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WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

LANCE G. PIERCE and JANETTE PIERCE, husband and wife,	)	**No. 29799-3-III**
Respondents,	)	**Division Three**
v.	)	
ALBERT L. BELCHER and LOUISE M. BELCHER, husband and wife,	)	**UNPUBLISHED OPINION**
Appellants.	)	

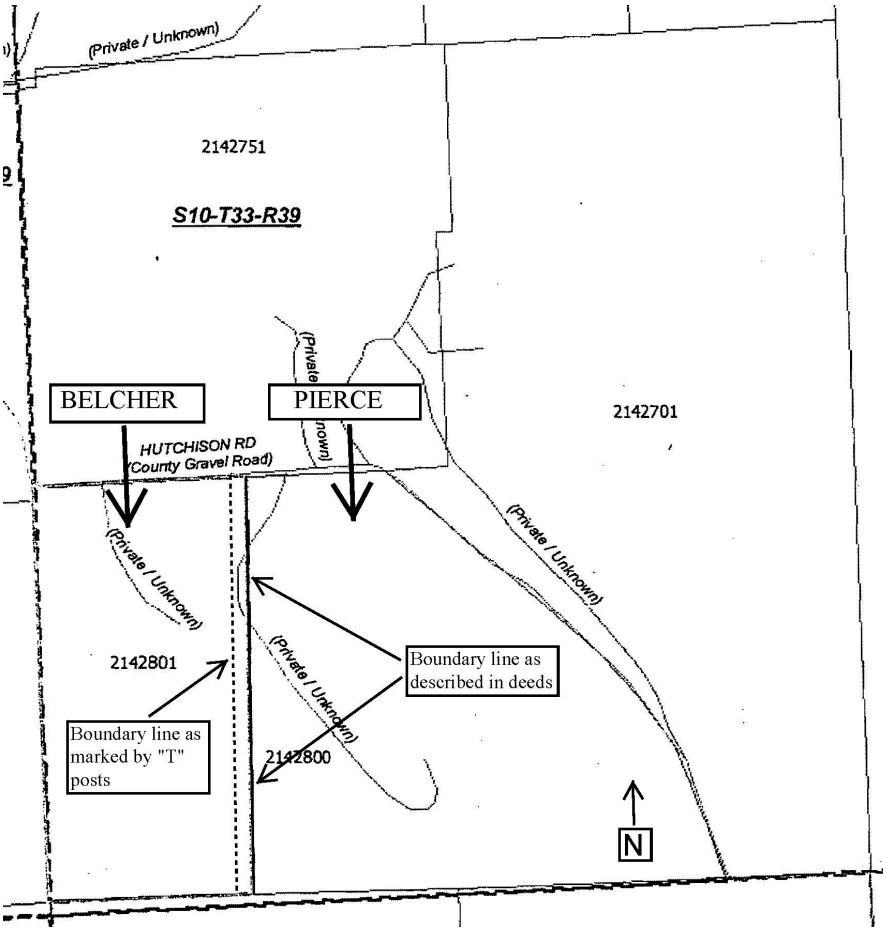
Sweeney, J. — This appeal follows a decision by the superior court that established a property boundary by the equitable doctrine of mutual recognition and acquiescence. We conclude that the findings necessary to support that conclusion are supported by the record and we affirm the judgment.

FACTS

Lance G. Pierce and Janette Pierce own a 33-acre parcel in Addy, Washington. Albert L. Belcher and Louise M. Belcher own a contiguous 20-acre parcel to the west of the Pierces'. The two parcels share approximately 1,343 feet of common boundary. The Pierces and Belchers dispute the location of the boundary line. The Pierces contend the

line is commonly defined by a row of metal "T" posts and PVC (polyvinyl chloride) posts and a mow line in the hay fields. That line places the Pierces' access driveway entirely on their property. The Belchers contend the line is as established in a 2009 survey that comports with the aliquot description in their deed. That line cuts off an "elbow" portion of the Pierce access driveway. The road apparently bows out in that section due to a solid rock ridge. A current map is depicted below.[1]

[1] The map is based on a sketch produced by Stevens County Title Company. It is illustrated here solely for purposes of factual understanding.


(Private / Unknown)
2142751
S10-T33-R39
BELCHER
PIERCE
2142701
HUTCHISON RD
(County Gravel Road)
(Private / Unknown)
(Private / Unknown)
(Private / Unknown)
2142801
Boundary line as described in deeds
Boundary line as marked by "T" posts
2142800
N

Clerk's Papers (CP) at 595.

Chain of Title

Thomas L. Franco acquired title to the properties at issue as a unified tract in November 1980. Ex. 1. He later divided the property into two parcels. He conveyed by statutory warranty deed the 33-acre parcel currently owned by the Pierces to George and Debra Voile Jr. (Voile Jr.) in May 1982. The deed legally described the property as:

> That portion of the E 1/2 of the SW 1/4 of the SW 1/4 and that portion of the SE 1/4 of the SW 1/4 of Section 10, Township 33 North, Range 39, East, W.M., lying South and West of Kerr County Road No. 423.

Ex. 2. Mr. Franco conveyed the 20-acre parcel currently owned by the Belchers to George and Joanne Voile Sr. (Voile Sr.) on the same day. The deed legally described the property as:

> The W 1/2 of the SW 1/4 of the SW 1/4 of Section 10, Township 33 North, Range 39 East, W.M., in Stevens County, Washington.

Ex. 3. Neither deed referenced any common boundary line defined by a row of posts.

Voile Jr. conveyed the Pierce parcel to Marylin F. Trimble in July 1991. Ex. 4. Ms. Trimble later transferred her interest to her son, Michael Trimble, and he conveyed the property to himself and his mother as joint tenants. Ms. Trimble gifted her interest in the land back to Michael in July 1997. Mr. Trimble conveyed the Pierce parcel to Kelly and Sheryl Davis in March 2005. The Davises conveyed the property to the Pierces in

August 2007.

So tracing title from the common grantor, Mr. Franco, the Pierce parcel was owned by Voile Jr., the Trimbles, and the Davises from May 1982 to August 2007, a period of 25 years.[2]

Voile Sr. conveyed the Belcher parcel to Ronald and Alene Miller in September 1992. The Millers conveyed the property to the Belchers in July 2008. So tracing title from the common grantor, Mr. Franco, the Belcher parcel was owned by Voile Sr. and the Millers from May 1982 to July 2008, a period of 26 years.

Procedural History

The Belchers had their land surveyed by Douglas W. Noyes[3] of Columbia Land Surveying in 2009. Mr. Noyes' survey showed the boundary as described in the deeds and not the common line marked by the "T" posts. He concluded that the elbow in the Pierce access driveway encroached 14.72 feet over the Belcher property. The Belchers reacted by constructing a fence along the surveyed boundary line—partially obstructing the Pierce driveway.

The Pierces sued to quiet title and for an injunction in October 2009. The Pierces

[2] The trial court noted the period as 26 years in finding of fact G because the wrong end date (July 2008) was used. CP at 866.

[3] The Pierces also used Douglas Noyes to survey their land at some point in time. Report of Proceedings at 185.

also moved for, and the court granted, an immediate temporary restraining order and an order to show cause that required the Belchers to show why the temporary should not be converted to a preliminary injunction. The court then entered an order authorizing the Pierces to remove the fence posts installed by the Belchers on the north and south sides of the driveway. The Pierces removed the posts and placed them on the Belcher property. The Belchers moved for, and the court granted, an order prohibiting the Pierces from entering the Belcher property (except to travel on the access driveway) and from removing any other fence posts. The Belchers counterclaimed for trespass; they argued that the Pierces exceeded the court's order and damaged the Belcher property. The court ultimately granted the Pierces a preliminary injunction prohibiting the Belchers from installing any fencing on the access driveway.

The suit proceeded to a bench trial in January 2011 that lasted for two days. Mr. Trimble testified that he participated in the original negotiations between his mother and Voile Jr. for the purchase of the Pierce property in 1991. He stated that Voile Sr., then owner of the adjacent Belcher property, showed him the boundary line between the two properties as marked by the row of three or four "T" posts and PVC posts. Mr. Trimble stated that his mother and Voile Sr. never disputed the location of that boundary line after she purchased the property. He stated that the same was true after the Millers purchased the property from Voile Sr. one year later. He stated that the Millers would actually plow snow and haul gravel on their access

driveway and never questioned ownership of the road. Mr. Trimble admitted that he granted a 10-foot-wide access easement over the driveway in 1997 to Washington Water Power Company so that the Millers could get electrical service to their property. The easement, evidenced in the Davis to Pierce deed, stated that it "runs in a Westerly direction through said lands to the Westerly property line." Ex. 120. The deed used the original aliquot description of the property lines quoted above.

Kenneth Gray Anderson, the Pierces' real estate agent, and Lance G. Pierce himself both testified regarding the continued existence of the straight row of "T" posts spaced approximately 50 to 75 yards apart dividing the property. Both men testified that the Millers kept the adjacent property neatly mowed, and that the Millers never mowed the hay line beyond the "T" posts. The mow pattern followed the posts shown in a number of aerial photographs. Mr. Anderson spoke to the Davises (the owner of the Pierce property after Mr. Trimble) and the Davises also identified the row of "T" posts as the boundary.

Mr. Pierce explained that the mow pattern did not follow the "T" post boundary line in 2000 or 2008 because the adjoining landowners (either the Millers and Trimble or the Millers and Pierce) had jointly allowed a third party to cut and keep the hay on both parcels. The "joint farming" mow pattern was illustrated in several aerial photographs. Mr. Pierce testified that he believed the "T" posts were purposely set a sufficient distance apart to allow farm machinery to pass

between them. Report of Proceedings (RP) at 205-06.

The declaration of Kelly J. Davis was admitted by stipulation of the parties. In the declaration, Mr. Davis identified attached photo exhibits of PVC posts as the northwest and southwest corners of his property. He identified the row of metal "T" posts running between the two corners and past the Belcher house. He confirmed that the distinct mow line running along the "T" posts as depicted in several attached aerial photographs was the common boundary between the Belcher and Pierce properties. He stated that his son rented the cabin on the property and the Millers never disputed the location of the access driveway:

> At no time during [our son's] occupancy and use of the access road did Ron Miller, predecessor to the Belchers, ever say anything about the access road not being on our property, or the fence post line that he maintained between our properties was not our common boundary with his East property line and our West property line, and he maintained his field up to that line. When we sold our property to Pierce, we paid Ron Miller to move the septic system and he made no mention whatsoever of any problems with the boundary line or the access road to the cabin we were selling to Pierce.

CP at 80.

The declaration of Ronald L. Miller was also admitted by stipulation. Mr. Miller notified Mr. Davis prior to his selling the property to the Pierces that the boundary line was actually 50 to 60 feet farther east than he believed and that it encompassed the elbow curve of the access driveway. Mr. Miller further stated that after he had sold his property

to the Belchers he also advised the Pierces of the mistaken understanding of the boundary line. Mr. Miller attempted to mediate the boundary line dispute. He apparently offered to use his heavy equipment to excavate the adjacent rock and adjust the boundary line east so that it sat entirely on the Pierce property. The Pierces refused the offer.

Gregory L. Olson, Miller's listing agent, testified at trial that he actually walked the boundary lines of the Belcher property with Mr. Miller prior to the sale. He stated that Mr. Miller had placed a second fence post marker in the northeast corner because he believed the boundary had changed from what he originally understood. Mr. Olson stated that both markers were in place when he eventually showed the property to the Belchers but that he indicated to the Belchers the one placed by Mr. Miller marked the true boundary. He stated that the intermediate "T" posts running between the corner markers were marking well sites from when Mr. Miller had the property water witched.

Louise Marie Belcher testified at trial that she visited the property prior to purchasing on three or four occasions. On one occasion, she toured the property with Mr. Olson and Kimberly Merritt, her real estate agent, and videotaped the tour. She confirmed that Mr. Olson identified the boundary line markers placed by Mr. Miller as marking the true boundary. She stated that she too understood the row of "T" posts to be marking well-witched sites as they did not line up with the Miller markers. She stated that she knew her understanding of the boundary line placed the elbow of the Pierce driveway onto her property but believed it

was a permissive encroachment. She stated she relied on appraisal reports, plat maps, title reports, and the statutory warranty deed in purchasing the property, all of which confirmed the location of the boundary line to the east of the row of "T" posts. Video introduced at trial from one of Ms. Belcher's visits showed Ms. Belcher stating that she might have to "'blackmail her neighbor (Pierce)'" for more pasture land. CP at 852.

The court concluded that title to the disputed strip had been established by mutual recognition and acquiescence and quieted title in favor of the Pierces.

DISCUSSION

The Belchers contend that the Pierces failed to show by clear, cogent, and convincing evidence the three factors necessary to prove a property line by mutual recognition and acquiescence.

To support this the Belchers assign error to nearly every finding of fact and conclusion of law entered by the trial court, but not every assignment is argued. We review challenged findings for substantial evidence. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 369 (2003). We view the evidence and all reasonable inferences in the light most favorable to the prevailing party. *Korst v. McMahon*, 136 Wn. App. 202, 206, 148 P.3d 1081 (2006). We, of course, do not reweigh the evidence and substitute our judgment just because we might have resolved the factual conflict differently. *Pardee v. Jolly*, 163 Wn.2d 558, 566, 182 P.3d 967 (2008). Ultimately, the question here on

appeal is whether the findings the trial court entered are supported by substantial evidence, not whether others (those suggested by the Belchers) might also be supported by the evidence. We review challenged conclusions of law to determine whether they are supported by the findings of fact. *Hegwine v. Longview Fibre Co.*, 132 Wn. App. 546, 555, 132 P.3d 789 (2006), *aff'd*, 162 Wn.2d 340, 172 P.3d 688 (2007).

I. Mutual Recognition and Acquiescence

Generally speaking, mutual acquiescence and recognition is a doctrine of boundary adjustments that supplements adverse possession in the settlement of boundary disputes. *Lilly v. Lynch*, 88 Wn. App. 306, 316, 945 P.2d 727 (1997); *Lloyd v. Montecucco*, 83 Wn. App. 846, 855, 924 P.2d 927 (1996). To establish a boundary by acquiescence, the party claiming title must convince the trier of fact that (1) the line is "certain, well defined, and in some fashion physically designated upon the ground"; (2) the adjoining property owners, or their predecessors in interest, have manifested a mutual recognition and acceptance of the designated line as the true boundary line "by their acts, occupancy, and improvements" on their respective properties; and (3) mutual recognition and acquiescence continued for a period of time necessary to establish adverse possession (10 years). *Lamm v. McTighe*, 72 Wn.2d 587, 593, 434 P.2d 565 (1967); *see also Merriman v. Cokeley*, 168 Wn.2d 627, 630, 230 P.3d 162 (2010).

The dispute here is over whether the common boundary line claimed by the Pierces was sufficiently well defined,

recognized, and acquiesced to before the Belchers erected the fence in 2009. "'In the absence of an agreement to the effect that a fence between the properties shall be taken as a true boundary line, mere acquiescence in its existence is not sufficient to establish a claim to title to a disputed strip of ground.'" *Lamm*, 72 Wn.2d at 592 (quoting *Thomas v. Harlan*, 27 Wn.2d 512, 518, 178 P.2d 965 (1947)). The parties must have actually recognized the fence posts as the true boundary line, and not merely acquiesced in the existence of the fence posts as a barrier or a marker for some purpose other than a boundary line. *Id.* Our review of this record convinces us that the evidence is sufficient to support the conclusion that the parties recognized the fence posts as the true boundary line.

1. *Well-defined line, designated upon the ground*

The Belchers first contend the "T" posts, the mow line, and the driveway do not establish a well-defined boundary line. *See id.* at 593. The Belchers contend the metal "T" posts are randomly placed and were used to mark well-witched sites, not a boundary line. And the Belchers argue that the posts were often obscured from view by the overgrown grass in the field. They argued that of the two posts marking the northern boundary, the farthest east marker was the legal boundary marker because that is what Mr. Olson showed Ms. Belcher before they bought and that is what comports with the legal description in their deed. The Belchers argue that the mow line between the properties changed periodically and often

did not follow any designated line.

What amounts to a well-defined boundary line, physically designated upon the ground has been the subject of other cases in this state. *See id.* at 594 (fence built by one neighbor was a sufficient boundary marker); *Merriman*, 168 Wn.2d at 631-32 (three survey markers overgrown with blackberry bushes and weeds were not a clear and well-defined line); *Waldorf v. Cole*, 61 Wn.2d 251, 377 P.2d 862 (1963) (rockery against a dirt bank was an insufficient boundary marker); *Scott v. Slater*, 42 Wn.2d 366, 368-69, 255 P.2d 377 (1953) (row of pear trees of varying shapes and sizes, which did not terminate at a well-defined point, was not a clear and well-defined line), *overruled on other grounds by Chaplin v. Sanders*, 100 Wn.2d 853, 861 n.2, 676 P.2d 431 (1984); *Skov v. MacKenzie-Richardson, Inc.*, 48 Wn.2d 710, 716, 296 P.2d 521 (1956) ("occasional grazing" was insufficient to establish a boundary line); *Green v. Hooper*, 149 Wn. App. 627, 642, 205 P.3d 134 (2009) (retaining wall constructed of railroad ties extending into beach area insufficient to establish boundary line).

Here, the court found that the north common boundary was marked by a "T" post and the south common boundary was marked by a white PVC pipe. The court found that there were at least two posts lined up in between the north and south markers, spaced about 50 to 75 yards apart. The court found that there were two other metal posts, not in any pattern and not located on the common boundary, which served as well-witching markers. The court found a distinct mow

line following the common boundary from different hues in aerial photographs. The court found that "[t]he corner markers, the intervening t-posts, and the vegetation lines were all observable." CP at 867 (Finding of Fact (FF) J). The court found that the elbow of the Pierce driveway was on the Pierce property and was 2 to 3 feet higher than the surrounding fields. Those findings are supported by substantial evidence.

Mr. Trimble testified to the existence of the metal "T" post in the north and the post with something white wrapped around it in the south. He testified to the existence of the straight line of "T" posts in between the corner markers. Mr. Trimble also marked the north and south corners on several aerial photographs. The trial court noted that Mr. Trimble showed some confusion in marking the boundaries but ultimately found his testimony credible. Mr. Anderson, the Pierces' real estate agent, testified that he walked the property and identified and photographed the same markers some 18 years later. Mr. Anderson estimated the posts were 50 to 75 yards apart. Mr. Davis testified by declaration regarding the same corner markers and line of posts. Mr. Davis further confirmed the distinct line in aerial photographs. Mr. Pierce testified to the existence of the corner markers, straight line of posts, and mow line. Mr. Pierce also testified that the driveway could not be cut in any further because of a rock ridge.

In addition to the extensive testimony, there were aerial photographs that also showed this to be the common boundary between the properties. Two 1995 GIS (Geographic Information Systems) aerial

photos show the common boundary and the driveway located wholly on the Pierce property. A 2000 Department of Transportation (DOT) photo shows a different pattern of agricultural use and the driveway within the Pierce property. Mr. Trimble testified that he allowed a neighbor, Ralph Guire, to cut hay off his property and keep whatever he took. Mr. Pierce testified that he and the Millers also had the properties jointly cut. A 2005 DOT photo again shows the distinct variations of hues along the common boundary, and the driveway within the Pierce property.

We view the evidence in a light most favorable to the Pierces and conclude that when so viewed it supports the court's findings of a well-defined common boundary line. We do not revisit the court's findings because there is conflicting evidence. *Merriman*, 168 Wn.2d at 631. The matter went to trial because there was conflicting evidence. It is clear, there are at least four visible "T" posts running in a straight line between the two properties. The line terminates at the northern and southern boundaries of those properties. A mow line in the grass distinctly follows the line of "T" posts. The respective property owners historically mowed up to the common boundary unless they had formed a joint farming agreement, in which case both properties were mowed together. And the elbow in the road was created to get around a rock ridge and most likely necessitated the changed boundary.

The trial court's conclusion that the "common boundary has been certain, well defined, and physically designated upon

the ground by corner posts and intervening marker posts—all clearly visible; together with the western edge of the Pierce driveway; the common boundary was also designated by the clearly visible, distinct agricultural uses on each side of the common boundary" is certainly supported by the findings. CP at 871 (Conclusion of Law (CL) A).

2. *Mutual recognition and acceptance*

The Belchers next contend that the evidence was insufficient to show that the Pierces and the Belchers, or their predecessors in interest, manifested a mutual recognition and acceptance of the "T" posts as the true boundary line by their acts, occupancy, or improvements on their respective properties. *Green*, 149 Wn. App. at 641-42. The Belchers specifically contend the testimony of Mr. Trimble is unreliable because he never walked the boundary lines and did not live on the property until 1998. The Belchers also contend the declaration of Mr. Davis is unreliable because he too never physically identified the boundary lines nor had he lived on the property. The Belchers contend that trial testimony firmly established that the Millers had placed the "T" posts to mark well-witched sites. The Belchers contend that no previous owners of the Belcher property ever acquiesced to the well-witching posts or mow lines as a new or altered boundary line.

In *Lamm*, our Supreme Court held that property owners showed mutual recognition and acquiescence by clearing portions of their property up to the disputed boundary line, erecting a fence, planting

berry bushes, mowing the grass, and occasionally using the strip adjacent to the disputed fence as a roadway for deliveries. *Lamm*, 72 Wn.2d at 590. Similarly, in *Mullally v. Parks*, our Supreme Court held that property owners demonstrated mutual recognition and acquiescence by clearing property up to the disputed boundary line, planting ornamental trees, ferns, and flowers, building a fence, and using the disputed strip as a play area for their children. 29 Wn.2d 899, 902-03, 908, 190 P.2d 107 (1948). In contrast, in *Waldorf*, the court held that there was "a complete lack of proof" of mutual recognition and acquiescence where the disputed area "was apparently not used and was essentially in its original condition," and the only improvement in the disputed area was a "rockery" built by one of the adjoining property owners against a dirt bank. 61 Wn.2d at 255-56.

The evidence of occupation and improvements here is closer to *Lamm* and *Mullally* than to *Waldorf*. The court here found that the mutual recognition and acceptance of the common boundary line could be traced back to when Voile Sr. and Voile Jr. purchased on the same day in May 1982: "The common boundary between the two parcels was established by the Voiles—father and son—so as to put the Pierce driveway entirely on the Pierce property." CP at 866 (FF G). The court noted that "[t]he Voiles, father and son, it makes sense to me that they would have, at the outset, this accommodation between the two of them." RP at 359. The court found that "[t]he common boundary markers (PVC pipe and

t-posts) were clearly evident when Mr. Trimble first entered his property in 1991 and were clearly evident when he sold out and departed in 2005. He used his garden tractor to mow along the established common boundary from time to time while he and his mother owned the property." CP at 866-67 (FF H). The court found the Millers had the same understanding of the common boundary: "Mr. Miller plowed snow and graveled the Pierce driveway." CP at 867 (FF I). The court noted: "Mr. Miller had observed the long established common boundary while he was in possession. At no time over the years did he question the common boundary." CP at 868 (FF M). The court found the Davises were "told the common boundary—as shown by the posts and vegetation line—was the same as described by Voile Sr. 23 years before." CP at 867 (FF J). Those findings are supported by substantial evidence.

The Voile deeds are included in this record. Mr. Trimble testified that he was involved in the negotiations when his mother first purchased the Pierce property in 1991 from Voile Jr. Mr. Trimble met with Voile Sr. and he showed him the common boundary with his son's property. Mr. Trimble identified the corner posts with PVC pipe and the straight line of "T" posts as the common boundary markers shown to him by Voile Sr. Mr. Trimble's mother put in a pad and mobile home, septic system, water and power to the property. Mr. Trimble testified that his ex-wife and two stepdaughters lived on the property from 1991 to 1994 and he visited them twice a month. Mr. Trimble personally moved onto the property in 1998 and lived

there until 2005. Mr. Trimble testified that there was never any dispute with Voile Sr. about the common boundary line. Mr. Trimble testified that the Millers also never disputed the common boundary line. In fact, Mr. Miller even plowed snow from and graveled the driveway. The Millers also requested an easement across the driveway to the property line for electric service. Mr. Anderson and Mr. Pierce testified that Mr. Miller kept his property neatly mowed, and that he never mowed beyond the common boundary markers or "T" posts. Mr. Miller did place a pipe approximately 50 to 60 feet west of the northwest corner post of the property after a non-party neighbor surveyed the land. Only Mr. Olson and the Belchers relied on the Miller pipe as the true boundary.

Again, substantial evidence supports the trial court's findings regarding a mutual recognition and acceptance to the "T" posts as the true boundary line especially when viewed in a light most favorable to Pierce. The respective parties, and their predecessors in interest, never removed the straight line of fence posts, they cultivated up to the line, and they treated the road as entirely on the Pierce property. Any confusion by Mr. Miller regarding the boundary line is offset by the fact that he recognized and accepted the common boundary from at least 1992 through 2005. He even asked for an easement across the road that he now claims was on his property.

The court's conclusion that

> the predecessors in interest to the Pierces and Belchers, in good faith manifested by their acts, occupancy, and improvements with respect to their

> respective properties, a mutual recognition and acceptance of the designated line as the true boundary line, i.e., George Voile, Jr. and Debra Voile, Marylin Trimble and her son, Michael Trimble, Kelly Davis and Sheryl Davis, and finally Lance Pierce and Janette Pierce as to the Pierce property; and George S. Voile, Sr. and Joanne Voile, Ronald Miller and Alene Miller, as to the Belcher property, all made different uses of the respective fields, all observed and maintained the location of the Pierce driveway, or roadway

is supported by the findings. CP at 871 (CL B).

3. *Mutual acquiescence for a period of time*

Finally, the Belchers contend the Pierces failed to show that both parties acquiesced in the line for the period required to establish adverse possession—10 years. *See Lamm*, 72 Wn.2d at 593. The Belchers specifically contend Mr. Trimble only occupied the Pierce property from 1998-2005 (7 years) and the subsequent owner, the Davises, never lived on the property. The Belchers contend the Davises could not, and did not, identify an altered boundary. The Belchers contend Mr. Miller put the Davises on notice at the time he sold the property to the Pierces that the boundary between the adjacent properties was not what he thought.

Here, the court found that Mr. Trimble acquiesced in the line since the time his mother purchased the property in 1991 until he sold it in 2005. The court found that Mr. Trimble visited the property one or two times a month from 1992 to 1998 and lived on the property full time from 1998 to 2005. Voile Sr., the adjacent property owner at the time, apparently showed Mr. Trimble the common boundary line marked by the "T" posts. Voile Sr. and his son, Voile Jr.,

purchased the properties in 1982. The court found that Mr. Davis, the owner of the Pierce property after Mr. Trimble, was told the common boundary was marked by the same "T" posts and the mow line. The trial court found that Mr. Miller observed the long established common boundary line while he was in possession. The trial court found the line had been established for 26 years. Substantial evidence supports those findings.

The evidence, then, indicates that Mr. Trimble alone acquiesced in the line for 14 years, regardless of how frequently he occupied or visited the property. The court could reasonably infer from his testimony that the Voiles may have acquiesced in the line for the 9 years prior to the Trimbles and the Millers. The Davises, who purchased from Mr. Trimble, knew of and acquiesced in the common boundary line, regardless of whether they lived on the property. The Millers owned the Belcher property from 1992 to 2008 and did not question the common line until maybe 2005 when Mr. Miller installed the additional northwestern marker. The Pierces acquiesced in the line after they purchased in 2007. The Belchers questioned the line but only after purchasing in 2008. So, at least from 1992 to 2005 (13 years) the owners of the respective properties acquiesced in the common boundary line. But the court could reasonably infer that the common line had been acquiesced in since the Voiles purchased in 1982, or 25 years.

The court's conclusion that "the mutual recognition and acquiescence in the line continued for the period of time required to secure property by adverse possession, namely at least ten years; in fact, for a

period of 26 years" is supported by the findings. CP at 871 (CL C). Again, the court used the Belcher purchase date (July 2008) instead of the Pierce purchase date (August 2007) in calculating 26 years. But the court's conclusions remain the same, notwithstanding.

The Pierces then sustained their burden of proving each essential element of their claim for mutual recognition and acquiescence. There was evidence from which the court could find a well-defined boundary line along the "T" posts that formed a common adjacent boundary. And substantial evidence supported the findings that the Pierces and the Belchers, or their predecessors, mutually recognized such boundary and had done so for more than 10 years.

II. Bona Fide Purchaser

The Belchers also contend they are bona fide purchasers for value. The Belchers argue that they purchased the property without notice of any common boundary line because none of the deeds referenced a common boundary marked by "T" posts or mow lines. The Belchers argue that they thought the "T" posts marked well-witched sites and the road encroachment was based on an agreement for ingress/egress.

A good faith purchaser for value without notice of another's interest in real property takes a superior interest in the property. *Tomlinson v. Clarke*, 118 Wn.2d 498, 500, 825 P.2d 706 (1992).

> "It is a well-settled rule that where a purchaser has knowledge or information of facts which are sufficient to put an ordinarily prudent man upon inquiry, and the inquiry, if followed with reasonable diligence, would lead to the discovery of defects in the title or of equitable rights of others affecting the property in question, the purchaser will be held chargeable with knowledge thereof and will not be heard to say that he did not actually know of them. In other words, knowledge of facts sufficient to excite inquiry is constructive notice of all that the inquiry would have disclosed."

Steward v. Good, 51 Wn. App. 509, 513, 754 P.2d 150 (1988) (quoting *Peterson v. Weist*, 48 Wash. 339, 341, 93 P. 519 (1908)).

Here, the Belchers were expressly told during a visit to the property that the pipe, purporting to be the new corner marker, had been placed the previous day by Mr. Miller and his real estate agent, Mr. Olson. The new pipe did not line up with the other existing posts marking the common boundary. The original northeastern corner marker was still in place during the Belchers' visit. Ms. Belcher noticed the "T" posts but testified that she had been told by Mr. Olson they were markers from well witching. Video evidence presented at trial showed Ms. Belcher speculating that she might have to "blackmail" the Pierces for more pasture land. The Belchers apparently relied upon appraisal reports, plat maps, title reports, and the statutory warranty deed in purchasing the property, all of which confirmed the location of the boundary line to the east of the row of "T" posts. The Belchers believed any encroachment by the Pierce driveway was permissive. But no evidence was presented to show permission by Voile Sr., the Millers, or the Belchers to

allow the road to encroach on the Belcher property. The boundary was changed.

III. Counterclaim For Trespass

The Belchers also contend the Pierces committed trespass by using a backhoe to physically remove the wooden fence posts and placing them on their property. The Belchers contend their property was damaged. The court found that "[b]oth the Belchers and Pierces acted in good faith belief they had lawful authority to install (Belchers) and remove (Pierces) the stock fence. There was no trespass." CP at 870 (FF Q). That finding is supported by substantial evidence. The court concluded: "Neither the Belchers nor the Pierces trespassed on the other's property in the aftermath of the Noyes survey. They each acted in a good faith belief that they had a legal right to install or remove the stock fence posts. Hence (Belchers in reliance of the survey) and remove fence posts (Pierces pursuant to court order) [sic]." CP at 871-72 (CL D). That conclusion is supported by the findings.

ATTORNEY FEES

The Belchers request attorney fees and costs incurred below and on appeal pursuant to RAP 18.1, RCW 48.30.015, and *Olympic Steamship Co. v. Centennial Insurance Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991). The Pierces also request fees and costs under the same authorities.

An award of fees to the insured is "required in any legal action where the insurer compels the insured to assume the burden

of legal action" to obtain the full benefit of the insured's insurance contract. *Olympic S.S.*, 117 Wn.2d at 53. "*Olympic Steamship* stands for the proposition that '[w]hen insureds are forced to file suit to obtain the benefit of their insurance contract, they are entitled to attorneys' fees.'" *Butzberger v. Foster*, 151 Wn.2d 396, 414, 89 P.3d 689 (2004) (alteration in original).

We cannot find where the party claimants have demonstrated that any insurer denied benefits owing under any policy and therefore will not award attorney fees.

We affirm.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

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Sweeney, J.

WE CONCUR:

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Kulik, C.J.

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Siddoway, J.