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CASE NUMBER: 2021CV30010

DISTRICT COURT, COUNTY OF COSTILLA, STATE OF COLORADO 304 Main Street San Luis, CO 81152	
Plaintiff: CIELO VISTA RANCH II, LLC, a Delaware Limited Liability Company **v.** **Defendants:** RICHARD ANTHONY MONDRAGON; AUGUSTINE ESQUIBEL; JOHN DOE; and ALL UNKNOWN PERSONS CLAIMING A RIGHT OF POSSESSION TO OR AN INTEREST IN TITLE TO THE SUBJECT REAL PROPERTY	▲ **COURT USE ONLY** ▲
	Case Number: 2021CV30010 Div.: C Ctrm:

FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT, AND DECREE QUIETING TITLE FOLLOWING TRIAL TO THE COURT ON AUGUST 17-18, 2022

A trial to the Court was held on August 17, 2022 and August 18, 2022. Plaintiff and counter-claim defendant Cielo Vista Ranch II, LLC (CVR-II), was represented by Jamie Cotter and Lauren Taylor. Defendants and counter-claim plaintiffs, Richard Anthony Mondragon, and Augustine Roy Esquibel, were represented by Ryan Shaffer. The Court heard the sworn testimony of Daniel Russell, expert in land surveying; Carlos DeLeon; Richard Anthony Mondragon; Mark Luchetti, expert in land surveying; Augustine Roy Esquibel; and Rebecca Mondragon. Prior to trial the parties submitted a Joint Trial Exhibit List. Exhibits 1-5, 7-13, 15, 16, 18, 19, 21, 25, 26, 27, 28, 30, 34, and 36 were admitted during trial. Counsel presented oral

argument at the close of evidence. CVR-II's Complaint, filed on September 27, 2021, contains two claims for relief, including a quiet title claim and a trespass claim. Defendants Answer and Counterclaims, filed on December 13, 2021, asserted counterclaims also for quiet title, adverse possession, and trespass. CVR-II filed its Trial Brief on August 3, 2022. Defendants filed a joint Trial Brief on August 3, 2022. In their Trial Brief Defendants request reformation of the deed for the first time.

ISSUES PRESENTED

This boundary dispute involves CVR-II and Mondragon's claims that each of them are the rightful owner of a portion of land including approximately three acres at the boundary between property belonging to CVR-II (the Meadowbrook Property) and property belonging to Richard Anthony Mondragon (Tract 198). Mondragon bases his claim for ownership upon adverse possession and an alternative assertion that the deed should be reformed. Similarly, both Mondragon and CVR-II assert that the other has trespassed by either erecting a fence or tearing down the fence. Esquibel and John Doe are named as Defendants because it is alleged that they assisted Mondragon in removing the fence that CVR-II erected. Defendants, in their trial brief, raised the issue of reformation. CVR-II objects to the Court addressing this request because it was not properly pled. Defendants assert that the Court is required to address reformation because it is necessary to fully adjudicate the rights of the parties with respect to the disputed real property, irrespective of whether reformation was separately pled.

APPLICABLE LAW

I. OWNERSHIP

Rule 105 of the Colorado Rules of Civil Procedure provides an avenue through which individuals may seek a complete adjudication of rights to real property. "The court in its decree shall grant full and adequate relief so as to completely determine the controversy and enforce the rights of the parties." C.R.C.P. 105(a). A plaintiff in a quiet title action has the burden of establishing title superior to that claimed by the defendant. *Hinojos v. Lohmann*, 182 P.3d 692, 697 (Colo. App. 2008). "In a quiet title action, each party is required to assume the burden of establishing by competent evidence its title to the lands respectively claimed." *Keith v. Kinney*, 140 P.3d 141, 146 (Colo. App. 2005).

II. ADVERSE POSSESSION

The adverse-possession statute, C.R.S. § 38-41-101, requires the claimant to prove any adverse possession claim by clear and convincing evidence. C.R.S. § 38-41-101(3)(a). Proof by "clear and convincing evidence" is proof that persuades the trier of fact that the truth of the contention is highly probable, or without serious or substantial doubt. *Page v. Clark,* 592 P.2d 792, 800 (Colo. 1979). "Eighteen years' adverse possession of any land shall be conclusive evidence of absolute ownership." C.R.S. § 38-41-101(1). A claimant is required to also prove that he "had a good faith belief that the person in possession of the property of the owner of record was the actual owner of the property and the belief was reasonable under the particular circumstances." C.R.S. § 38-41-101(3)(b)(II). "By adding the good faith requirement, the General Assembly made clear that it did not sanction the acquisition of property simply through trespass." *People v. Bruno*, 342 P.3d 587, 590-91 (Colo. App. 2014).

Where a claimant seeks to establish title to land by adverse possession, "an initial presumption favors the record title holder as against the adverse possession claimant." *Miller v. Bell,* 764 P.2d 389, 390 (Colo. App. 1988); *Lovejoy v. Sch. Dist. No. 46,* 129 Colo. 306, 311–12, 269 P.2d 1067, 1070 (1954); *DeCola v. Bochatey,* 420 P.2d 395, 397 (Colo. 1966), *rehearing den'd,* (noting that "every reasonable presumption is made in favor of the true owner as against one who claims to have acquired title through adverse possession"). The elements of adverse possession require that "the party's possession of the disputed property [be] actual, adverse, hostile, under a claim of right, exclusive, and uninterrupted for at least the statutory period of eighteen years." *Hunter v. Mansell,* 240 P.3d 469, 474 (Colo.App.2010), *see also Beaver Creek Ranch, L.P. v. Gordman Leverich Ltd. Liab. Ltd. P'ship*, 226 P.3d 1155, 1160 (Colo. App. 2009). Whether possession is hostile, actual, exclusive, and adverse is a question of fact. *Smith v. Hayden*, 772 P.2d 47, 52–53 (Colo. 1989).

To possess the land actually and exclusively, the adverse possessor need only act as the average landowner would in utilizing the land for the ordinary use of which it is capable. *See Smith v. Hayden, supra,* 772 P.2d at 55 ("What acts will characterize possession as 'actual' depend on the nature and location of the property, the uses to which it can be applied and all the facts and circumstances of a particular case.") (quoting *City of South Greenfield v. Cagle,* 591 S.W.2d 156, 160 (Mo.Ct.App.1979)); *see also Anderson v. Cold Spring Tungsten, Inc.*, 458 P.2d 756 (Colo. 1969). The adverse possessor may use any actual visible means that puts the true owner and the public on notice of his dominion over the parcel. *See Cold Spring Tungsten, Inc., supra.* "[H]ostile intent is based on the intention of the adverse possessor to claim exclusive ownership of the property occupied." *Smith v. Hayden,* at 56; *see also Cold Spring Tungsten, Inc., supra*. The

adverse possessor need not make a showing of force or actual dispute for his possession of the property to be hostile. *Id.*

Proof of adverse possession extends beyond actual possession and must demonstrate that the record owner has been excluded from the property. *Id.* at 52. "The possession must be hostile against both the true owner and the world from its inception." *Lensky v. DiDomenico*, 409 P.3d 457 (Colo. App. 2016). The trier of fact determines whether possession is hostile through reasonable deductions from the acts and declarations of the parties. *Smith v. Hayden, supra; see also Cold Spring Tungsten, Inc., supra; Miller v. Bell*, 764 P.2d 389 (Colo.App.1988). "Hostile intent is based on the intention of the possession to claim exclusive ownership of the property occupied. Therefore, to maintain adversity, the use cannot be with permission during the prescriptive period." *Hunter v. Mansell*, 240 P.3d 469, 475 (Colo. App. 2010). To meet this presumption, "the claimant's use must be sufficiently open and obvious to apprise the true owner, in the exercise of reasonable diligence, of an intent to claim adversely." *Palmer Ranch, Ltd. v. Suwansawasdi*, 920 P.2d 870, 872 (Colo. App. 1996), see also *Schuler v. Oldervik*, 143 P.3d 1197, 1203 (Colo. App. 2006).

The existence of a fence is sometimes relevant in determining the validity of a claim of ownership by virtue of adverse possession. "Although the mere existence of a fence does not establish adverse possession, when both property owners believe that a fence has marked the true boundary of the property for eighteen years, there is a presumption that the holding is adverse." *Welsch v. Smith*, 113 P.3d 1284, 1287-88 (Colo. App. 2005) (citation omitted); *see also Littlefield v. Bamberger*, 32 P.3d 615, 620 (Colo. App. 2001). "A mere showing of the existence of a fence, with nothing more, is not sufficient." *Hartley v. Ruybal*, 414 P.2d 114, 118 (Colo. 1966). Where

there is no fence, "constant, visible occupancy or physical improvement on every square foot of the parcel claimed," is not required to establish actual occupancy. *Smith,* 772 P.2d at 52. "[T]he nature of the property is critical in determining what acts by the claimant are required for actual possession. 'What acts will characterize possession as "actual" depend on the nature and location of the property, the uses to which it can be applied and all the facts and circumstances of a particular case." *Id.* at 55 (quoting *City of South Greenfield v. Cagle,* 591 S.W.2d 156, 160 (Mo. App. 1979)).

Finally, "[w]here an occupant of land acknowledges or recognizes the title of the owner during the period of his claimed adverse possession, he fatally interrupts the continuity of his adverse possession and the statute of limitation does not begin to run until he repudiates the owner's title." *Segelke v. Atkins,* 357 P.2d 636, 638 (Colo. 1960) (citations omitted). In *Segelke,* the Court noted that recognition of the record owner's title occurred when the record owners entered the disputed area, the land was shown to prospective purchasers, was twice surveyed and stakes outlining the boundaries were placed on the property. *Id.* "Recognition of title in another is inconsistent with the theory of adverse possession." *Id.*

III. TRESPASS

A party who claims trespass must establish, by a preponderance of the evidence 1) that he or it was the owner of or in lawful possession of property; 2) that another intentionally entered upon that property; and 3) that the person who entered upon that property caused physical damage to the property. "A landowner who sets in motion a force which, in the usual course of events, will damage property of another is guilty of a trespass on such property." *Sanderson v. Heath Mesa Homeowners Ass'n,* 183 P.3d 679, 682 (Colo. App. 2008) (quoting *Hoery v. United States,*

64 P.3d 214, 217 (Colo. 2003)).

IV. REFORMATION

Reformation of a deed is appropriate in quiet title actions where the evidence shows that the deed fails to express the true intent of the parties. "The error warranting reformation must constitute a mutual mistake of fact, and scriveners' errors are a form of mutual mistake." *Dennett v. Mt. Harvard Dev. Co.*, 604 P.2d 699, 701 (Colo. 1979) (internal citations omitted). The kind of mutual mistake that would warrant reformation of a deed "must be one which is reciprocal and common both to the grantor and grantees alike, and both these parties must labor under the same erroneous conception in respect to the terms and conditions of the instrument." *Smith v. Anderson*, 214 P.2d 366, 370 (Colo. 1950). Generally, where an error is copied on a series of deeds, the final grantee is entitled to reformation against the original grantor, provided that the circumstances illustrate that each grantee would be entitled to reformation against his or her vendor. *Heini v. Bank of Kremmling*, 25 P.2d 1113, 1114 (Colo. 1933). Parol evidence is admissible in an action to reform deeds for the purpose of showing the intentions of the parties in executing a writing. *Arbaney v. Usel*, 157 P. 204, 205 (Colo. 1916).

In general, it is error to consider issues at trial which were not raised by the pleadings. *Union Insurance Co. v. Kjeldgaard*, 775 P.2d 55, 56 (Colo. App. 1988). Defendants rely upon *Dennet, supra*, and *Board of Com'rs of Pitkin County v. Timroth*, 87 P.3d 102 (Colo. 2004) in support of their assertion that the Court must address the reformation claim despite the fact that it was not pled. *Dennet* is not determinative of this issue because the reformation claim was asserted in one of the defendants' answer. On the other hand, the holding in *Timroth* does squarely address the issue. In that case no party had raised the issue of reformation and neither the trial court nor

the appellate court addressed it. The Colorado Supreme Court held that, under Rule 105, "even though the pleadings do not raise a particular issue, if the evidence before the court makes the issue apparent, the court must reach that issue in order to grant full and appropriate relief. *Id.* at 105. The Colorado Supreme Court then went on to hold that "equity permits the reformation of the County's treasurer's deed based on the undisputed evidence presented to the trial court." *Id.* at 109.

V. SELF-HELP

Finally, self-help through unlawful action is not permitted in disputes between property owners. "When a dispute arises between two property owners, the court is the appropriate forum for the resolution of that dispute and – in order to avoid an adverse ruling of trespass or restoration – the burdened owner should obtain a court declaration before commencing alterations." *Roaring Fork Club, L.P. v. St. Jude's Co.*, 36 P.3d 1229, 1237-38 (Colo. 2001), *as modified on denial of reh'g* (Dec. 17, 2001).

FINDINGS OF FACT

This case involves the northern boundary between a vara strip (Tract 198) and a neighboring ranch (the Meadowbrook Property). While the issues presented in this case are distinct, the Colorado Supreme Court has addressed the history of vara strips in Costilla County. These historical factual findings are consistent with the testimony presented during trial:

> *In 1844, the governor of New Mexico granted two Mexican nationals a one-million-acre land grant, located mainly in present-day southern Colorado (Sangre de Cristo grant), for the purpose of settlement. The original grantees died during the war between the United States and Mexico. The land was not settled in earnest until after the cessation of the war, and Charles (Carlos) Beaubien then owned the grant. . . In the early 1850s, Beaubien successfully recruited farm families to settle the Colorado portion of the Sangre de Cristo grant. . . The settlement system he employed was common to Spain and Mexico: strips of arable land called vara strips*

> *were allotted to families for farming, and areas not open for cultivation were available for common uses. . . In 1863, Beaubien gave established settlers deeds to their vara strips. . . A year later, Beaubien died.*

Lobato v. Taylor, 71 P.3d 938, 943 (Colo. 2002). Tract 198 was amongst the vara strips granted by Beaubien prior to his death and those originally surveyed by Edmund C. Van Diest in 1894 at the request of Costilla County officials. The 1894 Van Diest survey was admitted during trial as Exhibit 4. Mr. Van Diest, in a letter written to the Board of County Commissioners of Costilla County, described how he determined the northern boundary of the vara strips in his survey. *See* Exh. 5. He indicated that he meandered the San Francisco and Vallejos creeks and then mathematically determined the midpoint between the two. Essentially, he surveyed the creeks and then mathematically calculated the midpoint between the two and used that point as the northern boundary of the vara strips in his survey. Exhibit 3 is a description of a Deed which was recorded at Book 13 Page 244 and which contains a metes and bounds description of Tract 198 describing Van Diest's calculated midpoint as the northern boundary. The Deed itself was not admitted. Van Diest's survey was recorded at map A book E. While the land was granted prior to 1894, Van Diest, as the first person to survey Tract 198, created the northern boundary of that tract.

Daniel Russell surveyed the Meadowbrook Property for the previous owner in 2015. That survey was admitted as Exhibit 1. In completing that survey, Mr. Russell researched descriptions of the property in title work; reviewed historical documents such as the Van Diest survey; took field measurements relying on GPS survey equipment, existing monuments on the northern boundary of the vara strips; and observed the location of fences and other indications of possessory interests on the ground. The survey took approximately six months to complete. Mr. Russell's 2015 survey is consistent with Van Diest's 1894 survey and with a 1956 survey that had been

completed by Davis Engineering. The 1956 Davis Engineering survey of the Meadowbrook Property was as admitted as Exhibit 7. Mr. Russell also reviewed several existing surveys of vara strips in the same area. Mr. Russell plotted each one of the vara strip descriptions – a total of 204. He then utilized mathematical processes to put the plots on the ground to verify that his survey did not have a disagreement with other, existing survey work. He concluded that Van Diest's northern boundary was a mostly straight line – with some deviations of approximately 10 feet. He attributed this to the fact that Van Deist did not have the benefit of GPS, computer software, or calculators in completing the mathematical calculations for his survey. None of the discrepancies were significant enough for Mr. Russell to determine that Van Diest's survey was unreliable.

Exhibit 1 shows a single vara strip with a northern boundary that matches the boundary of the area Mondragon asserts he owns as part of Tract 198. The rest of the northern boundaries are consistent with Van Diest and Russell's surveys. That single anomaly in the boundary line exists because the previous owner of the Meadowbrook Property failed to respond to a quiet title action and the carve-out was achieved by default judgment. *See* Exh. 42. Mr. Russell testified that, based on this prior legal action, that area became a "legitimate exception" to his survey by court order.

Mondragon's father obtained a claim survey from Mr. Luchetti in 1999 because there was an argument between Mondragon's father and Mondragon's uncle who owned a neighboring vara strip. The dispute at that time involved the boundary between Tract 198 and Tract 199, not the northern boundary. Mr. Luchetti's survey was admitted as Exhibit 8. Mr. Luchetti testified that he went to the property and was shown by Larry Mondragon where Larry Mondragon believed the boundaries to be. He then reviewed Exhibits 15 and 16 and surveyed the alignment of the creeks to determine a halfway point. After determining the position of the creeks, he mathematically

established what the thought was the best fit for a straight line for the boundaries. He was unable to locate the Deed located at Book 13 Page 244, so he did not review it. He also did not review the Van Diest survey. He conceded that, if he had seen the Van Diest survey, he would have honored Van Diest's northern boundary of Tract 198 and he would also have marked that as the northern boundary. Mr. Russell testified that he reviewed the Luchetti survey, but he did not rely upon it because the Luchetti survey is inconsistent with all the other information he reviewed regarding the northern boundary of Tract 198.

Exhibit 15 is a 1946 deed whereby Mondragon's ancestors first came into possession of Tract 198. That deed does not contain a metes and bounds description of the parcel. Rather, it indicates that the northern boundary of the 47.5-acre parcel is "one half the distance between the San Francisco Creek and the Vallejos Creek." *Id.* However, the deed also references Map A Book E – which is the 1894 Van Diest survey. Further, the Deed states, "This property being the same land originally deeded by Carlos Beaubien to Maria Soledad Martin on December 20th, 1889 and recorded in book 13 at Page 244 of the Costilla County Records." *Id.* This is a direct reference to the metes and bounds description in Exhibit 3. None of the parties sought to admit the original Deed conveying Tract 198 from Carlos Beaubien to Maria Soledad Martin. According to Mr. Russell, there is no possible way to survey Tract 198 based solely upon the description in Exhibit 15. The only way to determine where the property is, is to look at the 1894 Van Diest survey. Exhibit 16 is a Deed whereby Mondragon's father received Tract 198. This Deed contains no description of the tract except by reference to Van Diest's survey recorded at Map A Book E.

Mr. Russell has mapped historical deviations of the course of rivers, although he was not asked to do so in this case. Creeks commonly change course over time. The actual midpoint

between the two creeks would not be a straight line and would change over time as the creeks moved. The 1894 midpoint would be different from the midpoint today.

CVR-II's ranch manager, Mr. DeLeon, testified that CVR II is the portion of the Cielo Vista Ranch which owns property to which people do not hold access rights. CVR-I is the sister company which owns and manages land to which Costilla County residents have access rights – like those which were the subject matter of *Lobato, supra*. CVR II purchased the Meadowbrook Property in 2017. Exhibit 11 is a Special Warranty Deed from Hill Ranch, Ltd. to CVR II which conveyed the Meadowbrook Property in 2017. The Special Warranty Deed references two exceptions, one of which is the quiet title vara strip discussed as a legitimate exception by Mr. Russell. Exhibits 12 and 13 are Deeds conveying the Meadowbrook Property from Meadowbrook Ventures, LLC to Hill Ranch, Ltd. in 2015. Mr. DeLeon described the Disputed Property as hilly land with sage brush, a few pine trees, and a gully or trail. He used the words arid, sparse, and vacant to describe the land. In 2021 CVR-II constructed a fence around the Meadowbrook Property based upon the 2015 Russell survey – which Mr. DeLeon confirmed approximately three weeks prior to installing the fence by walking the Meadowbrook Property with and employee of Mr. Russell. After walking the property but before installing the fence, Mr. DeLeon installed three cameras on the Disputed Property, facing Tract 198. *See* Exh. 18. Mr. DeLeon had previously placed "No Trespassing" signs along the southern boundary of the Meadowbrook Property in mid-2016. There were three of these signs on the Disputed Property facing toward Tract 198. Two of the three No Trespassing signs on the Disputed Property have been torn down. Exhibit 19 shows the single sign that remains.

CVR-II installed the fence to stop trespassing and trash disposal on the Meadowbrook

Property. On August 28, 2021the cameras captured images of Mondragon, Esquibel and another individual tearing down CVR-II's fence. Defendants do not deny that they removed the fence. They assert that they do not know the last name of the third individual who was present with them. Two of the three game cameras were also removed when the fence was torn down.

CVR-II presently uses the Disputed Property in the same manner as the rest of the Meadowbrook Property. CVR-II employees patrol the area daily and use the land for hunting during the appropriate time of the year. Employees use the various trails and ATV roads during hunting season and during patrols of the entire property. CVR II has been hunting on the disputed tract – or, more accurately, crossing over it during hunting season – since 2000. While Mr. DeLeon has seen other individuals using trails on the Disputed Property, he has never seen Mondragon on the Disputed Property prior to the day the fence was removed. Additionally, while there is a history of conflict between Mr. DeLeon and Mondragon regarding property and trespassing allegations, there were not any conflicts relating to the Disputed Property prior to the removal of the fence. Mr. DeLeon testified that he had no indication that Mondragon claimed or intended to claim the Disputed Property as his own. CVR II has not yet replaced the fence, pending the outcome of this case. The cost to replace the portion of the fence that was torn down as of February 2022 was $5,295.00. *See* Exh. 36.

Mondragon inherited Tract 198 from his father in September of 2021. Previously he put a house on Tract 198 in 1994 and resided there until 2004. He now resides in Colorado Springs. Mondragon uses the property to grow hay and he sometimes keeps animals there. He asserts that the northern boundary of Tract 198 is supposed to be even with the quiet title carve out referenced in Exhibit 42. Notably, he did not assert that the boundary should move with the creeks during his

testimony. Mondragon relies solely on the 1999 Luchetti survey. Based upon that survey, he installed a cedar post at the point where he claims his northern boundary lies. Mondragon testified that he has used the Disputed Property for years for hunting, horseback riding, dressing harvested animals, and harvesting pinon every four years. Mondragon had a road made from County Road J8 toward the northern boundary of Tract 198. While there are a trash pit and a gravel pit on Tract 198, the only arguable improvement Mondragon noted on the Disputed Property was a place where he turns around trucks and trailers. Mondragon described this as a road, Mr. DeLeon described it as a trail. Photos show the area is more accurately described as a trail which is overgrown with vegetation and does not show signs of regular use or maintenance. *See* Exh. 27.

Mondragon first began accessing the Disputed Property at the age of eight by horse. Historically during hay season his family's cattle would roam the whole hillside (not just the disputed tract). No cattle have grazed the area since 2000. Additionally, the recreating on horseback or motorcycles occurred all over the Meadowbrook Property, not just on the Disputed Property. Mondragon testified that it is common for people to drive on unmarked roads that do not belong to them. He also testified that he gives friends and relatives permission to use the Disputed Property and he does not know who may use the land without permission. He conceded that there are various people who have used the Disputed Property – and the entirety of the Meadowbrook Property – and he does not know who has accessed the Disputed Property. Mondragon has not made any effort to exclude others from the Disputed Property. He believes that elk would break any fence he would install. Mondragon has seen CVR II employees on the Disputed Property during hunting season and he has seen CVR employees patrolling the property for years.

When Mondragon was informed that there was a bulldozer on the Disputed Property and a fence was being installed, he contacted the Sheriff. When the Sheriff informed him that the dispute was a civil issue, Mondragon took matters into his own hands. He and a friend, Esquibel, and another individual took down the portion of the fence across the Disputed Property. While there was much testimony about the use of a dirt or gravel pit and a separate trash pit, on cross examination Mondragon agreed that neither of those pits were located on the Disputed Property. Mondragon also conceded on cross examination that he rarely kills animals on the Disputed Property during hunting season. Instead, he usually harvests animals by County Road J8 or near water, but elk migrate through the Disputed Property to the areas where he typically hunts.

Esquibel testified that he grew up "a few vara strips down" from Tract 198. He has a 1/6 ownership interest in a house on Tract 179, but other family members own the property. There were never fences along the northern boundaries or on the Meadowbrook Property so all the families in the area regularly recreated in that area. Specifically, Esquibel would ride horseback all the way across the Meadowbrook Property to go fishing in the Vallejos Creek. Esquibel designates the northern boundary as the ridge line – which is not consistent with any other documentary or testimonial evidence. Rebecca Mondragon, Mondragon's aunt, also testified that she used the Disputed Property to recreate, check cattle and gather rosehips. She is unaware of any markings designating the Disputed Property as the Mondragon's. She has not lived in San Luis since 1962, and she neither owns nor has ever lived on Tract 198. She testified that in the 60s and 70s nobody surveyed their land. Nobody knew where the boundaries were. Everyone used the land because there were no fences.

CONCLUSIONS OF LAW

Venue has been considered and is proper in Costilla County, Colorado because the subject real property is in Costilla County, Colorado. C.R.C.P. 98(a).

I. OWNERSHIP

The Court must first determine who owns the Disputed Property. The Court finds that CVR-II has met its burden of establishing title superior to that claimed by Mondragon. CVR-II is the only party who has presented competent evidence of actual title to the Disputed Property. The only evidence presented by Mondragon references both the Van Diest survey and the Deed with a metes and bounds description based upon the Van Diest survey. Both of those documents indicate that the Disputed Property is legally part of the Meadowbrook Property, to which CVR-II holds title. Mondragon bases his claims of ownership of the Disputed Property upon claims of adverse possession or for reformation of the Deed. Therefore, the Court finds that CVR-II owns the Disputed Property.

II. ADVERSE POSSESSION

Mondragon failed to prove all the elements of adverse possession. Therefore, the adverse possession claim fails. While Mondragon and his predecessors in interest crossed over and recreated on the Disputed Property, they engaged in the exact same use of all of the Meadowbrook Property. Mondragon does not assert that he has adversely possessed the entirety of the Meadowbrook Property. He asserts that he owns the Disputed Property based upon a survey completed in 1999 which the surveyor conceded conflicted with prior survey work that he failed to review. Mr. Luchetti indicated that, if he had seen Van Diest's survey, he would have placed the northern boundary of Tract 198 at Van Diest's boundary line. Notably, Luchetti indicated that

he saw no signs of use of the Disputed Property when he completed his survey. Mondragon did place a post in Luchetti's northern boundary line in 2000 and likely did use the Disputed Property to turn vehicles and equipment around. Nevertheless, Defendants failed to establish by clear and convincing evidence that the use of the property was either adverse or exclusive.

Both Defendants testified that "everyone" used "all of the land" to the North of the vara strips. Ms. Mondragon agreed that no one knew where the actual boundary lines were when they were grazing cattle, recreating, harvesting pinon, or hunting in the area. These uses were not confined to the Disputed Property. There is no evidence that the record owner has ever been excluded from the property. More importantly, no legal action or assertion of ownership was made by Mondragon's predecessor in interest when CVR-II erected "No Trespassing" signs in 2016. Mere removal of the signs is not sufficient to establish the CVR-II was excluded from the Disputed Property. In fact, the evidence does not suggest that Mondragon or his predecessors ever excluded anyone from the Disputed Property.

III. REFORMATION

The Court declines to reform the deed. The evidence is insufficient to establish that there was a mutual mistake. Mondragon argues that there is no evidence that Van Diest captured the original intent of Carlos Beaubien in his 1894 survey. This is true. However, there is also no evidence that Van Diest did not capture the original intent of Mr. Beaubien. As such, Mondragon has not met his burden of proof relating to his reformation request. During his testimony Mr. Russell stated that he had not attempted to survey the actual midpoint between the two creeks because he had not been asked to do so. This speaks to Plaintiff's argument that, by failing to plead the reformation claim, Defendants' prejudiced Plaintiff. The Court does not need to address

this issue further because Defendants failed to establish – even by a preponderance of the evidence – that there was a mistake between the original grantor and the original grantee which has been repeated in deeds over the years.

While Defendant admitted one Deed which described the northern boundary of Tract 198 as the midpoint between the creeks and Mr. Van Diest calculated a midpoint between the two creeks, there was no evidence presented which indicated that Mr. Beaubien intended the northern boundary of the vara strips to be a riparian boundary which would not be a straight line and which would move over time as the creeks moved. Indeed, the original deed conveying the land from Mr. Beaubien to Ms. Martin was not admitted. Residents and officials within Costilla County have relied upon the northern boundary determined by Mr. Van Diest in 1894 for 127 years. No evidence was presented that any landowner at any time has treated the northern boundary of his or her vara strip as a riparian boundary. Even the single vara strip that was the subject of a prior quiet title action has a northern boundary that is a straight line, which is not riparian.

IV. TRESPASS

Finally, both parties have asserted claims of trespass against one another. Because the Court finds that CVR-II was and is the rightful owner of the Disputed Property, Defendants' trespass claims must fail. On the other hand, Plaintiff has proven all the elements of trespass against both Mondragon and Esquibel. When Mondragon was informed by the Sheriff that the boundary dispute was a civil issue, he elected to take matters into his own hands, rather than seeking a legal determination of the boundary line. Both Defendants entered intentionally onto the property of CVR-II and caused damage by destroying the fence. Plaintiff is entitled to damages for the harm caused to its property – namely the destruction of the fence. The Court awards

damages in favor of Plaintiff and against Defendants jointly and severally in the amount of $5,295.00. As the prevailing party CVR-II is entitled to recover its costs.

ORDER OF THE COURT

IT IS THEREFORE ORDERED that the Court finds in favor of the Plaintiff and against Mondragon on Mondragon's Adverse Possession Claim.

IT IS FURTHER ORDERED that Mondragon's request to reform the Deed is denied.

IT IS FURTHER ORDERED that the Court finds in favor of Plaintiff and against both Mondragon and Esquibel, jointly and severally, on Plaintiff's Trespass Claim. The Court enters judgment in favor of Plaintiff and against Defendants for damages relating to the Trespass Claim in the amount of $5,295.00.

IT IS FURTHER ORDERED that Plaintiff shall submit a Bill of Costs within twenty-one days of the date of this Order. Defendants shall have fourteen days within which to file a written objection.

IT IS FURTHER ORDERED, adjudged, and decreed that Plaintiff, CVR-II, at the time of the commencement of this proceeding, was and now is the owner in fee simple, and with right to possession of the Disputed Property. Fee simple title in and to said real property be and the same hereby is quieted in Plaintiff and that each of the Defendants has no right, title or interest in or to the said real property or any part thereof and that they are forever enjoined from asserting any claim, right, title or interest in or to the said real property or any part thereof. The boundary as surveyed by Daniel Russell shall be the controlling boundary line between Tract 198 and the Meadowbrook Property. *See* Exh. 1.

DATED this 22nd day of September 2022.

BY THE COURT:

District Court Judge