

NO. 23739

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

NEAL W. BAKER, Trustee under that certain unrecorded Neal W. Baker Trust No. 1, dated October 25, 1994, and FRANCES S. BAKER, Trustee under that certain unrecorded Francis S. Baker Trust No. 1, dated October 25, 1994, Plaintiffs/Counterclaim Defendants-Appellees, v. SIDNEY ALBERT QUINTAL, individually and as Trustee of the Sidney Albert Quintal Revocable Living Trust; SUSAN MARTHA QUINTAL, individually and as Trustee of the Susan Martha Quintal Revocable Trust, Defendants/Counterclaimants-Appellants; and JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; DOE "NON-PROFIT" CORPORATIONS 1-10; DOE ASSOCIATIONS 1-10; and DOE GOVERNMENTAL ENTITIES 1-10, Defendants

APPEAL FROM THE SECOND CIRCUIT COURT  
(CIV. NO. 97-0732(1))

MEMORANDUM OPINION

(By: Burns, C.J., Lim and Foley, JJ.)

In this quiet title action, Defendants/Counterclaimants-Appellants Sidney Albert Quintal and Susan Martha Quintal (the Quintals) appeal from the August 17, 2000 Judgment (Judgment), entered by Second Circuit Court Judge Artemio C. Baxa, in favor of Plaintiffs/Counterclaim Defendants-Appellees Neal W. Baker and Frances S. Baker (the Bakers),

The Judgment quieted title by adverse possession in favor of the Bakers and against the Quintals to a part of the

Quintals' Lot 56 (Tax Map Key (TMK) 2-2-9-4:56) that adjoins the boundary of the Bakers' Lot 57 (TMK 2-2-9-4:57). In this appeal, we will label the part of the Quintals' Lot 56 awarded by the Judgment to the Bakers as the "Disputed Parcel."

The Judgment also enjoined the Quintals to remove a fence constructed by them on the Disputed Parcel and not to construct a fence on the Disputed Parcel.

A map of the relevant area is attached.

The Quintals do not seek reversal of the award of title to the Bakers of the *makai* (makai) or north part of the Disputed Parcel. We will call this part of the Disputed Parcel the "Makai Disputed Parcel." It extends from the *mauka* (mauka) or southern edge of the Honopou Stream in the makai or north direction to the makai or northern boundary of the Disputed Parcel at the Hana Belt Highway. We affirm that part of the Judgment awarding title of the Makai Disputed Parcel to the Bakers.

The Quintals seek reversal of the award of title to the Bakers of the *mauka* or south portion of the Disputed Parcel. We will call this part of the Disputed Parcel the "Mauka Disputed Parcel." It extends from the mauka or southern boundary of the Honopou Stream in the mauka or southern direction to the makai or northern boundary of the East Maui Irrigation Ditch (EMI Ditch).

We reverse that part of the Judgment awarding title of the Mauka Disputed Parcel to the Bakers.

The Quintals also seek reversal of the mandatory and prohibitory injunctions entered against them pertaining to both the Mauka and Makai Disputed Parcels. We vacate that part of the Judgment imposing mandatory and prohibitory injunctions and remand that part of the case for further proceedings consistent with this opinion.

I.

BACKGROUND

The Bakers' Lot 57 and the Quintals' Lot 56 are both rectangular in shape and each is comprised of approximately 13 acres. The east side of Lot 57 adjoins the west side of Lot 56. The main fork of the Honopou Stream flows west to east across the middle of Lot 57 and then, at the boundary of Lots 57 and 56, it turns north (makai), joins a seasonal fork that flows east-northeast to west-southwest across the middle of Lot 56, turns back into Lot 57, and flows north (makai) out of Lot 57 and under the Hana Belt Road.

On the south (mauka) part of Lots 56 and 57, the EMI Ditch flows east to west across Lot 56 and into Lot 57 and then south (mauka) out of Lot 57.

The Mauka Disputed Parcel, and Lots 56 and 57 on either side of it, has an elevation rising from the Honopou Stream to the EMI Ditch. Above the EMI Ditch, the areas are flat or sloped south (mauka).

The history of the Quintals' Lot 56 and the Bakers' Lot 57 is as follows:

June 20, 1960            The heirs of Lydia Copp Ralston partitioned certain real property located at Honopou, Hamakualoa, and conveyed Lot 56 to Gladys and Kenneth Warner and adjoining Lot 57 to Raymond and Doris Ralston.

1960                    Between Lots 56 and 57, a Historic Fence was built which starts at the boundary pin located at the north (makai) point of the common boundary between Lot 56 and Lot 57 and runs south (mauka) to a point near the EMI Ditch. The Historic Fence is angled east to a point within Lot 56 so that it creates the thin triangular five-acre Disputed Parcel bounded on the east by the Historic Fence, on the south (mauka) side by the EMI Ditch, and on the west by the boundary between Lot 56 and Lot 57. The 1,200-foot long and 4-foot-tall Historic Fence was built by a lessee from Mr. Warner, the then-owner of Lot 56, so that cattle could be raised/contained within Lot 56. The Historic Fence was made of railroad ties approximately 8 by 10 inches wide that were placed 12 to 15 feet apart and four strands of barbed wire. The Historic Fence was sturdy and well built and, where the Historic Fence crossed the Honopou Stream, it was "reinforced heavier" with a one-half inch cable and other supporting cables. The one-half inch cable began near the top of the bank on the north boundary of the Honopou Stream and continued to the bank of the south boundary of the Honopou Stream. The one-half inch cable was in the ground on the north and

south boundary of the Honopou Stream and suspended along the side of the Historic Fence itself. There were also other supporting cables that were attached to Lot 56 to support the Historic Fence from deviating back and forth in case there was a flood.

August 27, 1971

The Bakers purchased Lot 57. At the time of purchase, both Lots 56 and 57 were undeveloped and overgrown with thick vegetation. The Bakers relied on their realtor's assurance that the Historic Fence was the boundary on the east (Hana side) boundary of Lot 57 and that all boundary pins were found. Thus, the Bakers believed it was unnecessary to conduct a survey.

1972

The Bakers planted coconut trees on the Makai Disputed Parcel along the Lot 57 side of the Historic Fence. The trial court determined that the coconut trees were significant because they were clearly visible to the adjoining owners and because there were no other coconut trees in the immediate area.

1973

Lot 57 was overgrown with vegetation. James Baker, the son of the Bakers, cleared an entranceway on the north (makai) part of Lot 57. In preparation for the building of the Bakers' first house, a Lindal Cedar Home, on the north (makai) part of Lot 57, the Bakers and James Baker cleared an area of about 110 by 90 feet and also cleared the area up to the Historic Fence, from the north (makai) end of Lot 57 to the Honopou Stream, which included the Makai Disputed Parcel.

Since 1973, James Baker mowed the area along the Historic Fence in the Makai Disputed Parcel about 2 to 3 times per month until 1997. Due to the frequent rain in the area, constant maintenance is needed to control overgrowth. In contrast, Lot 56 remained uncleared until 1997.

James Baker placed "No Trespassing" signs at the entrance of the Bakers' driveway from the Hana Belt Road and at the tunnel where the stream runs underneath the Hana Belt Road. However, "No Trespassing" signs were not placed on the Historic Fence because of the remoteness of the area and because Lot 56 was so overgrown with vegetation that nobody would walk through Lot 56 to Lot 57.

1973-1974

The Bakers cleared a path from the first house to the Historic Fence and along the Historic Fence to the "area behind the [Honopou Stream]" on the Makai Disputed Parcel to install a waterline. Where the Historic Fence moved into the low-lying area of the Honopou Stream, the Bakers cleared the area around the Historic Fence near the waterline area on the Makai Disputed Parcel once or twice a month beginning in 1973 and continuing until 1994. The Honopou Stream is not a rushing stream, it is a trickling stream, meandering from little pools to little pools. The waterline was installed next to the Historic Fence and extended into the low-lying areas of the Honopou Stream. At this point the waterline protruded out into the stream where it was attached to a water intake system. Eight to ten feet of the steel waterline pipe is permanently cemented to the banks of the stream and is located within the Makai Disputed Parcel.

The waterline that had been above ground and tied to the Historic Fence was buried underground with visible hose bibs installed to standpipes attached to the Historic Fence on the Makai Disputed Parcel. To bury the waterline, the Bakers dug a trench that was one foot deep, 350 feet long, and one foot away from the Historic Fence on the Makai Disputed Parcel. This waterline has not been in use since 1996 because of a flood.

The Mauka Disputed Parcel was covered by tall grass, bushes, and trees. In 1973, the Bakers walked on the tall grass and cut away some of the vegetation on the Lot 57 side of the Historic Fence thereby creating a trail two to three feet wide along the Historic Fence. This trail was used by the Bakers to provide human access to the Historic Fence and to areas south (mauka) of Lot 57. Thereafter, the Bakers maintained and repaired the Historic Fence 4 to 5 times during the period from 1973 to 1986. Once or twice a month during the period from 1973 to 1997, the Bakers maintained the trail by walking on the vegetation, and by using a machete to cut shrubbery and bushes that were in the way. During those times when James Baker was on the Mauka Disputed Parcel and trespassers, such as hikers from Twin Falls, would come onto the Mauka Disputed Parcel, James Baker would "throw them out." The number of these "times" was not specified. When he was on the trail, James Baker also sought "to investigate the top and remote portions of the property to be sure there was no illegal agricultural activities ongoing." The Bakers did not put any "no trespassing" or similar signs on the Mauka Disputed Parcel. There is no evidence that the Bakers did anything on Lot 57 south (mauka) of the Honopou Stream.

November 6, 1974<sup>1</sup> Gladys Warner and Kenneth Warner conveyed their interest in Lot 56 to David Quintal. Kenneth Warner physically showed his stepson, David Quintal, where the boundaries were and measured the property. The Bakers had already cleared the Makai Disputed Parcel.

The north (makai) boundary of the Bakers' Lot 57 is about 30 feet below the Hana Highway, which borders the property on the north. The Bakers' Lot 57 is situated in a

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<sup>1</sup> On or about November 6, 1974.

valley between Lot 56 and Lot 58, and Lot 57 is the bottom of this valley and slopes upward in a north (makai) to south (mauka) direction. A person on the north (makai) part of Lot 56 would be able to see the activities on the Makai Disputed Parcel because they were in open view. When David Quintal, who lived on Oahu, visited Lot 56, he saw what had been done on the Makai Disputed Parcel, but did not say anything to the Bakers. There is no evidence that a person on the north (makai) part of Lot 56 would be able to see the pathway used by the Bakers next to the Historic Fence on the Mauka Disputed Parcel.

1970's

James Baker asked David Quintal permission to mow a fire break on the Lot 56 side of the Historic Fence on the Makai Disputed Parcel. James Baker did not ask permission to mow the Lot 57 side of the Historic Fence on the Makai Disputed Parcel. In addition, David Quintal did not question the Bakers about the fact that the Lot 57 side of the Historic Fence on the Makai Disputed Parcel was mowed.

1982

The Bakers started cultivating and maintaining plants and trees (banana, citrus, coconut, ficus, croton, and paper bark) on Lot 57 and the Makai Disputed Parcel. Based upon a setback measured from the Historic Fence, the Bakers constructed a second house on the north (makai) portion of Lot 57 south (mauka) of the first house.

1983

After constructing the second house, the Bakers buried underground conduits between the first and second houses along the Historic Fence on the Makai Disputed Parcel, a few feet away from the waterline. The trial court decided that the work was so substantial as to put the true owner on notice of the Bakers' activities.

September 1991

David Quintal refused a power pole easement over the part of Lot 56 adjoining the Makai



Disputed Parcel, but did not object when the power poles were installed on the Lot 57 side of the Historic Fence within the Makai Disputed Parcel.

- September 1994 The Quintals purchased Lot 56 from David Quintal.
- October 25, 1994 The Bakers created the Neal W. Baker Trust No. 1 and the Frances S. Baker Trust No. 1. On or about July 25, 1995, each conveyed all of his or her respective rights, titles, and interests in and to Lot 57 to their respective Trusts.
- February 1996 The Bakers hired Randall Sherman (Sherman) to survey their property and discovered that the Historic Fence was not the boundary line between Lots 56 and 57 and that the Historic Fence was several feet into the Quintals' Lot 56 side of the actual boundary.
- March 1996 The Quintals hired Kenneth Nomura (Nomura) to conduct a survey of their property and, similar to the Sherman survey, the Nomura survey revealed that the east boundary of the Bakers' Lot 57 was located further west than the Historic Fence. However, Nomura's location of the mauka point of the common boundary between Lots 56 and 57 was approximately 10 feet west of the Sherman survey. Sherman agreed with Nomura's location of the mauka point of the common boundary.
- September 3, 1997 The Quintals' attorney sent a letter to the Bakers advising that the newly surveyed boundary line would be enforced and a fence would be installed along Nomura's boundary line.
- September 20, 1997 The Quintals removed the Historic Fence. After a bulldozer was used, only a few fence posts were left. The Quintals installed a temporary fence along Nomura's boundary line.

- September 24, 1997 The Bakers filed their complaint in the Second Circuit Court (a) alleging that the Quintals were using a bulldozer to remove fence posts, wire, plants and other landscaping within the Disputed Parcel and were planning to remove the Historic Fence and place an eight-strand barbed-wire fence along the surveyed boundary, and (b) praying for (1) an order temporarily restraining the Quintals from constructing a fenceline west of the Historic Fence, (2) an injunction preventing the Quintals from any further destruction/construction, and (3) via adverse possession or prescriptive use, a judgment awarding the Bakers title to the Disputed Parcel, including "that portion of the Quintal Property between the common boundary and the [Historic Fence] along the east boundary of the Baker property," excluding land owned by the State of Hawai'i and land south (mauka) of the EMI Ditch.
- September 14, 1998 The Bakers filed an Amended Complaint changing the plaintiffs from the individual Bakers to the trustee Bakers.
- September 21, 1998 The Quintals filed a counterclaim against the Bakers. They sought judgment quieting their title to the Disputed Parcel.

The bench trial was held on September 27, 28, 29, and 30, 1999. On June 23, 2000, the trial court entered its Findings of Fact and Conclusions of Law (FsOF and CsOL).

The August 17, 2000 Judgment (a) based on adverse possession quieted title to the Disputed Parcel in favor of the Bakers, (b) ordered the Quintals to remove the fence previously constructed by them on the west side of the Historic Fence, and

(c) prohibited the Quintals from constructing a new fence on the west side of the Historic Fence.

II.

POINTS ON APPEAL

The Quintals challenge the following relevant part of the Judgment:

JUDGMENT IS ENTERED quieting title in favor of Plaintiffs [the Bakers] and against Defendants [the Quintals], to the real property described in the Amended Complaint filed herein on September 14, 1998. . . .<sup>2</sup>

. . . .

JUDGMENT IS FURTHER ENTERED against Defendants [the Quintals] restraining and prohibiting them from constructing their own fence line along the actual boundary west of the historic fence between the parcels and Defendants [the Quintals] are hereby ordered to remove any fence line constructed by them within the boundaries of Tax Map Key 2-2-9-4:57[.]

(Footnote added.)

The Quintals challenge the following FsOF and CsOL:

FINDINGS OF FACT

. . . .

25. From 1973 to 1997, the BAKERS and their son, James Baker, maintained the property in question. Evidence was presented to this Court which indicated the area around the historic fence was cleared and maintained in 1973. Photos taken subsequently were admitted into evidence which illustrated the continued maintenance of the property in issue.

26. The extensive clearing of the property of overgrown vegetation, starting in 1973 and the continued maintenance of the property in question until 1997 provide additional clear and strong evidence of the BAKERS' belief that the property in issue belonged to them. The BAKERS cleared the property up to the historic fence

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"[T]he real property described in the Amended Complaint filed herein on September 14, 1998" is "the portion of real property between the newly surveyed boundary line and the historic boundary line and fence[.]"

because they believed that the historic fence was the boundary to their property. The activity of clearing the land and maintaining it to prevent overgrown vegetation would be apparent to the adjoining landowner, such that, the landowner would be placed on notice of the activities occurring on the land.

. . . .

32. The BAKERS maintained the historic fence between the Honopou Stream and the EMI Ditch from 1973 to 1986. The BAKERS created and maintained a pathway 2 to 3 feet wide along the historic fence in order to provide access to it. The historic fence, in this area, was repaired 4 to 5 times between 1973 and 1986. James Baker ceased maintenance of the historic fence in 1986 because Lot 56 no longer had cattle. James Baker maintained the pathway by walking on it and crushing the overgrown vegetation in the process. During these walks, James Baker brought with him a machete to cut shrubbery and bushes to keep the historic fence clear. James Baker maintained the historic fence area from the Honopou Stream to the EMI ditch from 1973 to the present. Such maintenance by the BAKERS is evidence of their belief that the disputed property was theirs.

33. . . . Upon conveying the property, Kenneth Warner physically showed his stepson, David Quintal where the boundaries were and "measure[d] out the property." During their inspection of the property, Kenneth Warner and David Quintal saw the historic fence. They were able to find all of the boundary pins on Lot 56 except the [southwest] pin. Since the historic fence originated from the [northwest] pin of Lot 56, and there were no boundary pins between that pin and the [southwest] pin, a reasonable person would assume that the historic fence was the boundary. Had the [southwest] pin of Lot 56 been found, this would have revealed that the historic fence was not in line with the two pins. The fact that they were unable to find the [southwest] pin would indicate to the court that the QUINTALS believed the historic fence to be the common boundary between Lots 56 and 57.

CONCLUSIONS OF LAW

. . . .

3. The Court concludes that the BAKERS were in "actual, open, and notorious possession" of the property in question. Id.<sup>3</sup> This is shown by the fact that the BAKERS cleared the property in question of overgrown vegetation and maintained the property from 1973 until 1997. They mowed, maintained, and improved it.

4. With respect to the hostility element, where it has been proven that the property in controversy was held for the statutory period in actual, open, notorious, continuous and exclusive possession, and "such possession is unexplained, either by showing it

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<sup>3</sup> Petran v. Allencastre, 91 Hawai'i 545, 556-57, 985 P.2d 1112, 1123-24 (App. 1999).

was under a lease from, or other contract with or other by permission of the true owner, the presumption is that such possession was hostile." Oahu Railroad & Land Co. v. Kolohana Kaili, 22 Haw. 673, 677-78 (1915). A contract, agreement or permission such as those mentioned above was not present in this case. The BAKERS lived on Lot 57 and conducted activities on the property in question without permission or grant from the QUINTALS. As such, the presumption that the BAKERS' possession of the property in question was hostile, applies.

5. . . . The Court concludes that the BAKERS' actions on the property in question demonstrates their possession of the land under a claim of right. An adverse possessor would have a claim of right where the "claimant is in possession as owner, with intent to claim the land as his or her own, and not in recognition of or subordination to record title owner." Black's Law Dictionary 248 (6<sup>th</sup> ed. 1990). Simply phrased, the "'claim of right' element requires that the claimant treat the property as if it were its own against all others." Chaplin v. Sanders, 100 Wash.2d 853, 857-861, 676 P.2d 431 [sic] (1984). . . . The evidence clearly indicates that the BAKERS considered themselves the owners of the property. "[T]hroughout all these years [they] claimed the land as [their] own." Deponte v. Ulupalakua Ranch, Limited, 48 Haw. 17, 18, 395 P.2d 273, 274, reh'g denied, 48 Haw. 149, 396 P.2d 826 (1964). The BAKERS' possession of the land and their actions therein were so blatant that they could not be interpreted any other way but a denial of the QUINTALS' title. In fact, the QUINTALS have implicitly recognized that the BAKERS were the owners of the property in question because they did not do anything until the Kenneth Nomura survey of 1996.

The Court concludes that the BAKERS clearly treated the property "as if it were its own against all others" and therefore, the BAKERS asserted a claim of right to the property. Chaplin v. Sanders, 100 Wash.2d 853, 857-61, 676 P.2d 431 (1984).

. . . .

9. The element of hostility further requires that the "possession . . . import a denial of the owner's title." [Petran v. Allencastre, 91 Hawai'i 545, 556-57, 985 P.2d 1112, 1123-24 (App. 1999)] (citing Okuna [v. Nakahuna], 60 Haw. [650,] 656, 594 P.2d [128,] 132 (1979)). . . . The QUINTALS argue that the BAKERS did not place any type of sign [demonstrating ownership] on the historic fence. However, ["keep out" and "no trespassing"] signs were placed on other parts of Lot 57 which would indicate the BAKERS' intention of excluding people from their property which, in their reasonable belief, included the disputed property. . . . The BAKERS' also maintained the historic fence in order to prevent animals and/or people from entering their property. . . . Furthermore, structures and improvements were made on the disputed property including, inter alia, clearing the disputed property of overgrown vegetation, planting of coconuts, cultivating an orchard, and erecting poles for power lines.

10. This Court concludes that the BAKERS "'possess[ed the land] under a claim of right' in such a way as to deny the title

owner's right", therefore, satisfying the element of hostility. Petran, 91 Hawai'i at 558, 985 P.2d at 1125 citing (Okuna, 60 Haw. at 656, 594 P.2d at 132).

. . . .

12. The element of continuity and exclusivity of possession must also be proven. Petran, 91 Hawai'i at 557, 985 P.2d at 1124. "Continuity and exclusivity of possession require that the 'adverse possessor's use of a disputed area . . . rise to the level which would characterize an average owner's use of similar property.'" Id. (citing Tenala, Ltd, v. Fowler, 921 P.2d 1114, 1119 (Alaska 1996)). The QUINTALS argue that the facts in Okuna is [sic] similar to this case. The Court disagrees. In Okuna, the Court stated that "infrequent visits to [a] property to pick and gather fruit can hardly be said to constitute continuous possession or even [actual] possession at all." Okuna, 60 Haw. at 656, 594, P.2d at 132. Okuna does not resolve this case. The Okuna Court found abandonment by the tenant of the adverse claimant. In this case there was no abandonment at all. James Baker and the BAKERS lived on Lot 57, maintained and improved the property in issue and exhibited every indication that they owned it.

Furthermore, the Morinoue Court further distinguished Okuna by noting that: "On the other hand, full-scale and continuous 'cultivation, tillage of the soil, planting[,] and harvesting a crop' have been described as 'superior indicia' of actual and continuous possession for purposes of establishing adverse possession." Morinoue, 86 Hawai'i at 81, 947 P.2d at 949. In this case, the BAKERS cleared and mowed the property in question and planted several plants on it. They cultivated and maintained an orchard on the property. . . . Therefore, the Court concludes that the BAKERS were in continuous and exclusive possession of the property in issue.

13. The QUINTALS further argue that the BAKERS failed to continuously possess the area along the historic fence between the Honopou Stream and the EMI Ditch. Relying on Okuna, the QUINTALS contend, that the "infrequent visits" of James Baker along the historic fence do not constitute continuous possession of the land. Okuna, 50 Haw. at 656, 594 P.2d at 132. First of all, the Court concludes that the maintenance of the area along the historic fence, by James Baker, is not infrequent. On the contrary, maintaining the area around the historic fence once or twice a month demonstrates to this court a routine act of ownership. Furthermore, this Court already distinguished Okuna from this case. In Okuna, infrequent acts of picking fruits would provide sufficient warning to others that an adverse possessor intends to claim the land. Id. at 656-57, 594 P.2d [at] 132. In the instant case, clearing the path and using a machete to cut bushes and shrubs would result with a cleared area. This would be apparent to the true owners, that someone has maintained the property and claims it to be his own. Although the maintenance of the historic fence ended on or about 1986, James Baker continued to maintain the

pathway along the historic fence from 1973 until the present, exceeding the statutory period. James Baker ceased repair of the fence in 1986 since Lot 56 no longer contained cattle. James Baker's maintenance of the area around the historic fence, "rises to the level which would characterize an average owner's use of similar property." Petran, 91 Hawai'i at 557, 985 P.2d at 1124. As such, the court finds that as to the area between the Honopou Stream and the EMI ditch, the BAKERS' maintenance of the path on the Lot 57 side of the historic fence exemplifies an "average owner's use of similar property" and therefore, the BAKERS were in "continuous and exclusive" possession of this property. Id.

(Footnote added; brackets in original in CsOL nos. 5, 10, and 12.)

### III.

#### RELEVANT STANDARDS OF REVIEW

##### A. Findings of Fact

A trial court's finding of fact is reviewed under the clearly erroneous standard.

"A[n] [FOF] is clearly erroneous when, despite evidence to support the finding, the appellate court is left with the definite and firm conviction in reviewing the entire evidence that a mistake has been committed." State v. Kane, 87 Hawai'i 71, 74, 951 P.2d 934, 937 (1998) (quoting Aickin v. Ocean View Investments Co., 84 Hawai'i 447, 453, 935 P.2d 992, 998 (1997) (quoting Dan v. State, 76 Hawai'i 423, 428, 879 P.2d 528, 533 (1994))). An FOF is also clearly erroneous when "the record lacks substantial evidence to support the finding." Alejado v. City and County of Honolulu, 89 Hawai'i 221, 225, 971 P.2d 310, 314 (App.1998) (quoting Nishitani v. Baker, 82 Hawai'i 281, 287, 921 P.2d 1182, 1188 (App.1996)). See also State v. Okumura, 78 Hawai'i 383, 392, 894 P.2d 80, 89 (1995). "We have defined 'substantial evidence' as credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion." Roxas v. Marcos, 89 Hawai'i 91, 116, 969 P.2d 1209, 1234 (1998) (quoting Kawamata Farms v. United Agri Products, 86 Hawai'i 214, 253, 948 P.2d 1055, 1094 (1997) (quoting Takayama v. Kaiser Found. Hosp., 82 Hawai'i 486, 495, 923 P.2d 903, 912 (1996) (citation, some internal quotation marks, and original brackets omitted))).

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Kotis, 91 Hawai'i at 328, 984 P.2d at 87 (footnote omitted) (brackets in original).

Leslie v. Estate of Tavares, 91 Hawai'i 394, 399, 984 P.2d 1220, 1225 (1999) (brackets in original).

Where an appellant alleges that the trial court failed to make adequate findings of fact, the appellate court will examine all the findings, as made, to determine whether they are (1) supported by the evidence; and (2) sufficiently comprehensive and pertinent to the issues in the case to form a basis for the conclusions of law. Palama v. Sheehan, 50 Haw. 298, 440 P.2d 95 (1968); Shannon v. Murphy, 49 Haw. 661, 426 P.2d 816 (1967); Ventura v. Grace, 3 Haw. App. 371, 650 P.2d 620 (1982); Scott v. Contractors License Board, 2 Haw. App. 92, 626 P.2d 199 (1981). If those findings include sufficient subsidiary facts to disclose to the reviewing court the steps by which the lower court reached its ultimate conclusion on each factual issue, then the findings are adequate. See Tugaeff v. Tugaeff, 42 Haw. 455 (1958).

Nani Koolau Co. v. K & M Constr., Inc., 5 Haw. App. 137, 140, 681 P.2d 580, 584 (1984).

### B. Conclusions of Law

Hawai'i appellate courts review conclusions of law de novo, under the right/wrong standard. See Associates Fin. Services Co. of Hawaii, Inc. [v. Mijol], 87 Hawai'i [19] at 28, 950 P.2d [1219] at 1228. "Under the right/wrong standard, this court 'examine[s] the facts and answer[s] the question without being required to give any weight to the trial court's answer to it.'" Estate of Marcos, 88 Hawai'i at 153, 963 P.2d at 1129 (citation omitted).

Robert's Hawai'i School Bus, Inc. v. Laupahoehoe Transportation Co., Inc., 91 Hawai'i 224, 239, 982 P.2d 853, 868 (1999).

Leslie, 91 Hawai'i at 399, 984 P.2d at 1225 (brackets in original).

### C. Injunctions

The grant or denial of equitable relief in the form of an injunction rests in the sound discretion of the trial court and is reviewed under the abuse of discretion standard.

The relief granted by a court in equity is discretionary and will not be overturned on review unless the circuit court abused its discretion by issuing a decision that clearly exceeds the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of the appellant.



Aickin v. Ocean View Investments Co., Inc., 84 Hawai'i 447, 453, 935 P.2d 992, 998 (1997) (quoting AIG Hawai'i Ins. Co., Inc., v. Bateman, 82 Hawai'i 453, 457, 923 P.2d 395, 398 (1996) (citations, internal quotation marks, and brackets omitted)).

#### IV.

##### THE RELEVANT LAW

In 1977, the Hawai'i Supreme Court concluded that "[i]t is well established that one claiming title to real property by adverse possession must bear the burden of proving by clear and positive proof each element of actual, open, notorious, hostile, continuous and exclusive possession for the statutory period." Lai v. Kukahiko, 58 Haw. 362, 368-69, 569 P.2d 352, 357 (1977) (citations omitted). In Hawai'i, the statutory period is twenty years. Hawaii Revised Statutes (HRS) § 657-31.5 (1993).

"The burden of 'clear and positive proof' derives from the long-observed proposition that [a]dverse possession is to be taken strictly, and every presumption is in favor of a possession in subordination to the rightful owner." Morinoue v. Roy, 86 Hawai'i 76, 81, 947 P.2d 944, 949 (1997) (quoting Territory v. Pāi'a, 34 Haw. 722, 726 (1938) (brackets in original)). In 1978, this burden was emphasized and the limitations on this right were expanded when Article XVI, section 12, of the Hawai'i State Constitution was amended to read as follows:

No person shall be deprived of title to an estate or interest in real property by another person claiming actual, continuous, hostile, exclusive, open and notorious possession of such lands, except to real property of five acres or less. Such claim may be exercised in good faith by any person not more than once in twenty years.

However, Article XVI, section 12, does not bar adverse possession claims to more than five acres of land where the claim matured prior to November 7, 1978. Petran v. Allencastre, 91 Hawai'i 545, 558-59, 985 P.2d 1112, 1125-26 (App. 1999); see also HRS § 669-1(b).

In Petran, this court explained as follows:

Actual, open, and notorious possession is established where a claimant shows "'use of the land to such an extent and in such a manner as to put the world on notice' by means 'so notorious as to attract the attention of every adverse claimant.'" "The element of hostility is satisfied by showing possession for oneself under a claim of right," and "such possession must import a denial of the owner's title." Finally, continuity and exclusivity of possession require that the "adverse possessor's use of a disputed area . . . rise to that level which would characterize an average owner's use of similar property." Accordingly, infrequent visits to a property will not suffice to establish continuity and exclusivity of possession. At the same time, one claiming by adverse possession does not necessarily have to reside or be physically present on property.

91 Hawai'i at 557, 985 P.2d at 1124 (citations and brackets omitted).

Regarding the relevancy of the Historic Fence, the law is as follows:

Here, the claimant contends that an existing fence constitutes a visible boundary and that because of unequivocal acts of ownership, title to all of the disputed property, the land delineated by that visible boundary, vested by adverse possession. In opposition it is contended that the fence does not constitute a boundary and that, consequently, adverse possession extended only to such land, if any, as was actually occupied by the claimant. We agree with the latter contention.

. . . .

[Storr v. James, 84 Md. 282, 35 A. 965 (1896)] establishes that in determining a claim of adverse possession, the appropriate inference to be drawn from the existence of a fence is dependent upon whether the record owner or the claimant erected the fence and the purpose for which the fence was erected. The existence of a fence, erected by the record owner within the record owner's land and for the record owner's own purposes, does not support an inference that the fence is a visible boundary delineating the extent of a claimant's adverse possession. It, therefore, does not constitute evidence of the claimant's adverse possession.

. . . .

Here the record shows that the claimant was without color of title and claimed all of the land delineated by the existing barbed wire fence. The only evidence presented relating to the fence was that it was erected by a farmer who was the record owners' predecessor in interest. The farmer's sole purpose for erecting the fence was to confine his cattle to his own property, lot 233, and to prevent them from straying onto the adjoining property, lot 232. Thus, the record shows that the fence on the disputed property was erected by the record owners' predecessor within the predecessor's own boundaries and for the predecessor's own purposes. Under these circumstances, the existing fence was not a visible boundary delineating the extent of the claimant's adverse possession. It, therefore, did not constitute evidence of adverse possession and was not an appropriate factor to be taken into account in determining the extent of the claimant's adverse possession. . . .

Because the fence, although visible, did not constitute a boundary, the principle that unequivocal acts of ownership vest title in a claimant to all of the land delineated by a visible boundary is inapplicable. Rather, the applicable principle is that the claimant, who was without color of title, is entitled to acquire title by adverse possession only to land actually occupied.

Costellow v. Staubitz, 300 Md. 60, 68-74, 475 A.2d 1185, 1189-1192

(1984) (footnote omitted).

V.

#### DISCUSSION

The Quintals contend that: (1) FsOF nos. 25, 26, 32, and 33 are clearly erroneous as to the Mauka Disputed Parcel;

(2) CsOL nos. 3, 4, 5, 9, 10, 12, and 13 are clearly erroneous findings of ultimate fact as to the Mauka Disputed Parcel;

(3) (a) the trial court abused its discretion by issuing a mandatory injunction against the Quintals without evidence, findings, or conclusions of law and (b) the trial court abused its discretion by issuing a prohibitory injunction against the Quintals without stating the reasons for the injunction or finding the required elements.

#### A. Findings of Fact

##### 1. FOF no. 25

In FOF no. 25, the trial court stated that "[f]rom 1973 to 1997, the BAKERS and their son, James Baker, maintained the [Makai and Mauka Disputed Parcels]. Evidence was presented to this Court which indicated the area around the historic fence was cleared and maintained in 1973." The Quintals argue that FOF no. 25 is clearly erroneous as to the Mauka Disputed Parcel. We agree.

James Baker described and gave the following reasons for his activities on the Mauka Disputed Parcel along the Historic Fence. First, he testified, in relevant part, as follows:

A. I maintained this fence line, so it was integrally strong to keep cattle out by walking up and down this area a couple times a month repairing the fence so that the cows would not come into our water supply. This fence is on a -- is a barbed wire railroad tie post constructed fence and was enclosed from the ditch to the Hana makai pin.

Q. What did you do in addition to maintaining the fence, if anything?

A. I would cut shrubbery that would push down on the water. I would cut bushes that were pushing in on the posts. I created a walkway, a pathway through here so that you could maintain the fence line.

Q. Mr. Baker, how often would you walk that fence line above the stream and below the ditch?

A. Twice a month, on occasions more than that because it was a pathway of taking friends out on a hike and it was a way to get to the back of the property.

. . . . .

Q. Did there come a time when you stopped repairing the fence?

A. Yes, there was.

Q. When was that?

A. 1986-87.

. . . . .

Q. Why was that, Mr. Baker?

A. There were no cattle on the other side. Nobody were [sic] running cattle on this side on lot 56 side.

Q. Okay. During this period of time did you maintain the lower portions of the historic fence?

A. Yes, I did.

Q. And this period of time 1973 through present?

A. Yes, I did. I always kept this way as a walkway.

. . . . .

A. Yes. Remembering that this property is next to Twin Falls, it is a high hiking area. Lots of people try to hike around in this area.

Q. Mr. Baker, did you put any notice signs on the historical fence, itself?

A. No, I did not.

Q. Why not?

A. Because the lot was so overgrown that nobody walked through there.

. . . .

A. It is very rainy. It is in a valley so you don't get the openness as you normally would on a mountain side. It is wet. Things grow very quickly there.

. . . .

Q. I believe you testified earlier that you did mowing of the lower portions of lot 57?

A. Yes, I did. Yes, I did.

Q. What happens if you don't mow, Mr. Baker?

A. Goes right back into the jungle.

Q. When you say it goes right back into the jungle, what do you mean?

A. It gets overgrown quickly.

Second, James Baker testified, in relevant part, as

follows:

Q. So you were concerned about the cattle, you were concerned about the hikers coming from Twin Falls, and you were concerned about people growing illegal agricultural activities, is that correct?

A. Yes, yes.

Q. Were these significant concerns that you had?

A. Yes.

Q. And you still didn't . . . put any signs on that portion of the property?

A. I would throw people out when I found them.

Regarding the pathway along the Historic Fence, Frances

Baker testified, in relevant part, as follows:

A. Okay. That was kept clear so that we could go up and down. It might not have been obvious all the time since it grew rapidly, but it was always clear so --

Q. When you say it was kept clear, how large an area was kept clear?

A. Enough for a path, two or three feet.

The record lacks substantial evidence to support the finding that the Bakers "maintained" the Mauka Disputed Parcel from 1973 to 1997. At the widest point of the Mauka Disputed Parcel, the Historic Fence was 25 feet away from the actual surveyed boundary line. Doing what the Bakers did regarding the crude trail along the Historic Fence is not substantial evidence of their "maintenance" of the Mauka Disputed Parcel. In contrast, there was substantial evidence that the Bakers mowed, maintained, improved, and used the Makai Disputed Parcel.

## 2. FOF no. 26

In FOF no. 26, the trial court stated:

The extensive clearing of the [Makai and Mauka Disputed Parcels] of overgrown vegetation, starting in 1973 and the continued maintenance of the property in question until 1997 provide additional clear and strong evidence of the BAKERS' belief that the property in issue belonged to them. . . . The activity of clearing the land and maintaining it to prevent overgrown vegetation would be apparent to the adjoining landowner, such that, the landowner would be placed on notice of the activities occurring on the land."

The Quintals argue that there was no "extensive clearing" or "maintenance" of the Mauka Disputed Parcel and that the activities of the Bakers on the Mauka Disputed Parcel were not such that the Quintals were placed on notice of the activities and, thus, FOF no. 26 is clearly erroneous. We agree with the Quintals.

In light of the size and character of the Mauka Disputed Parcel, the nonactivity of the Bakers on Lot 57 south (mauka) of the Honopou Stream, the nonactivity of the Bakers on all of the Mauka Disputed Parcel except on the crude trail, the limited activities of the Bakers regarding the crude trail along the Historic Fence were insufficient to put the Quintals on notice of the Bakers' claim of ownership of the Mauka Disputed Parcel.

3. FOF no. 32

The Quintals argue that FOF no. 32 is clearly erroneous. We agree that the findings in FOF no. 32 that after 1986, James Baker did what he did to the crude trail "to keep the historic fence clear" and that he "maintained the historic fence area from the Honopou Stream to the EMI ditch from 1973 to the present" are clearly erroneous.

4. FOF no. 33

The finding in FOF no. 33 that "the QUINTALS believed the historic fence to be the common boundary between Lots 56 and 57" is not relevant. The decisive question is whether the Bakers had "actual, continuous, hostile, exclusive, open and notorious possession" of the Mauka Disputed Parcel.

A lessee of the predecessor of the Quintals built the Historic Fence to contain cattle within Lot 56. Thus, the following rule applies:



The existence of a fence, erected by the record owner within the record owner's land and for the record owner's own purposes, does not support an inference that the fence is a visible boundary delineating the extent of a claimant's adverse possession. It, therefore, does not constitute evidence of the claimant's adverse possession.

. . . .

Because the fence, although visible, did not constitute a boundary, the principle that unequivocal acts of ownership vest title in a claimant to all of the land delineated by a visible boundary is inapplicable. Rather, the applicable principle is that the claimant, who was without color of title, is entitled to acquire title by adverse possession only to land actually occupied.

Costellow, 300 Md. at 68-74, 475 A.2d at 1189-92 (footnote omitted).

#### B. Conclusions of Law

##### 1. COL no. 3

In COL no. 3, the trial court concluded that "the BAKERS were in 'actual, open, and notorious possession' of the [Makai and Mauka Disputed Parcels]. Id.<sup>4</sup> This is shown by the fact that the BAKERS cleared the property in question of overgrown vegetation and maintained the property from 1973 until 1997. They mowed, maintained, and improved it." (Footnote added.)

The Quintals argue COL no. 3 that the Bakers were in "actual, open, and notorious possession" is wrong as to the Mauka Disputed Parcel. We agree.

"Actual, open, and notorious possession is established where a claimant shows 'use of the land to such an extent and in

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<sup>4</sup> Petran, 91 Hawai'i at 556-57, 985 P.2d at 1123-24.

such a manner as to put the world on notice' by means 'so notorious as to attract the attention of every adverse claimant.'" Petran, 91 Hawai'i at 557, 985 P.2d at 1124 (citations omitted).

In Petran, it was held that

the operation and leasing of a slaughterhouse for over fifty years and the existence of signs identifying the land as the "Allencastre Slaughterhouse" for the same time period as demonstrating "use of the land to such an extent and in such a manner as to put the world on notice."

Id. at 558, 985 P.2d at 1125 (citations and brackets omitted).

"Land need only be used by an adverse possessor in a manner consistent with its nature and character - by such acts as would ordinarily be performed by the true owners of such land in such condition." Hand v. Stanard, 392 So.2d 1157, 1160 (Ala. 1980) (citation omitted). The Washington Supreme Court has stated as follows: "In determining what acts are sufficiently open and notorious to manifest to others a claim to land, the character of the land must be considered. The necessary use and occupancy need only be of the character that a true owner would assert *in view of its nature and location*." Chaplin v. Sanders, 100 Wash. 2d 853, 863, 676 P.2d 431, 437 (1984) (citations and internal quotation marks omitted; emphasis in original). Nevertheless, some use and occupancy is necessary.

The limited activities by the Bakers regarding the Historic Fence and the crude trail on the Mauka Disputed Parcel

along the Historic Fence did not show "'use of the land to such an extent and in such a manner as to put the world on notice' by means 'so notorious as to attract the attention of every adverse claimant.'" Petran, 91 Hawai'i at 557, 985 P.2d at 1124.

Although there was ample evidence for the court to find facts leading to the conclusion that the Bakers were in actual, open, and notorious possession of the Makai Disputed Parcel, the same is not true with respect to the Mauka Disputed Parcel.

## 2. COL no. 4

In COL no. 4, the trial court decided that

where it has been proven that the property in controversy was held for the statutory period in actual, open, notorious, continuous and exclusive possession, and "such possession is unexplained, either by showing it was under a lease from, or other contract with or other by permission of the true owner, the presumption is that such possession was hostile." Oahu Railroad & Land Co. v. Kolohana Kaili, 22 Haw. 673, 677-78 (1915). A contract, agreement or permission such as those mentioned above was not present in this case. The BAKERS lived on Lot 57 and conducted activities on the property in question without permission or grant from the QUINTALS. As such, the presumption that the BAKERS' possession of the property in question was hostile, applies.

The Quintals contend COL no. 4 is wrong because the Bakers were not entitled to a "presumption that [their] possession of the [Mauka Disputed Parcel] was hostile[.]" We agree. It has been held that

[i]n the absence of any explanation whatsoever, "where one is shown to have been for the statutory period in actual, open, notorious, continuous and exclusive possession, apparently as owner, and such possession is unexplained, either by showing that it was under a lease from, or other contract with or otherwise by permission of the true owner, the presumption is that such possession was hostile." Albertina v. Kapiolani Estate, 14 Haw. 321, 325 [(1902)]. Kapiolani Estate, Ltd. v. A. S. Cleghorn, 14 Haw. 330 [(1902)].

Deponte v. Ulupalakua Ranch, Ltd., 48 Haw. 17, 19, 395 P.2d 273, 275 (1964). As noted previously, the Bakers were not in actual, open, and notorious possession of the Mauka Disputed Parcel. They were creators and twice-a-month maintainers and users of a crude trail on the Mauka Disputed Parcel along the Historic Fence. Therefore, the Bakers not were not entitled to a presumption that their possession of the Mauka Disputed Parcel was hostile.

3. CsOL nos. 5, 9, and 10

The Quintals contend that (1) COL no. 9 is clearly erroneous/wrong with respect to the Mauka Disputed Parcel because the Bakers failed to satisfy the "hostility" element necessary for adverse possession and (2) CsOL nos. 5 and 10 are clearly erroneous/wrong because the Bakers failed to possess any part of the Mauka Disputed Parcel under a "claim of right."

"The element of hostility is satisfied by showing possession for oneself under a claim of right. Such possession must import a denial of the owner's title." Okuna v. Nakahuna, 60 Haw. 650, 656, 594 P.2d 128, 132 (1979) (citations omitted).

The activities by the Bakers on the trail on the Mauka Disputed Parcel along the Historic Fence have been noted above. The Bakers initially created and maintained the crude trail to maintain the Historic Fence so that it would keep cattle out and away from the Bakers' water supply. Commencing 1986 to 1987,

after there were no cattle, the Bakers maintained the crude trail to get to the back of the property on hikes. During those times, the number of which was unspecified, when James Baker was on the crude trail and trespassers, such as hikers, would come onto the pathway, James Baker would tell them to leave because he did not want hikers in the area, and he was concerned about persons involved in illegal agricultural activities.

We conclude that the record lacks substantial evidence that the Bakers treated the Mauka Disputed Parcel as if it were their own, so as to satisfy the element of "hostility" and "claim of right" necessary for the adverse possession claim. The activities of the Bakers did not show possession for the Bakers under a claim of right or import a denial of the Quintals' title.

#### 4. CsOL nos. 12 and 13

The Quintals argue that the trial court's conclusion in CsOL nos. 12 and 13 of "continuous and exclusive possession" of the Mauka Disputed Parcel by the Bakers is clearly erroneous.

When assessing the Bakers' claim of actual and continuous possession of the Mauka Disputed Parcel, the trial court cited three cases. On one side, the trial court noted that the court in Morinoue described "full-scale and continuous 'cultivation, tillage of the soil, planting, and harvesting a crop' as 'superior indicia' of actual and continuous possession."

Morinoue, 86 Hawai'i at 81, 947 P.2d at 949 (brackets omitted).

On the other side, the trial court noted that the court in Okuna held that "[i]nfrequent visits to the property to pick and gather fruits" did not constitute actual and continuous possession.

Okuna, 60 Haw. at 656-57, 594 P.2d at 132. "Between these two extremes lies a gray area, in which the courts must assess the strength of the record on a case-by-case basis." Morinoue, 86 Hawai'i at 81, 947 P.2d at 949.

The Quintals argue that the activities by the Bakers on the Mauka Disputed Parcel did not satisfy the Morinoue court's full-scale and continuous "cultivation, tillage of the soil, planting, and harvesting a crop" standard applied in COL no. 12. Morinoue, 86 Hawai'i at 81, 947 P.2d at 949 (brackets omitted). However, in determining the element of continuity and exclusivity of possession by the Bakers, the trial court applied the Petran court's requirement that the "adverse possessor's use of a disputed area . . . rise to that level which would characterize an average owner's use of similar property." Petran, 91 Hawai'i at 557, 985 P.2d at 1124 (quoting Tenala, Ltd. v. Fowler, 921 P.2d 1114, 1119 (Alaska 1996)). In Petran, the court held that "by averring intermittent residence, continuous business operations, the raising of livestock, and maintenance of the grounds," Petran had shown that her use of the property "rose to the 'level that

would characterize an average owner's use of similar property.'" Petran, 91 Hawai'i at 558, 985 P.2d at 1125.

The Quintals argue COL no. 13 is wrong because the Bakers' activities within the Mauka Disputed Parcel did not satisfy the Petran court's "average owner's use of similar property" standard. Id. We agree. Nonuse is not use. Twice a month, the Bakers used and maintained a crude trail on the eastern boundary of the Mauka Disputed Parcel because the Historic Fence was useful to them. By the time the Historic Fence was not useful to them, they continued to use and maintain the crude trail along the Historic Fence merely because it was a way to go on hikes. During those times when James Baker was on the Mauka Disputed Parcel and trespassers, such as hikers, would come onto the walkway, he required their departure. There is no evidence of the number of these times. There is no evidence that the Bakers ever used the other part of the Mauka Disputed Parcel. There is no evidence that the Bakers ever used the part of Lot 57 that was mauka of the Honopou Stream and adjacent to the Mauka Disputed Parcel.

## VI.

### CONCLUSION

- A. The Makai Disputed Parcel and the Mauka Disputed Parcel are two separate and distinct parcels

We conclude that the trial court erred when it did not make a distinction between the Mauka Disputed Parcel and the Makai Disputed Parcel. The Makai Disputed Parcel includes the Honopou Stream. The Mauka Disputed Parcel is the part of the Disputed Parcel that is south (mauka) above the Honopou Stream. The Makai Disputed Parcel is relatively flat and was cleared and maintained. The Mauka Disputed Parcel is sloped. Except for the crude trail, the Mauka Disputed Parcel was covered with "overgrown vegetation." "[S]hrubbery and bushes" constantly grew in the way of the trail. The Bakers' activities within the Makai Disputed Parcel differed substantially from their activities within the Mauka Disputed Parcel. The Bakers' actions adversely possessing the Makai Disputed Parcel were too different and remote from the Mauka Disputed Parcel to be characterized as actions also adversely possessing the Mauka Disputed Parcel.

- B. Injunctions

The Quintals removed the Historic Fence and installed a temporary fence on the Makai and Mauka Disputed Parcels along the boundary line as surveyed by Mr. Nomura. The "mandatory" part of



the injunction states that the Quintals are "ordered to remove any fence line constructed by them [west of the Historic Fence]. . . ." The "prohibitory" part of the injunction states the Quintals are restrained and prohibited "from constructing their own fence line along the actual boundary west of the historic fence between the parcels[.]"

The Quintals argue that the trial court violated Hawai'i Rule of Civil Procedure (HRCP) Rule 65(d) (2002)<sup>5</sup> by failing to state in the Amended Order or Judgment its reason(s) for issuing a mandatory and prohibitory injunction pertaining to both the Makai and Mauka Disputed Parcels. We agree. HRCP Rule 65(d) states, in relevant part, "[e]very order granting an injunction and every restraining order shall set forth the reasons for its issuance[.]" In this case, the trial court entered the following Judgment:

JUDGMENT IS ENTERED quieting title in favor of Plaintiffs [Bakers] and against Defendants [Quintals], to the real property described in the Amended Complaint filed herein on September 14, 1998.  
. . . .  
. . . .

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<sup>5</sup> HRCP Rule 65(d) (2002) states:

**Form and Scope of Injunction or Restraining Order.** Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

JUDGMENT IS FURTHER ENTERED against Defendants [Quintals] restraining and prohibiting them from constructing their own fence line along the actual boundary west of the historic fence between the parcels and Defendants [Quintals] are hereby ordered to remove any fence line constructed by them[.]

Here, the Judgment states that the trial court quieted title in favor of the Bakers and against the Quintals. The Judgment does not state the reason(s) for the mandatory and prohibitory injunctions, and HRCP Rule 65(d) does not allow the reasons for an injunction to be inferred from the Judgment itself.

C.

Accordingly, we affirm that part of the August 17, 2000 Judgment that awards title of the Makai Disputed Parcel to the Bakers. We reverse that part of the Judgment that awards title of the Mauka Disputed Parcel to the Bakers. We vacate and remand that part of the Judgment that requires the Quintals to remove a fence constructed by them on the Disputed Parcel and not to construct a fence on the Disputed Parcel. On remand, the court may enjoin the Quintals to remove the fence constructed by them on the Makai Disputed Parcel. We note that there is no need to enjoin the Quintals from constructing a fence on the Makai Disputed Parcel because the Bakers now own the Makai Disputed Parcel and any form of future construction by the Quintals on the

Makai Disputed Parcel would be trespassing<sup>6</sup> on the Bakers' property. On remand, the court may not enjoin the Quintals to do anything or not to do anything on the Mauka Disputed Parcel.

DATED: Honolulu, Hawai'i, May 23, 2002.

On the briefs:

William J. Nagle III for Defendants/ Counterclaimants-Appellants.	Chief Judge
Guy A. Haywood for Plaintiffs/Counterclaim Defendants-Appellees.	Associate Judge
	Associate Judge

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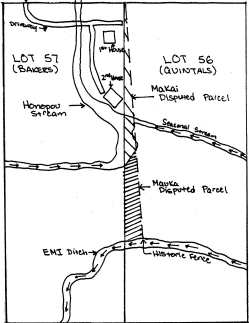
Hawaii Revised Statutes (HRS) § 708-815 (1993) defines simple trespass as follows: "A person commits the offense of simple trespass if the person knowingly enters or remains unlawfully in or upon premises."

N (Makai)

← To Kahului

→ To Hana

"No Trespassing" signs  
Hana Belt Road



↑ Boundary Line  
(Surveyed by Nomura)

S (Mauka)