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BOOK 237 PAGE 564

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SKAMIA COUNTY WASH  
BY *Marvin Clemans*

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Document Title(s) or transactions contained herein:	
Findings of Fact and Conclusions of Law Case No. 02-2-00002-1	
GRANTOR(S) (Last name, first name, middle initial)	REAL ESTATE EXCISE TAX
Kaszewicz, Frank	22815 FEB 21 2003
<input type="checkbox"/> Additional names on page _____ of document.	PAID <i>100.00</i>
GRANTEE(S) (Last name, first name, middle initial)	<i>Marvin Clemans</i>
Clemans, Marvin A. etux	SKAMIA COUNTY TREASURER
<input type="checkbox"/> Additional names on page _____ of document.	
LEGAL DESCRIPTION (Abbreviated: i.e., Lot, Block, Plat or Section, Township, Range, Quarter/Quarter)	
SE1 Section 19, T2N, R5E	
<input checked="" type="checkbox"/> Complete legal on page 5 of document.	
REFERENCE NUMBER(S) of Documents assigned or released:	
Book 3 of Short Plats at Page 419	
<input type="checkbox"/> Additional numbers on page _____ of document.	
ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER	
02-05-19-0-0-1301-00	
<input type="checkbox"/> Property Tax Parcel ID is not yet assigned	2-5-19-1301 2-21-03 GTH
<input type="checkbox"/> Additional parcel numbers on page _____ of document.	
The Auditor/Recorder will rely on the information provided on the form. The Staff will not read the document to verify the accuracy or completeness of the indexing information.	

SKAMANIA COUNTY  
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OCT 17 2002

Lorena E. Hollis, Clerk

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SKAMANIA

MARVIN A. CLEMANS and CATHY  
S. CLEMANS, husband and wife,  
Plaintiffs

v.

FRANK KASZIEWICZ, a single person,  
Defendant.

No. 02-2-00002-1

FINDINGS OF FACT  
AND CONCLUSIONS  
OF LAW

This matter was tried to the Court without a jury on September 27,  
2002. Judge E. Thompson Reynolds presided at the trial.

Plaintiffs Marvin Clemans and Cathy Clemans appeared personally at  
the trial and through their attorney of record, Robert D. Weisfield.  
Defendant Frank Kasziewicz appeared personally at trial and through his  
attorney of record, Christopher R. Lanz.

The following witnesses were called and testified:

Plaintiffs' witnesses: Terry Trantow, Patrick Connolly and Marvin  
Clemans.

Defendant's witnesses: Frank Kasziewicz.

The following exhibits were offered and admitted into evidence:  
there were fifteen exhibits marked for identification. Fourteen exhibits were  
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1 admitted without objection and one, Exhibit 15, was withdrawn by the  
2 defendant and not offered. No exhibits which were offered were rejected by  
3 either the Court or the adverse party.

4  
5 Based on the evidence presented at trial, the Court finds:

6 1. The defendant, Frank Kasziewicz, obtained title to his property  
7 in 1970 by purchasing acreage along Skye Road, the deed to which included  
8 a portion of property to the west of Skye Road.

9 2. In about 1974 or 1975, Skye Road was moved to the east by  
10 Skamania County, which entered into an agreement with the defendant for  
11 the purchase of a right-of-way.

12 3. The plaintiffs purchased their property in approximately  
13 January 1976.

14 4. The plaintiffs and the defendant each assumed that their  
15 property only extended to the centerline of Skye Road, with the plaintiffs  
16 owning west of the centerline and the defendant owning east of the  
17 centerline.

18 5. The area of dispute is bordered by Harder Road to the north  
19 and the plaintiffs' driveway to the south.

20 6. The area in dispute is approximately 38 feet by 307 feet.

21 7. The plaintiffs' mowed the grass and planted trees in the south  
22 50 feet of the disputed parcel.

23 8. The plaintiffs posted two "No Trespassing" signs in the area of  
24 dispute.

25  
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9. Land within the area of dispute, which extends 200 feet north of the mowed lawn to Harder Road, was not improved in any material respect by the plaintiffs and consisted of natural brush and trees.

10. At the time plaintiffs purchased their property, Harder Road was in existence and subjected the north 30 feet of their property to an easement for ingress and egress.

11. The north 30 feet of the area in dispute, which includes Harder Road, has been adversely possessed by the plaintiffs in that they were in actual, open, notorious, hostile, continuous, and exclusive possession of said north 30 feet.

12. The south 50 feet of the area in dispute, which includes the driveway and the mowed area, has been adversely possessed by the plaintiffs in that they were in actual, open, notorious, hostile, continuous, and exclusive possession of said south 50 feet.

13. The boundaries of the remaining area in dispute are well-defined by Skye Road and Harder Road. Both the plaintiffs and the defendant manifested a mutual recognition and acceptance of the area in dispute as belonging to the plaintiffs.

14. This manifested mutual recognition continued for a period of 10 years.

Based on the above findings, the Court makes the following conclusions of law:

1. Plaintiffs' claim is based upon adverse possession as that concept is embodied in Washington Law RCW 4.16.020.

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2. What constitutes actual possession for purposes of an adverse possession claim depends upon the nature, character, and location of the property, and the uses to which a rightful owner might ordinarily put it.

3. The burden of proof in this case is upon the plaintiffs to prove each element of adverse possession by a preponderance of the evidence.

4. The elements of proof consist of (1) possession/use, (2) uninterrupted and actual, (3) open and notorious, (4) hostile, and (5) exclusive.

5. Possession of the property with each of the necessary concurrent elements must exist for the statutorily prescribed period of 10 years. RCW 4.16.020.

6. Evidence of use is admissible because it is ordinarily an indication of possession. It is possession that is the ultimate fact to be ascertained. Exclusive dominion over land is the essence of possession, and it can exist in unused land if others have been excluded therefrom.

7. The nature of the possession is measured objectively, and the subjective belief of the claimant regarding his true interest is irrelevant to a determination of whether the element has been established.

8. Plaintiffs, together with their predecessors in title, have been in the actual, open, adverse, notorious and uninterrupted possession of the north 30 feet and the south 50 feet of the area in dispute for more than 10 years. The remaining portion of the property in dispute is quieted in the plaintiffs as recognized by the doctrine of recognition and acquiescence.

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9. Title to the following described property is quieted in the name  
of the plaintiffs, to wit:

A strip of land located within a portion of the Southwest  
quarter of the Northwest quarter of the Southeast quarter of  
Section 19, Township 2 North, Range 5 East, of the  
Willamette Meridian, in the County of Skamania and State  
of Washington, and described as follows:

The West 38 feet of said Southwest quarter of the Northwest  
quarter of the Southeast quarter; EXCEPTING  
THEREFROM any portion of the right-of-way of Skye  
Road #1108, the centerline of which is depicted on the  
plan/profile of Skye Shields Road, approved January 8,  
1973, File Number 2-50-AA2.26, on file at the Skamania  
County Engineer's Office.

Dated: October 17, 2002.

/s/ E. THOMPSON REYNOLDS  
Judge E. Thompson Reynolds

Presented by:

Approved for entry:

Notice of Presentation Waived: chz

Robert D. Weisfield, WSBA #3538  
Attorney for Plaintiffs

Christopher R. Lanz, WSBA #24220  
Attorney for Defendant

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