

Washington Supreme Court clarifies the status of dedicated lands, adverse possession law

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A recent opinion by the Washington Supreme Court has provided some guidance on what legal interest in land is transferred to the public upon dedication of land to a city, as well as the application of adverse possession law to these lands. In *Kiely v. Graves*, one landowner sought to establish title to part of an adjacent alley by adverse possession, and a neighbor who also claimed ownership of the same property contested the adverse possession claim. In denying the would-be adverse possessor's claim, the Supreme Court had to resolve two separate issues: First, whether the City of Port Townsend owned the alley, which was dedicated to the City as a "public thoroughfare[]" in 1908, in fee simple, or whether the City merely held an easement in the land. And second, whether a City easement over the alley prevented the neighbor from gaining fee simple title to the alley by adverse possession. The Supreme Court's opinion was instructive on these issues, both of which lacked some clarity under prior case law.

On the first issue, the Court found an easement was created based on an analysis of the dedication at issue, as well as the presumption "that a statutory dedication of land for highway purposes constitutes only a public easement." On the second issue, the Court held that a Washington statute (namely, RCW 7.28.090) prevents adverse possession not only of land owned outright by certain government entities, but also of land in which a government entity holds only an easement. That is, the City's easement rights in the alley prevented the claimant from adversely possessing the underlying fee interest in the property. This ruling is all the more significant because it seems to overturn a 1995 Court of Appeals case—*Erickson Bushling*—in which the court suggested a property owner could, in

fact, gain fee simple title to land by adverse possession despite the existence of a public easement. See *Erickson Bushling, Inc. v. Manke Lumber Co.*, 77 Wn. App. 495, 891 P.2d 750 (1995). In any event, this ruling brings Washington into line with a number of other states, where courts have held that a private party cannot adversely possess land in a public easement.

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