testimony.

The Walkers introduced Tipton's video deposition at trial, but the Plummers objected to several lines from the deposition testimony, some of which the trial court sustained. At the conclusion of the Walkers' case, the Plummers moved to dismiss the Walkers' claims. The trial court reserved ruling on the motion without prejudice to finish presentation of the evidence. On May 19, 2010, the trial court entered declaratory judgment with written findings of fact and conclusions of law in favor of the Plummers. The Walkers timely appeal.

DISCUSSION

The Walkers assign error to the trial court striking a portion of Tipton's deposition testimony and entering findings of fact and conclusions of law that the Walkers failed to prove adverse possession, mutual recognition and acquiescence, common grantor, and estoppel. The Plummers argue that the Walkers waived their right to challenge the admissibility of Tipton's testimony when they agreed to strike and that substantial evidence supports the declaratory judgment.

After a trial court has weighed the evidence in a bench trial, we may not substitute our

[4] Januska's letter is not in the record before us on appeal. However, the transcript of Dennis Walker's trial testimony includes Dennis Walker quoting directly from the letter. ER 1007.

judgment for that of the trial court. Our review is limited to determining whether substantial evidence supports the findings of fact and, if so, whether the findings support the conclusions of law. *Keever & Assocs., Inc. v. Randall*, 129 Wn. App. 733, 737, 119 P.3d 926 (2005) (citing *City of Tacoma v. State*, 117 Wn.2d 348, 361, 816 P.2d 7 (1991)), *review denied*, 157 Wn.2d 1009 (2006). Substantial evidence is evidence sufficient to persuade a fair-minded person of the truth of the asserted premise. *Keever*, 129 Wn. App. at 737 (citing *Fred Hutchinson Cancer Research Ctr. v. Holman*, 107 Wn.2d 693, 712, 732 P.2d 974 (1987)). We review alleged errors of law de novo. *Trotzer v. Vig*, 149 Wn. App. 594, 612, 203 P.3d 1056 (citing *Sunnyside Valley Irr. Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003)), *review denied*, 166 Wn.2d 1023 (2009).

Ordinary rules of appellate procedure apply to an appeal from a declaratory judgment. *Schneider v. Snyder's Foods, Inc.*, 116 Wn. App. 706, 713, 66 P.3d 640 (citing *Nollette v. Christianson*, 115 Wn.2d 594, 599-600, 800 P.2d 359 (1990)), *review denied*, 150 Wn.2d 1012 (2003); *Lakewood Racquet Club, Inc. v. Jensen*, 156 Wn. App. 215, 223, 232 P.3d 1147 (2010) (a declaratory judgment is an appealable final judgment (citing RAP 2.2(a)(1))). We review declaratory judgments the same way as any other civil action. RCW 7.24.070. First, we determine whether substantial evidence supports the trial court's findings of fact, and if so, second, whether those findings of fact support the trial court's conclusions of law. *Schneider*, 116 Wn. App. at 713 (citing *Landmark Dev., Inc. v. City of Roy*, 138 Wn.2d 561, 573, 980 P.2d 1234 (1999)). Unchallenged findings are verities on appeal. *Schneider*, 116 Wn. App. at 713 (citing *Goodman v. Bethel Sch. Dist. No. 403*, 84 Wn.2d 120, 124, 524 P.2d 918 (1974)).

Tipton's Deposition Testimony

A party seeking appellate review has the burden of providing us with all evidence in the record relevant to the issue before us. RAP 9.2(b); *Starczewski v. Unigard Ins. Grp.*, 61 Wn. App. 267, 276, 810 P.2d 58, *review denied*, 117 Wn.2d 1017 (1991). Without the trial record, we cannot review challenged evidence in the context of the rest of the evidence presented. *Allemeier v. Univ. of Wash.*, 42 Wn. App. 465, 473, 712 P.2d 306 (1985), *review denied*, 105 Wn.2d 1014 (1986). An insufficient record on appeal generally precludes our review of the alleged errors. *Bulzomi v. Dep't of Labor & Indus.*, 72 Wn. App. 522, 525, 864 P.2d 996 (1994). We do not typically consider documents appended to a party's brief that are not part of the appellate record. RAP 10.3(a)(8) (an appendix to a brief may not include materials not contained in the record on review without permission from the appellate court); *City of Moses Lake v. Grant Cnty. Boundary Review Bd.*, 104 Wn. App. 388, 391, 15 P.3d 716 (2001), *review denied*, 151 Wn.2d 1032 (2004).

Here, the Walkers attached Tipton's video deposition transcript to their opening brief but did not include it in the record on appeal. Generally, without a complete record, we would not review the Walkers' challenge regarding the admissibility of Tipton's deposition testimony. *Allemeier*, 42 Wn. App. at 473; *City of Moses Lake*, 104 Wn. App. at 391. However, because at oral argument both parties mistakenly agreed that the deposition transcript was included in the record before us, we exercise our discretion under RAP 1.2(a) and (c) to review Tipton's deposition and proceed to review the merits of the parties' arguments.

The Walkers assert that the trial court erred in striking a portion of Tipton's video deposition testimony regarding her conversation with Januska wherein he told her where to find the "survey markers." The Walkers argue that this testimony was admissible under either ER

804(b)(3) as a hearsay exclusion or ER 803(a)(1) as a present sense of impression. The Plummers argue that because the Walkers agreed to strike the testimony, they are precluded from raising this issue on appeal. The Plummers are correct.

The challenged testimony is as follows:

Q. "Januska also showed me the original survey post on the north side of the Plummer property," so do you recall Jack showing you either of those survey markers that were in the ground or are you referring to something different?
A. Yeah, he told me where to look for it --
Q. Okay.
A. -- and it was along --
MR. HAMILTON: The same objection.
MS. CRAWFORD: It's okay.

Br. of Appellant, App. (Tipton Dep. at 73). The Plummers objected to lines 11 through 15 of the deposition as hearsay. The record clearly shows that the Walkers agreed to strike the portion of testimony at issue:

THE COURT: Go to page 73.
MS. CRAWFORD: Strike.
THE COURT: Okay. 11 through 15 stricken.

2 RP at 314. The record does not show that the trial court struck lines 7 through 10 of Tipton's deposition.

We hold that the Walkers invited the alleged error by agreeing to strike the testimony at issue and the invited error precludes them from challenging the trial court's alleged error. *Davis v. Globe Mach. Mfg. Co.*, 102 Wn.2d 68, 77, 684 P.2d 692 (1984) ("A party cannot properly seek review of an alleged error which the party invited."); *see In re Marriage of Monaghan*, 78 Wn. App. 918, 930, 899 P.2d 841 (1995) (failing to make appropriate objection to evidence argued to the trial court generally waives the issue on appeal). We do not address this stricken

portion of Tipton's deposition testimony further.

Adverse Possession

Next, the Walkers assert that the trial court erred in finding the Walkers' and their predecessor Januska's use of the disputed area was not exclusive, open, notorious, and hostile for 10 continuous years. The Walkers assign error to the trial court concluding that they failed to prove adverse possession. The Plummers respond, arguing that substantial evidence supports the trial court's findings and conclusion that the Walkers failed to prove adverse possession because the Walkers did not live on their parcel for 10 years and Januska did not use the disputed area, except for one time to test the well. Our review of the record supports the Plummers' argument that the Walkers failed to prove they adversely possessed the property for the requisite 10 years.

To establish adverse possession, the possession must be (1) exclusive, (2) open and notorious, (3) hostile, and (4) actual and uninterrupted for 10 years. *Teel v. Stading*, 155 Wn. App. 390, 393-94, 228 P.3d 1293 (2010) (citing RCW 4.16.020(1); *Chaplin v. Sanders*, 100 Wn.2d 853, 857-62, 676 P.2d 431 (1984)). The party claiming to have adversely possessed the property has the burden of establishing the existence of each element because the presumption of possession is in the holder of legal title. *Krona v. Brett*, 72 Wn.2d 535, 539, 433 P.2d 858 (1967) (if a landowner has used real property as a true owner would, he is not precluded from claiming legal title merely because the parties' predecessors mistakenly placed a fence dividing his property from another in a wrong location), *overruled on other grounds by Chaplin*, 100 Wn.2d 853; *Shelton v. Strickland*, 106 Wn. App. 45, 50, 21 P.3d 1179 (citing *ITT Rayonier, Inc. v. Bell*, 112 Wn.2d 754, 757, 774 P.2d 6 (1989)), *review denied*, 145 Wn.2d 1003 (2001); *see Jones v. Jacobson*, 45 Wn.2d 265, 272, 273 P.2d 979 (1954) (Hill, J. concurring) (there can be no

abandonment of title to real property).

"Possession is established if it is of such a character as a true owner would exhibit considering the nature and location of the land in question." *Shelton*, 106 Wn. App. at 50 (citing *ITT Rayonier, Inc.*, 112 Wn.2d at 759). "The nature of the actual use, rather than the original purpose for constructing the fence is controlling." *Roy v. Cunningham*, 46 Wn. App. 409, 412, 731 P.2d 526 (1986), *review denied*, 108 Wn.2d 1018 (1987). "Subjective beliefs regarding a true interest in the land and any intent to dispossess or not dispossess another are irrelevant to the determination." *Shelton*, 106 Wn. App. at 51 (citing *Chaplin*, 100 Wn.2d at 860-62).

"'Where there is privity between successive occupants holding continuously and adversely to the true title holder, the successive periods of occupation may be tacked to each other to compute the required 10-year period of adverse holding.'" *Draszt v. Naccarato*, 146 Wn. App. 536, 542, 192 P.3d 921 (2008) (quoting *Cunningham*, 46 Wn. App. at 413). "Privity is established when the disputed property is transferred by deed and physically turned over." *Draszt*, 146 Wn. App. at 542 (citing *Shelton*, 106 Wn. App. at 53).

Here, the Walkers purchased the Walker parcel on November 18, 1997. The Plummers purchased the Plummer parcel from Tipton on March 1, 1999, and removed a portion of the fence on August 1, 2007. The 10-year adverse possession period at issue in this case is between August 1, 1997, and August 1, 2007. *Draszt*, 146 Wn. App. at 542. Thus, at minimum, the Walkers must show that their predecessor Januska possessed the disputed area as a true owner from August 1, 1997 to November 17, 1997, to tack his period of occupation and satisfy the fourth element of their adverse possession claim. *Teel*, 155 Wn. App. at 394.

The record shows that Januska used the Walker parcel for grazing livestock; that his cattle

ventured into the disputed area sporadically; and that he made only minor improvements to the old, dilapidated fence to keep his cows in sight of his house. *See Cunningham*, 46 Wn. App. at 412. Tipton stated Januska was not "around at all" when she built her fence. Br. of Appellant, App. (Tipton Dep. at 19). Tipton saw Januska at well #184 once to test the water, she never saw him on the adjacent property other than that one time.[5]

These facts are insufficient to prove Januska adversely possessed the disputed area. Substantial evidence supports the trial court's finding that Januska did not possess the disputed property as a true owner between August 1997 and November 1997. *Draszt*, 146 Wn. App. at 542; *Keever*, 129 Wn. App. at 737. Accordingly, we cannot hold that the trial court erred in concluding that because the Walkers could not tack Januska's period of ownership to theirs, they failed to prove the 10-year period necessary to establish adverse possession. *Draszt*, 146 Wn. App. at 542; *cf. Shelton*, 106 Wn. App at 51 ("construction and maintenance of a structure on, or partially on the land of another, almost necessarily is exclusive, actual and uninterrupted, open and notorious, hostile and made under a claim of right").

Mutual Recognition and Acquiescence

Next, the Walkers assign error to the trial court finding that the Plummers and Januska did not consider or accept Tipton's fence as the true boundary. They assert that the trial court erred in concluding that the Walkers failed to prove mutual recognition between the owners of the Walker and Plummer parcels that the fence marked the true deed line. The Plummers contend that substantial evidence supports the trial court's findings and conclusion that the Walkers failed

[5] It is reasonable to us that under the geographic circumstances of this case, Tipton would not have seen Januska on the Walker parcel. Thus, the fact that Tipton did not see Januska on the adjacent parcel, alone, is not dispositive of any issue in this case.

to prove mutual recognition and acquiescence because the Walkers did not present any evidence that Januska considered the fence a boundary. Again, the record supports the Plummers' contentions.

To claim title to the disputed area by mutual recognition and acquiescence, the Walkers must prove that (1) the boundary line between the two properties was certain, well defined, and physically designated on the ground; (2) the adjoining landowners manifested in good faith a mutual recognition of the designated boundary line as the true line; and (3) mutual recognition of the boundary line continued for 10 years. *See Merriman v. Cokeley*, 168 Wn.2d 627, 630, 230 P.3d 162 (2010). "These elements must be proved by clear, cogent, and convincing evidence." *Merriman*, 168 Wn.2d at 630 (citing *Lilly v. Lynch*, 88 Wn. App. 306, 316-17, 945 P.2d 727 (1997)). The evidence must show the ultimate facts to be highly probable to meet this standard of proof. *Merriman*, 168 Wn.2d at 630-31 (citing *Douglas Nw., Inc. v. Bill O'Brien & Sons Constr., Inc.*, 64 Wn. App. 661, 678, 828 P.2d 565 (1992)). Tacking also applies to mutual recognition and acquiescence. *Lilly*, 88 Wn. App. at 318 (appellant proved that the parties and their predecessors treated a wall as a boundary line for at least 10 years).

Here, as with their adverse possession claim, the Walkers must prove that Januska and Tipton mutually recognized Tipton's fence as the true deed line between August 1997 and November 1997 to meet the required 10-year period. *Lilly*, 88 Wn. App. at 318. The record before us indicates that although Tipton considered the fence she built in 1992 to be the boundary between the two parcels, the Walkers did not present any evidence to show that Januska also recognized Tipton's fence as the true boundary between the properties.

Tipton relied on a "written out description" of her property and what she believed were

"survey markers" to determine where to build her fence. Br. of Appellant, App. (Tipton Dep. at 16). Tipton stated that once she built her new fence she considered it the boundary line of her property. But Tipton also testified that Januska was not "around at all" when she built her fence, and that neither Januska nor anyone else had ever approached her to discuss her new fence as a boundary line while she lived on the property. Br. of Appellant, App. (Tipton Dep. at 19).

The only evidence the Walkers presented as to Januska's beliefs was the letter written by Januska's wife stating that he did not intend for the old, dilapidated fence, which Tipton replaced, to mark the boundary between the eastern and western parcels. Under these facts, we hold that the trial court did not err in concluding that the Walkers failed to prove mutual recognition between the owners of the two parcels for the required 10-year period. *Merriman*, 168 Wn.2d at 630; *Keever*, 129 Wn. App. at 737. The record contains no evidence that Januska recognized Tipton's fence as the true boundary line between August 1997 and November 1997. *Merriman*, 168 Wn.2d at 630; *Lilly*, 88 Wn. App. at 318.

Common Grantor

The Walkers further assign error to the trial court finding that Januska did not sell the Plummer parcel to Tipton with reference to the fence as the boundary. They also assert that the trial court erred in concluding that the Walkers failed to prove that Januska divided the property intending the old fence to be the boundary and conveyed either the Plummer parcel or the Walker parcel with reference to the fence as the boundary. Specifically, the Walkers argue that because Januska told Tipton where to locate the "survey markers," substantial evidence supports a finding that Januska intended to divide the property along the line between the "survey markers," i.e., where Tipton built her fence.

"A grantor who owns land on both sides of a line he has established *as the common boundary* is bound by that line." *Winans v. Ross*, 35 Wn. App. 238, 240, 666 P.2d 908 (1983) (emphasis added) (citing *Fralick v. Clark County*, 22 Wn. App. 156, 159, 589 P.2d 273 (1978), *review denied*, 92 Wn.2d 1005 (1979)). "The line will also be binding on grantees if the land was sold and purchased with reference to the line, and there was a meeting of the minds as to the identical tract of land to be transferred by the sale." *Winans*, 35 Wn. App. at 240 (citing *Kronawetter v. Tamoshan, Inc.*, 14 Wn. App. 820, 826, 545 P.2d 1230 (1976)). "The common grantor doctrine involves two questions: (1) was there an agreed boundary established between the common grantor and the original grantee, and (2) if so, would a visual examination of the property indicate to subsequent purchasers that the deed line was no longer functioning as the true boundary?" *Winans*, 35 Wn. App. at 241 (citing *Fralick*, 22 Wn. App. at 160).

As discussed above, however, the Walkers waived their challenge to the exclusion of Tipton's testimony that Januska told her where to find the "survey markers." *Davis*, 102 Wn.2d at 77. The Walkers do not present any alternative arguments in support of their assignments of errors regarding their common grantor claim. RAP 10.3(a)(6). Absent alternative argument not based on excluded testimony the Walkers cannot challenge, we cannot hold that the trial court erred in entering these findings of fact or conclusions of law. *Holland v. City of Tacoma*, 90 Wn. App. 533, 538, 954 P.2d 290 ("[p]assing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration"), *review denied*, 136 Wn.2d 1015 (1998). Accordingly, we cannot address the Walkers' assignments of error regarding their common grantor claim further.

Estoppel

Last, the Walkers assign error to the trial court's conclusion of law that they failed to prove the elements of estoppel. However, they do not provide argument on this issue in their brief. Because RAP 10.3(a)(6) requires argument in support of the issues presented for review, together with citations to legal authority and references to the relevant parts of the record, we do not reach the merits of this issue.

Accordingly, we hold that the Walkers waived any challenge to the admissibility of Tipton's deposition testimony regarding Januska and the "survey markers." *Davis*, 102 Wn.2d at 77. Because substantial evidence supports the trial court's findings of fact, and those findings support the trial court's conclusions that the Walkers failed to prove adverse possession, mutual recognition and acquiescence, common grantor, and estoppel, we must affirm and cannot substitute our judgment for that of the trial court. *Keever*, 129 Wn. App. at 737.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

QUINN-BRINTNALL, J.

We concur:

ARMSTRONG, J.

WORSWICK, A.C.J.