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Supreme Court  
SCWC-16-0000348  
17-JUL-2020  
03:33 PM

SCWC-16-0000348

IN THE SUPREME COURT OF THE STATE OF HAWAII

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FRANCIS FOO, RUBY FOO and VERA YOKOI,  
Petitioners/Plaintiffs/Counterclaim Defendants-Appellants,

vs.

RICHARD L. BONER, as Trustee of the Richard L. Boner Trust,  
Respondent/Defendant/Counterclaimant-Appellee,

and

DONALD E. McBRYDE, ANNE M. McBRYDE,  
Respondents/Defendants-Appellees.

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CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS  
(CAAP-16-0000348; CIV. NO. 14-1-196K)

DISSENT

(By: McKenna, J., in which Wilson, J., joins)

I respectfully dissent. I would accept certiorari because there are genuine issues of material fact that should have precluded summary judgment.

First, there is a genuine issue of material fact as to the element of hostility. The existence of a fence with a claim of ownership of the land up to the fence without interruption by

the adjoining landowner raises a presumption of hostility.  
E.g., Salter v. Cobb, 88 So.2d 845, 848-49 (Ala. 1956); Konop v. Knobel, 92 N.W.2d 714, 719 (Neb. 1958). Here, there is an issue of material fact as to the extent of the use up to the fence line. See White v. Wheeler, 406 P.3d 1241, 1250 (Wyo. 2017).

Second, there is a genuine issue of material fact because the Foos' declarations support an inference that their predecessor's claims to the subject property began in 1960 and continued for decades.

Finally, use of a property as one's own up to a fence line may constitute actual, open, notorious, continuous, and exclusive possession. E.g., Konop v. Knobel, 92 N.W.2d 714, 719 (Neb. 1958). Thus, this case should not have been decided on summary judgment.

DATED: Honolulu, Hawai'i, July 17, 2020.

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson

