

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

GREGG SMITH and KELLY SMITH,)	
husband and wife,)	DIVISION ONE
)	
Respondents/Cross-Appellants,)	No. 66245-7-1
)	
v.)	
)	UNPUBLISHED OPINION
LARRY L. PETERSON and SUSAN)	
PETERSON, husband and wife and the)	
marital community composed thereof,)	
)	
Appellants/Cross-Respondents,)	FILED: February 13, 2012
)	
_____)	

Dwyer, C.J. — This case involves a boundary dispute between two lakefront property owners. Each party claims an ownership interest in a covered dock that extends from the shoreline near the boundary line between the respective properties. The trial court concluded (1) that no ownership interest in the dock arose through mutual recognition and acquiescence and (2) that the presence of a canopy was insufficient to establish title to the underlying shorelands by adverse possession. Finding no error, we affirm.

The Smiths and the Petersons are owners of adjoining properties on the eastern shore of Lake Washington in Bellevue. Larry and Susan Peterson acquired the southern parcel in 1971 from the Wolfe family. Gregg and Kelly Smith acquired the northern parcel in 2007 from the Heath family, the long-time

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neighbors of the Petersons.¹ A covered dock extends from the land near the border between the two properties. The dock has existed in its current configuration for more than 50 years.

In 1971, shortly after purchasing the Wolfe property, the Petersons installed a fence in the area of the boundary between their property and the Heath parcel. The fence did not coincide with the legal boundary line. Nor, as originally constructed, did the fence extend to the shoreline of Lake Washington. Instead, it terminated approximately eight feet from the shore, leaving a gap between the two parcels near the water. However, the path of the fence—if it were to have been extended in a straight line along the same track—would bisect the dock. The fence has been maintained, repaired, and replaced in the same location at the Petersons' expense since 1971.

In the early 1980s, Larry Peterson installed a gate at the western end of the fence, thus completing the physical division between the Smith and Peterson properties. Instead of following the original fence line, the newly-installed gate veers in a northwesterly direction. The gate intersects the shoreline at a point that lies approximately seven feet to the north of where the original fence would have intersected the shoreline had it been extended in a straight line along the same track. The entrance to the dock now lies entirely on the southern side of the fence. Although the gate has never been locked, the Heaths made little use of the dock after installation of the gate. In contrast, the Petersons used the dock

¹ The Heaths purchased their property prior to 1971.

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and its moorage slips to store boats and equipment, supplied power to the dock, and repaired and replaced various portions of the dock's structure at their own expense.

In 2008, one year after purchasing the Heath property, the Smiths filed a lawsuit against the Petersons seeking to quiet title to the northern half of the dock and gate area. Following a three day bench trial, the trial court determined that an adjusted upland boundary had been established by the Heaths' and Petersons' longstanding recognition of the fence and gate as the true dividing line between their respective properties. The trial court relied on the testimony of a professional surveyor to set the shoreland boundary line. The court determined that the shoreland boundary "commenc[es] at the point of intersection of the upland boundary and the west face of the bulkhead and extend[s] westerly in a straight line therefrom parallel to adjoining legal subdivision boundary lines." Clerk's Papers (CP) at 247.

Based upon this survey—which depicted the dock as lying nearly entirely to the south of the common boundary line—the court concluded that the dock belonged solely to the Petersons. However, the court also determined that several pilings supporting the dock's canopy lay on the Smiths' side of the border. The trial court determined that these pilings belonged to the Smiths. Finding that the canopy was not a fixture, the court ruled that the Petersons had not acquired the shoreland beneath the dock's canopy or the pilings by adverse

possession or prescriptive easement.

The Petersons appeal from the trial court's ruling that they failed to establish ownership of the pilings and shoreland based upon principles of adverse possession. The Smiths cross-appeal from the trial court's determination that they failed to demonstrate an ownership interest in the dock based upon mutual recognition and acquiescence.

II

The Smiths contend in their cross-appeal that the trial court erred by determining that the true dividing line between the Smith and Peterson properties was established by a fence and gate running along the upland border of these parcels. We disagree.

When evaluating evidence in a bench trial, our review is limited to determining whether the trial court's factual findings are supported by substantial evidence and whether those findings support the trial court's conclusions of law.²

Standing Rock Homeowners Ass'n v. Misich, 106 Wn. App. 231, 242-43, 23 P.3d

² The Smiths assign error to several of the trial court's findings of fact but have failed to provide a complete verbatim report of proceedings. Where an appellant fails to supply a verbatim report of proceedings, our ability to fairly evaluate the findings in light of the record before the trial court is necessarily compromised. In re Parentage & Custody of A.F.J., 161 Wn. App. 803, 806 n.2, 260 P.3d 889, review granted in part, denied in part, 172 Wn.2d 1017, 262 P.3d 64 (2011). In such situations, we accept the trial court's findings of fact as verities. In re A.F.J., 161 Wn. App. at 806 n.2; see also Happy Bunch, LLC v. Grandview N., LLC, 142 Wn. App. 81, 88 n.1, 173 P.3d 959 (2007); St. Hilaire v. Food Servs. of Am., Inc., 82 Wn. App. 343, 351-52, 917 P.2d 1114 (1996); Rekhi v. Olason, 28 Wn. App. 751, 753, 626 P.2d 513 (1981); Gaugholm v. Aurora Office Bldgs., Inc., 2 Wn. App. 256, 257, 467 P.2d 628 (1970). This has long been the rule. See Apostle v. Lillions, 8 Wn.2d 118, 121, 111 P.2d 789 (1941); Deller v. Long, 96 Wash. 372, 373, 165 P. 98 (1917). Accordingly, our review is properly limited to determining whether the trial court's conclusions of law are supported by its findings of fact. In re A.F.J., 161 Wn. App. at 807. Nevertheless, because a significant portion of the verbatim report provided pertains to the issue of boundary by acquiescence, the record is sufficient to evaluate whether substantial evidence supports the trial court's factual findings on this issue.

520 (2001). Substantial evidence is the “quantum of evidence sufficient to persuade a rational fair-minded person the premise is true.” Sunnyside Valley Irrigation Dist. v. Dickie, 149 Wn.2d 873, 879, 73 P.3d 369 (2003). On review, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the prevailing party. Korst v. McMahon, 136 Wn. App. 202, 206, 148 P.3d 1081 (2006). Although the trier of fact is free to believe or disbelieve any evidence presented at trial, “[a]ppellate courts do not hear or weigh evidence, find facts, or substitute their opinions for those of the trier-of-fact.” Quinn v. Cherry Lane Auto Plaza, Inc., 153 Wn. App. 710, 717, 225 P.3d 266 (2009) (citing Thorndike v. Hesperian Orchards, Inc., 54 Wn.2d 570, 572, 343 P.2d 183 (1959)), review denied, 168 Wn.2d 1041 (2010). We review questions of law de novo. Sunnyside Valley, 149 Wn.2d at 880.

Pursuant to well-established Washington law, if adjoining landowners recognize and acknowledge a common boundary, this boundary becomes the “true dividing line” between the properties. Lilly v. Lynch, 88 Wn. App. 306, 316, 945 P.2d 727 (1997) (quoting Mullally v. Parks, 29 Wn.2d 899, 906, 190 P.2d 107 (1948)). A party claiming title to land by mutual recognition and acquiescence must prove (1) that the boundary line between the two properties was “certain, well defined, and in some fashion physically designated upon the ground,” (2) that the adjoining landowners, in the absence of an express boundary line agreement, manifested in good faith a mutual recognition of the

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designated boundary line as the true line, and (3) that mutual recognition of the boundary line continued for the period of time necessary to establish adverse possession. Merriman v. Cokeley, 168 Wn.2d 627, 630, 230 P.3d 162 (2010) (quoting Lamm v. McTighe, 72 Wn.2d 587, 593, 434 P.2d 565 (1967)). The time period required to establish adverse possession is 10 years. Merriman, 168 Wn.2d at 630. These elements must be proved by clear, cogent, and convincing evidence. Lilly, 88 Wn. App. at 316-17.

Here, the trial court found that each element of mutual recognition and acquiescence was established “by clear, cogent and convincing standards.” CP at 245 (Finding of Fact 6). In the trial court’s written findings of fact and conclusions of law, the court determined that the dividing line was physically designated upon the ground by the fence and gate, which were respected “as the common boundary between the two parcels.” CP at 244-45 (Finding of Fact 7). The Petersons and the Heaths (the predecessors in interest to the Smith property) manifested their mutual recognition of this designated boundary by “maintenance” and “use.” CP at 245 (Finding of Fact 7). Finally, this recognition persisted for the required time period—the Petersons erected the original fence in 1971, and the gate was added in “the early 1980s.” CP at 244 (Finding of Fact 6). At all times, the fence and gate were “treated as the common legal boundary line between the respective ownerships.” CP at 245 (Finding of Fact 7).

Substantial evidence supports each of these findings. Our courts have long treated fence lines as a type of physical designation that is sufficient to establish a boundary line. Lamm, 72 Wn.2d at 593 (listing “monuments, roadways, [and] fence lines” as markers sufficient to establish a boundary). Here, the evidence was undisputed that the fence and gate had completely separated the Smith and Peterson properties along their upland boundary since the early 1980s. Larry Peterson testified that he had built the original fence in 1971, installed the gate in 1982, and had repaired, maintained, and replaced the fence in the same location ever since. Moreover, there is substantial evidence that the Smiths and Heaths manifested in good faith a mutual recognition of the fence and gate as the true boundary line. Dean Secord, a grandson of Marian Heath who maintained her yard from 1994 to 2003, testified that he would weed and mow up to the fence and gate, but that he would not mow beyond the fence and “never really opened the gate.” Report of Proceedings (RP) (Jan. 25, 2010) at 164. Tamara Heath, the daughter of Marian Heath, likewise testified that her parents had maintained the yard on their side of the fence line. Larry Peterson testified that, although he occasionally weeded the Heaths’ side of the fence as a neighborly gesture, he at all times considered the area north of the fence to be “Marian [Heath’s] yard.” RP (Jan. 27, 2010) at 125. Thus, there is substantial evidence that the Heaths and Petersons recognized the fence and gate as the true boundary between their properties for nearly 30 years.

The Smiths contend that, as a matter of law, the presence of an unlocked gate prevents a fence from acting as a definitive boundary line for purposes of establishing a boundary by mutual acquiescence. However, the cases cited by the Smiths in support of this proposition involve claims of adverse possession or easement ouster, in which a finding of exclusive possession is crucial to a successful legal challenge. See Cole v. Laverty, 112 Wn. App. 180, 49 P.3d 924 (2002) (adverse possession); Hernandez v. Reed, 239 P.3d 186 (Okla. Civ. App. 2010) (same); Stone v. Lea Brent Family Invs., LP, 998 So.2d. 448, 455 (Miss. App. 2008) (same); Nicholls v. Healy, 37 Mich. App. 348, 194 N.W.2d 727 (1971) (easement ouster and adverse possession). A claim of boundary by acquiescence, of course, requires no such determination of exclusive possession. Instead, it is the presence of a physically designated and mutually respected boundary line that is crucial to the determination of an adjusted border. Merriman, 168 Wn.2d at 630-31. Here, the long-existing fence line, with or without a gate, provided for a “well defined, and in some fashion physically designated upon the ground,” divider between the two properties which was respected by both neighbors. Lamm, 72 Wn.2d at 593. Accordingly, the trial court did not err by finding the gate to be a portion of this mutually recognized boundary.

The trial court’s findings of fact are supported by substantial evidence, and—as the necessary elements of mutual recognition and acquiescence are

established—the court’s conclusions of law are properly supported by the factual findings. The trial court did not err by concluding that the fence and gate established the “true dividing line” between the Smith and Peterson properties. Lilly, 88 Wn. App. at 316 (quoting Mullally, 29 Wn.2d at 906).

III

The Smiths next contend that the trial court erred by adopting the results of a professional survey describing the common boundary within the shoreland of the Smith and Peterson parcels. This survey indicates that the shoreland boundary commences at the point where the upland fence intersects the waterline and extends into Lake Washington in a straight line running parallel to the adjacent legal subdivision boundary lines. The Smiths assert that the trial court’s adopted boundary line bears “no logical relation . . . to the platted and pro-rated [property] lines” and urges this court to instead extend the original fence line through the middle of the dock. Br. of Respondent at 16. However, because the trial court acted well within its equitable discretion in determining the shoreland boundary line, the Smiths’ claim is unavailing.

As an initial matter, we find that our review of this issue is severely hampered by the incomplete record before us. In its oral ruling, pronounced at the end of trial, the trial court explained that it had relied on the testimony of a professional surveyor, Ben Petersen, in setting the common shoreland boundary between the parcels. The trial court noted that Petersen had testified that the

choice of boundary line within the shoreland was “a standard within the industry,” that “he could not recall a time where that was not the standard,” and that alternative theories were not “respected within the industry or . . . in the law.” RP (Jan. 28, 2010) at 7. However, the Smiths have provided only a short portion of Petersen’s testimony within the incomplete verbatim report of proceedings.³ As Petersen’s methodology cannot be discerned from this record, we cannot properly evaluate the propriety of that methodology or the trial court’s reliance upon it. A party seeking review has the burden of perfecting the record so that this court has before it all of the evidence relevant to the issue. Dash Point Village Assocs. v. Exxon Corp., 86 Wn. App. 596, 612, 937 P.2d 1148, 971 P.2d 57 (1997). Where the record is insufficient for appellate review, we will not disturb a trial court’s decisions.

Nevertheless, even on this record, it is clear that the trial court’s determination of the shoreland boundary was proper. The doctrine of mutual recognition and acquiescence is an equitable doctrine. See Drasz v. Naccarato, 146 Wn. App. 536, 543, 192 P.3d 921 (2008). A court sitting in equity has broad discretion in shaping relief. Hough v. Stockbridge, 150 Wn.2d 234, 236, 76 P.3d 216 (2003). Moreover, as our Supreme Court has explained, “[a]long a comparatively straight shore line, [shoreland] boundaries may easily be determined by erecting lines perpendicular to the shore . . . at points where

³ The Smiths provided only a verbatim report of their own counsel’s cross-examination of Petersen.

property side lines intersect the shore.” Spath v. Larsen, 20 Wn.2d 500, 512, 148 P.2d 834 (1944) (citing Knight v. Wilder, 2 Cush. 199, 56 Mass. 199, 48 Am.Dec. 660 (1848)). However, because the “physical characteristics of the bays, coves, and inlets present . . . many peculiarities,” a court should not simply apply “a particular formula and let[] the chips fall where they may.” Grill v. Meydenbauer Bay Yacht Club, 61 Wn.2d 432, 437-38, 378 P.2d 423 (1963). Instead, “it is desirable that all affected property owners be treated equitably.” Grill, 61 Wn.2d at 438.

Here, the trial court’s decision in setting the shoreland boundary line was well within its equitable discretion. Because the shoreline was “comparatively straight,” the court did not err by determining that the shoreland border should commence at the point “where property side lines intersect the shore.” Spath, 20 Wn.2d at 512. The trial court determined that it was equitable to draw this shared shoreland border as running parallel to the northern and southern platted boundary lines to ensure that both the Smiths and the Petersons received a proportional share of the disputed shoreland. In setting the shoreland boundary, the trial court noted that no “oyster beds” or “other development” existed to change the balance of equities. RP (Jan. 28, 2010) at 9.⁴ Because the trial court’s determination was a reasonable exercise of its equitable discretion, it did not err in establishing the common boundary within

⁴ The trial court’s final written findings of fact and conclusions of law incorporated by reference several of its previous oral rulings. The court determined that no oyster beds or development required a different shoreline boundary in its oral ruling of January 28, 2010.

the shoreland of the Peterson and Smith parcels.

IV

The Smiths next contend that the trial court erred by finding that they had failed to demonstrate any ownership interest of the dock based upon mutual recognition and acquiescence. We disagree.

As our Supreme Court has made clear, “[a] fence, a pathway, or some other object or combination of objects clearly dividing the two parcels must exist.” Merriman, 168 Wn.2d at 631 (citing Lamm, 72 Wn.2d at 593). In Merriman, the court reiterated that a clear dividing line must be present in the area of the disputed border, holding that “three widely spaced markers . . . set in a thicket of blackberry bushes, ivy, and weeds, did not constitute a clear and well-defined boundary.” 168 Wn.2d at 632; see also Scott v. Slater, 42 Wn.2d 366, 368-69, 255 P.2d 377 (1953) (no well-defined boundary established where there was no fence or defining point of cultivation on the ground near disputed border), overruled on other grounds, Chaplin v. Sanders, 100 Wn.2d 853, 676 P.2d 431 (1984); Green v. Hooper, 149 Wn. App. 627, 642, 205 P.3d 134 (2009) (retaining wall constructed of railway ties insufficient to establish boundary by acquiescence where wall ended before disputed boundary area). Thus, our courts have long required a mutually respected and definitive line in the area of a disputed border before determining that adjoining property owners have acquiesced to an adjusted boundary.⁵ Lamm, 72 Wn.2d at 593.

⁵ The Smiths rely on Lloyd v. Montecucco, 83 Wn. App. 846, 854, 924 P.2d 927 (1996),

Here, substantial evidence supports the trial court's finding that no definitive line or physical demarcation on the dock clearly identified any portion of the dock as owned by one party or the other. Tamara Heath testified that the northern and southern portions of the dock were never separated by any "physical divider" such as "fences, walls, [or] barriers of any sort." RP (Jan. 25, 2010) at 258. She described the dock as having always been used on a "shared" basis, further stating that neither the Petersons nor the Heaths had ever attempted to limit their use to only one side of the dock. RP (Jan. 25, 2010) at 255. Larry Peterson similarly testified that he used and maintained both sides of the dock. He told the court that he had stored his boats in both the dock's northern and southern moorage slips. He testified that the Petersons had repaired and replaced the entirety of the dock's canopy at least twice at their own expense, and that the Petersons had both replaced the dock's interior support pilings and surface boards on several occasions, and supplied power to the entire dock since the early 1970s. Given this testimony, there was substantial evidence to support the trial court's determination that "no definite line or demarcation of ownership interests" existed and that the Heath family's use of the dock failed to demonstrate "a physical dividing line or legal boundary

to support their assertion that the trial court erred by declining to extend the path of the original fence line to determine the boundary in the area of the dock. That decision, however, stands at most for the principle that a trial court may project boundary lines *between* objects when it is reasonable and logical to do so. Lloyd, 83 Wn. App. at 854. Where no such objects are present, there can be no well-demarkated, defining line upon the ground. Indeed, in a later portion of the Lloyd decision, the court determined that the appellants' claim of mutual recognition and acquiescence must fail where there was no physical evidence designating a boundary line within the tidelands of the adjoining properties. 83 Wn. App. at 854-55.

on or in the vicinity of the dock itself.”⁶ CP at 246.

The trial court’s findings of fact support its conclusion of law. Because there was no clear, cogent, and convincing evidence of a mutually recognized dividing line in the area of the dock, Lilly, 88 Wn. App. at 316-17, the trial court did not err by concluding that the Smiths had failed to establish an ownership interest in the northern side of the boathouse by mutual recognition and acquiescence.

V

The Petersons contend that the trial court erred by denying their counterclaim for adverse possession of that portion of the Smith shoreland property lying beneath the canopy of the dock. We disagree.

⁶ The Smiths point to a permit application by Larry Peterson to the City of Bellevue to support their contention that the Petersons had long recognized the Smith’s ownership of the northern half of the dock. The permit application contained a map depicting the common boundary as bisecting the dock. However, where substantial evidence exists to support a trial court’s findings of fact, we will not disturb those findings even where there is some conflicting evidence. Merriman, 168 Wn.2d at 631. “The deference accorded under the substantial evidence standard recognizes that the trier of fact is in a better position than the reviewing court to evaluate the credibility and demeanor of the witnesses.” Peterson v. Big Bend Ins. Agency, Inc., 150 Wn. App. 504, 514, 202 P.3d 372 (2009) (citing State v. Hill, 123 Wn.2d 641, 646, 870 P.2d 313 (1994)). Given the substantial amount of evidence indicating that no dividing line was present, the existence of some conflicting evidence is insufficient for this court to disturb the trial court’s factual findings.

Nevertheless, the Smiths contend that an earnest money agreement between the Petersons and their seller demonstrates that the Petersons recognized a shared ownership in the dock. This document, signed by Larry Peterson in 1971, notes that “[i]t is understood that one-half of the boat house belongs to the subject property.” Exhibit 8. However, because the Smiths relied solely upon the theory of “boundary by acquiescence” in their complaint, the earnest money agreement was immaterial to the Smiths’ claim. It is the recognition of a clear dividing line that is critical to a successful boundary by acquiescence claim, and, at most, the earnest money agreement was evidence that the Smiths possessed an undivided one-half interest in the entire dock. The agreement does not tend to prove that the Petersons and the Heaths had recognized a clearly demarcated dividing line in the area of the dock. Because the Smiths did not claim legal title to the dock based upon the earnest money agreement in their complaint, this agreement was not material to an issue in the case. Similarly, the testimony of an employee of the King County Assessor, indicating that the dock was classified as jointly owned for tax purposes, was not material to establishing a mutually recognized, clear dividing line.

Adverse possession presents questions of both law and fact. The trier of fact determines whether the essential facts exist, and the court determines whether those facts constitute adverse possession. Anderson v. Hudak, 80 Wn. App. 398, 401-02, 907 P.2d 305 (1995). On appeal, we review the adverse possession determination de novo but defer to the factual findings made at trial. Bryant v. Palmer Coking Coal Co., 86 Wn. App. 204, 210, 936 P.2d 1163 (1997). In order to successfully establish an adverse possession claim, a party must prove possession that was (1) open and notorious, (2) actual and uninterrupted, (3) exclusive, and (4) hostile for the statutory 10-year period. Chaplin, 100 Wn.2d at 857. The burden of establishing each element is on the party claiming to have adversely possessed the property. Anderson, 80 Wn. App. at 401. The ultimate test is whether the adverse possessor exercised such dominion over the land that the legal owner should have recognized that the adverse possessor was treating the land as would its true owner. ITT Rayonier, Inc. v. Bell, 112 Wn.2d 754, 759, 774 P.2d 6 (1989).

The Petersons assign error to several of the trial court's findings of fact, contending that the court simply "ignored the testimony that the Petersons have maintained the canopy supported by the pilings, have replaced the roof material on top of the canopy structure at their own expense, and that since 1980 [have] had the exclusive possession of the shorelands and waters above them under the north canopy which extends over onto the Smith property." Reply Br. of

Appellant at 29. Ordinarily, where a party challenges a trial court's findings of fact, this court reviews the record to determine if there is substantial evidence to support those findings. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). However, in this case, the Petersons have failed to provide a complete trial record. "In such a situation, [a reviewing court's] ability to fairly evaluate the findings in light of the record before the trial court is compromised." In re Parentage & Custody of A.F.J., 161 Wn. App. 803, 806 n.2, 260 P.3d 889, review granted in part, denied in part, 172 Wn.2d 1017, 262 P.3d 64 (2011); see also Happy Bunch, LLC v. Grandview N., LLC, 142 Wn. App. 81, 88 n.1, 173 P.3d 959 (2007). Accordingly, the trial court's factual findings must be accepted as verities. In re A.F.J., 161 Wn. App. at 806 n.2.

Here, in its written findings of fact and conclusions of law, the trial court found that the canopy consisted of "a metal cover on top of wood that can be moved, removed or modified." CP at 247 (Finding of Fact 13). The court found that the "canopy is attached to the pilings but is not a fixture."⁷ CP at 247 (Finding of Fact 13). In its oral ruling of August 13, 2010, the trial court likened the canopy to "an umbrella . . . sitting atop those pilings."⁸ RP (Aug. 13, 2010) at 60. The court explained that the canopy was an "ephemeral" structure that could

⁷ The determination of whether an item is annexed to the land as a "fixture" is based upon an objective test. Union Elevator & Warehouse Co. v. State of Washington, 144 Wn. App. 593, 603, 183 P.3d 1097 (2008). An item is a fixture where (1) it is actually annexed to the realty, (2) it is adapted to the use of the realty, and (3) the annexing party intended a permanent attachment. Union Elevator, 144 Wn. App. at 603.

⁸ The trial court's final written findings of fact and conclusions of law incorporated this oral ruling by reference.

be “taken away, torn down, [or] replaced.” RP (Aug. 13, 2010) at 53.

These factual findings were crucial to the trial court’s ultimate legal conclusion. We have previously noted that “[t]he construction and maintenance of a structure partially on the land of another almost necessarily is exclusive, actual and uninterrupted, open and notorious, hostile and made under a claim of right.” Draszt, 146 Wn. App. at 542 (citing Reitz v. Knight, 62 Wn. App. 575, 582, 814 P.2d 1212 (1991)). Here, however, because the canopy did not constitute a permanent part of the dock’s structure, the trial court determined that the presence of the canopy was insufficient to confer ownership of the shoreland beneath the canopy to the Petersons. The court concluded that although “[i]t would be wasteful to remove it, [the existence of the canopy] does not affect the ownership of the shorelands below or the Smith pilings.” CP at 247. Moreover, no other action of the Peterson family, “whether it’s hanging a boat [or] using the slip[,] . . . changes the ownership of the piling[s].” RP (Aug. 13, 2010) at 25. Because the Petersons had not exercised “dominion over the land in a manner consistent with [the] actions [of] a true owner,” ITT Rayonier, 112 Wn.2d at 759, the trial court determined that the Petersons had failed to establish ownership of the shoreland property by adverse possession.⁹ Because

⁹ The trial court’s findings of fact similarly support its legal conclusion that the Petersons did not establish a prescriptive easement for use of the canopy. Although the trial court determined that the Petersons’ use of the northern moorage slip to store their boats was sufficient to establish an easement for this purpose, the placement of an ephemeral structure on the land of another is not the type of use or possession that “would be normal for a true easement holder or owner to make in the circumstances.” 17 William B. Stoebuck & John W. Weaver, Washington Practice: Real Estate: Property Law § 2.7, at 106 (2d ed. 2004). Accordingly, the trial court did not err by determining that the presence of the canopy was

this conclusion of law is properly supported by the findings of fact, the trial court did not err by so ruling.¹

Affirmed.

Dupre, C. S.

We concur:

Spencer, J.

Cox, J.

insufficient to establish an easement by prescription.

¹ A large portion of the Petersons' briefing is devoted to their assertion that the trial court's ruling failed to identify the legal relationship between themselves and the Smiths with respect to the canopy. However, the trial court's ruling was quite clear. The court determined that the Petersons had acquired an easement to use all portions of the moorage slip to the south of the northern pilings on the Smith property. The court further explained that the canopy covering the slip belonged to the Petersons and that its removal would be wasteful and destructive. Accordingly, the court made clear that the Smiths would not be permitted to remove the supporting pilings as such an action might "damage the canopy." Nevertheless, the trial court explained that the pilings could not be replaced or repaired absent "cooperation" by the Smiths. Instead, in the absence of such an agreement, the Petersons must devise a different solution to support the canopy at such time as the pilings required replacement. There is nothing unclear about the legal relationship that the trial court imposed on the parties.