

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF ITASCA

NINTH JUDICIAL DISTRICT

---

Mark W. Besemann,

File No. 31-CV-13-2695

Plaintiff,

v.

Roger T. Weber and Mary Jo Weber,

Defendants.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
ORDER FOR JUDGMENT AND  
JUDGMENT**

---

The above-entitled matter came on for court trial before the Honorable Lois J. Lang, Judge of District Court, at the Itasca County Courthouse, in the City of Grand Rapids, County of Itasca, State of Minnesota, on January 26, 27, and 28, 2015.

Mark W. Besemann [hereinafter 'Plaintiff'] appeared in person with his attorney, Jaclyn Corradi Simon, 1907 Third Avenue East, Suite 1, P.O. Box 37, Hibbing, Minnesota 55746.

Roger T. Weber and Mary Jo Weber [hereinafter 'Defendants'] appeared in person with their attorney, Brian C. Bengtson, 515 Northeast Second Avenue, Grand Rapids, Minnesota 55744.

Plaintiff purchased a 1.15 acre parcel of land from Defendant Roger Weber's sister, Ann Anderson, in April 2013. Defendants own the adjoining 39-acre parcel of land. Plaintiff alleges that, beginning in April 2013, Defendant Roger Weber removed two-thirds of a three-stall garage and completely removed a one-stall garage from Plaintiff's portion of the property. Plaintiff's Amended Complaint, filed January 16, 2015, includes three counts: adverse possession, trespass, and prescriptive easement. Plaintiff alleges that he owns the disputed property upon which the damaged garages and a septic system are located in its entirety, because his predecessors in title satisfied all the elements of adverse possession. In the alternative, Plaintiff alleges that his

predecessors in title obtained a prescriptive easement for use of the garage, shed, and septic system on the disputed property. Plaintiff further alleges that Defendant Roger Weber committed trespass when he entered onto Plaintiff's property without consent and removed two-thirds of a three-stall garage and completely removed a one-stall garage; Plaintiff seeks damages in the amount of \$20,000 for the alleged trespass. Defendants oppose Plaintiffs claims, and assert counterclaims for declaratory judgment confirming the boundary line of their property and ejectment.

The parties waived their right to a jury trial. The parties were given additional time to submit proposed findings, conclusions of law and memoranda. Defendants filed Proposed Findings of Fact, Conclusions of Law, Order for Judgment and Judgment, and a Trial Memorandum in support thereof, on February 27, 2015. Plaintiff filed Proposed Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree, and a Final Argument and Memorandum of Law, on March 3, 2015. The matter is deemed submitted March 3, 2015.

Based on the arguments of counsel, testimony of witnesses, and exhibits received, the Court makes the following:

### **FINDINGS OF FACT**

1. Plaintiff Mark W. Besemann [hereinafter 'Plaintiff'] is the owner of a parcel of real property in the County of Itasca, State of Minnesota, legally described as follows:

The West 208 feet of the East 238 feet of the North 241 feet of the Northeast Quarter of the Northwest Quarter (NE  $\frac{1}{4}$  NW  $\frac{1}{4}$ ), Section Sixteen (16), Township Fifty-seven (57) North, Range Twenty-three (23), West of the Fourth Principal Meridian.

[See Exhibit 6, Quit Claim Deed dated April 12, 2013, and filed with the Itasca County Recorder April 22, 2013, as Document No. 674691, whereby Ann M. Anderson and her husband Bruce Anderson conveyed the above-listed property to Mark Besemann.]

2. Defendants Roger T. Weber and Mary Jo Weber [hereinafter ‘Defendants’] are the owners of a parcel of real property in the County of Itasca, State of Minnesota, legally described as follows:

The Northeast Quarter of the Northwest Quarter (NE  $\frac{1}{4}$  NW  $\frac{1}{4}$ ), Section Sixteen (16), Township Fifty-seven (57) North, Range Twenty-three (23), West of the Fourth Principal Meridian, LESS the West 208 feet of the East 238 feet of the North 241 feet thereof, subject to reservations, restrictions and easements of record.

[See Exhibit 19, Quit Claim dated March 20, 1998, and filed with the Itasca County Recorder March 20, 1998, as Document No. 490304, whereby Colleen Blade, a single person, conveyed the above-listed property to Roger T. Weber.]

3. Plaintiff’s property is adjacent to Defendants’ property. Defendants’ property surrounds Plaintiff’s property to the west, south and east. [See *generally* Exhibit 62, Survey of Plaintiff’s Property by Northern Lights Land and Surveying, P.S.C., completed for Defendants on May 5, 2014; Exhibit 64, topographical photograph of the disputed property from the website of the Itasca County Department of Surveying and Mapping, printed December 12, 2014.] Plaintiff’s property is bordered by County Road 8 to the north. [*Id.*]
4. A house constructed in 1960 sits entirely within the boundaries of Plaintiff’s property. The crux of the dispute in these proceedings is whether outbuildings surrounding the house on Plaintiff’s property, including a garage and shed, and the septic system serving the house, are located entirely on Plaintiff’s property, entirely on Defendants’ property, or whether the outbuildings and septic system straddle the boundary lines between Plaintiff and Defendants’ properties.
5. In April 2013, Defendant Roger Weber removed the shed and a portion of the three-stall garage from the disputed property. Plaintiff alleges that Defendant Roger Weber wrongfully damaged the outbuildings located on Plaintiff’s property, and seeks \$20,000 in damages for the alleged trespass and property damage. Defendants contend that: (1) the portions of the outbuildings Defendant Roger Weber removed were located entirely on Defendants’ property, and (2) regardless of the location of the outbuildings, the buildings were in such poor condition so as to render them valueless.

#### Ownership of the Disputed Property, and Transfers Thereof, Since 1953

6. Prior to 1953, Defendant Roger Weber’s maternal grandparents, W. Raymond Dodson and Mary Dodson, owned a parcel of property measuring just under 40 acres in Itasca County, Minnesota, comprising what is now Plaintiff’s property and Defendants’ property. [Testimony of Frank Weber.] That property was legally described as follows:

Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$  NW $\frac{1}{4}$ ), Section Sixteen (16), Township Fifty-seven (57) North, Range 23, West of the Fourth Principal Meridian.

7. In 1953, W. Raymond Dodson and Mary Dodson carved out approximately 1.15 acres from their parcel and gave it to their daughter, Colleen Weber, and her husband, Robert Weber, who are the parents of Defendant Roger Weber. This 1.15 acre parcel is located in Itasca County, Minnesota and is legally described as follows:

The West 208 feet of the East 238 feet of the North 241 feet of the Northeast Quarter of the Northwest Quarter (NE  $\frac{1}{4}$  NW  $\frac{1}{4}$ ), Section Sixteen (16), Township Fifty-seven (57) North, Range Twenty-three (23), West of the Fourth Principal Meridian.

[See Exhibit 25, Quit Claim Deed dated July 23, 1953, and filed with the Itasca County Recorder July 29, 1953, as Document No. 189900, whereby W. Raymond Dodson and Mary Dodson, his wife conveyed the above-listed property to Robert Weber and Colleen Weber, as husband and wife.] Plaintiff is the current owner of the 1.15 acre parcel [hereinafter the 'One Acre Parcel'].

8. After transferring the One Acre Parcel to Robert and Colleen Weber, the parents of Defendant Roger Weber, in 1953, W. Raymond Dodson and Mary Dodson retained ownership of the surrounding property in Itasca County, Minnesota, legally described as follows:

The Northeast Quarter of the Northwest Quarter (NE  $\frac{1}{4}$  NW  $\frac{1}{4}$ ), Section Sixteen (16), Township Fifty-seven (57) North, Range Twenty-three (23), West of the Fourth Principal Meridian, LESS the West 208 feet of the East 238 feet of the North 241 feet thereof, subject to reservations, restrictions and easements of record.

Defendants are the current owners of this parcel, which measures between 38 and 39 acres [hereinafter the '39 Acre Parcel'].

9. Since the One Acre and 39 Acre Parcels were divided in 1953, ownership of the parcels has been transferred several times, as discussed below. From 1953 to 2013, all of the transfers of ownership of the parcels were intra-family transfers within the Dodson and Weber families. Plaintiff, who purchased the One Acre Parcel in April 2013, is the first non-relative to purchase either of the parcels.
10. In 1968, Defendant Roger Weber's parents, Robert Weber and Colleen Weber, divorced. [Testimony of Frank Weber; Testimony of Roger Weber.] As part of the divorce decree, the One Acre Parcel, which Robert and Colleen Weber had owned as husband and wife since 1953, was transferred to Robert Weber by way of conduit deeds in 1968. [See Exhibit 126, written agreement dated March 29, 1968 between Robert Weber and Colleen Weber, in which Colleen Weber agreed to transfer the One Acre Parcel to Robert Weber in connection with their divorce proceeding; Exhibit 127, Conduit Quit Claim Deeds transferring ownership of the One Acre Parcel to Robert Weber, dated March 22, 1968, and March 25, 1968.]
11. In 1976, Defendant Roger Weber's father, Robert Weber, gave Defendant Roger Weber a one-half interest in the One Acre Parcel. Defendant Roger Weber was residing with his

father on the One Acre Parcel at the time they became joint tenants. [Testimony of Roger Weber; Exhibits 23 and 24, Conduit Quit Claim Deeds transferring ownership of the One Acre Parcel to Robert Weber and Roger Weber, as joint tenants, dated November 3, 1976, and filed with the Itasca County Recorder November 10, 1967, as Document Nos. 313017 and 313018.]

12. In 1978, Defendant Roger Weber purchased the 39 Acre Parcel from his maternal grandparents W. Raymond Dodson and Mary Dodson, and other relatives. [See Exhibit 22, Warranty Deed transferring ownership of the 39 Acre Parcel to Roger Weber, dated June 7, 1978, and filed with the Itasca County Recorder June 21, 1978, as Document No. 325790.]
13. In 1986, Defendant Roger Weber and his wife, Defendant Mary Jo Weber, transferred their interest in the 39 Acre Parcel to Defendant Roger Weber's Mother, Colleen Blade (formerly known as Colleen Weber). [See Exhibit 129, Warranty Deed transferring ownership of the 39 Acre Parcel to Colleen Blade, dated September 3, 1986, and filed with the Itasca County Recorder September 19, 1986, as Document No. 382705.]
14. From 1976 to 1996, Defendant Roger Weber and his father, Robert Weber, owned the One Acre Parcel as joint tenants. [See Exhibits 23 and 24, Conduit Quit Claim Deeds.] In 1996, Robert Weber asked Defendant Roger Weber to convey his one-half interest in the One Acre Parcel back to him; Robert Weber intended to convey an interest in the One Acre Parcel to Ann Anderson (formerly known as Ann Weber), Robert Weber's daughter and Defendant Roger Weber's sister. At that time, Ann Anderson did not own any property and Robert Weber wanted to ensure that she would always have a place to live. [Testimony of Defendant Roger Weber.] In June 1996, in accordance with Robert Weber's request, Defendants transferred their interest in the One Acre Parcel to Robert Weber. [See Exhibit 21, Quit Claim Deed granting sole ownership of the One Acre Parcel to Robert Weber, dated June 26, 1996, and filed with the Itasca County Recorder July 23, 1996, as Document No. 472879.]
15. In July 1996, Defendant Roger Weber's father, Robert Weber, reserved in himself a life estate and transferred his remaining interest in the One Acre Parcel to his daughter, Ann Anderson, Defendant Roger Weber's sister. [See Exhibit 20, Quit Claim Deed transferring ownership of the One Acre Parcel to Ann Weber (n/k/a Ann Anderson), subject to grantor Robert Weber's life estate, dated July 19, 1996, and filed with the Itasca County Recorder July 23, 1996, as Document No. 472880.]
16. In March 1998, Defendant Roger Weber's Mother, Colleen Blade (formerly known as Colleen Weber), transferred her interest in the 39 Acre Parcel, which she had held since 1986, back to Defendant Roger Weber. [See Exhibit 19, Quit Claim Deed filed with the Itasca County Recorder as Document No. 490304.] Defendant Roger Weber has owned the 39 Acre Parcel continuously from 1998 until the present.<sup>1</sup> [Testimony of Roger Weber.]

---

<sup>1</sup> Defendant Roger Weber put his parcel in joint tenancy with his wife, Mary Jo Weber, by Quit Claim Deed dated April 10, 2008, and filed with the Itasca County Recorder on January 13, 2011, as Document No. 650747.

17. Since 1996, Defendant Roger Weber's sister, Ann Anderson, had owned the One Acre Parcel, subject to Robert Weber's life estate. Robert Weber died on January 2, 2013. [See Exhibit 18, Copy of Robert Weber's Death Certificate.] Ann Anderson claimed her interest in the One Acre Parcel by filing an Affidavit of Identity and Survivorship with the Itasca County Recorder on February 11, 2013. [See Exhibit 17, Affidavit of Identity and Survivorship, filed with the Itasca County Recorder as Document No. 672789.]
18. In April 2013, Ann Anderson and her husband Bruce Anderson sold the One Acre Parcel to Plaintiff. [See Exhibit 6, Quit Claim Deed filed with the Itasca County Recorder April 22, 2013, as Document No. 674691; see also Exhibit 4, handwritten purchase agreement between Ann Anderson and Plaintiff for the sale of the One Acre Parcel.]

Plaintiff's Purchase of the One Acre Parcel, and Subsequent Damage to the Outbuildings

19. Plaintiff learned that the One Acre Parcel was for sale from a friend at work and contacted Ann Anderson, record owner of the One Acre Parcel and sister of Defendant Roger Weber, to inquire about purchasing the property. Plaintiff visited the One Acre Parcel to view the property with Frank Weber, brother of Ann Anderson and Defendant Roger Weber, in March 2013. [Testimony of Plaintiff.]
20. Ann Anderson resides in Arizona. [Testimony of Frank Weber; Testimony of Amy Weber.] Ann Anderson did not testify in these proceedings.
21. Ann Anderson contacted Frank Weber to show Plaintiff the One Acre Parcel in March 2013, because Ann Anderson resides in Arizona and could not show Plaintiff the parcel herself. Frank Weber resides at 20406 County Road 8, Nashwauk, Minnesota 55769, approximately one mile away from the One Acre Parcel. Frank Weber testified that he was willing to show Plaintiff the property because he lived nearby, and because he is retired and his schedule is flexible. [Testimony of Frank Weber.]
22. When Plaintiff visited the One Acre Parcel with Frank Weber in March 2013, Plaintiff observed a house and several outbuildings, including a three-stall garage, to which a single-stall "lean-to" was attached, as well as a separate shed located south of the garage. [Testimony of Plaintiff.]
23. Frank Weber showed Plaintiff the inside of the house, including the basement and attic. As further discussed below, the house was constructed by Defendant Roger Weber's father, Robert Weber, in 1960. No substantial updates had been made to the house since that time. [Testimony of Frank Weber.]
24. The three-stall garage and lean-to were locked when Plaintiff visited the One Acre Parcel in March 2013, but Plaintiff looked inside the garage-door windows and observed an older vehicle, deer antlers, and miscellaneous items including tools being stored within the garage. [Testimony of Plaintiff.] Plaintiff further observed a boat being stored in the shed located south of the garage. [Id.]

25. Because there was a significant amount of snow on the ground when Plaintiff visited the One Acre Parcel in March 2013, Frank Weber could not show Plaintiff the exact location of the underground septic tank. [Testimony of Plaintiff; Testimony of Frank Weber.]
26. Plaintiff testified that Frank Weber told him that, if Plaintiff purchased the property, the contents of the shed and garage, which had belonged to Defendant Roger Weber's father, would be removed from the property. [Testimony of Plaintiff.]
27. Plaintiff testified that, after viewing the One Acre Parcel, he was interested in the property as an investment, and intended to remodel the house for sale or rental. Plaintiff testified that the house would need substantial work but had "good bones." [Testimony of Plaintiff.]
28. Plaintiff testified that he anticipated the septic system for the One Acre Parcel would need to be replaced, as it was over 50 years old.<sup>2</sup> Prior to purchasing the One Acre Parcel, Plaintiff contacted the relevant Itasca County officials to inquire about repairing the septic system; County officials confirmed that the property was "grandfathered in," and that septic repairs would be permitted. [Testimony of Plaintiff.]
29. Plaintiff's Verified Complaint alleges that, at the time Plaintiff purchased his parcel of property from Ann Anderson, Defendant Roger Weber's sister, "it was represented to Plaintiff that the real property conveyed to Plaintiff included the house, the three stall garage, and the one stall garage." [Plaintiff's Verified Complaint at ¶ 14.] However, Plaintiff's trial testimony, as well as the trial testimony of Frank Weber, undercut this assertion. Plaintiff and Frank Weber both credibly testified that, during the March 2013 property visit, Frank Weber explicitly told Plaintiff that the boundary line between the One Acre Parcel and the 39 Acre Parcel owned by Defendants Roger and Mary Jo Weber went through the middle of the garage, and that the septic system was also located on or near the boundary line.
30. After visiting the One Acre Parcel with Frank Weber in March 2013, Plaintiff communicated by e-mail with Ann Anderson, record owner of the One Acre Parcel and sister of Defendant Roger Weber; and Amy Weber, sister of Defendant Roger Weber and Ann Anderson, regarding the sale of the One Acre Parcel. [See *generally* Exhibits 10, 28.]
31. Prior to the sale, by e-mail sent to Ann Anderson and Amy Weber dated March 13, 2013, Plaintiff offered to pay "\$15,000 with no earnest money down," for the One Acre Parcel. Plaintiff further specified, "I will take the house 'as is' including the septic and well. There will not be a house inspection." [Exhibit 10.] A few hours later on March 13, 2013, Amy Weber sent a response e-mail to Plaintiff and Ann Anderson, indicating that Plaintiff's offer "sound[ed] good, but we must include the garage issue." [*Id.*] None of the e-mails between Plaintiff, Ann Anderson, and Amy Weber specifically define this

---

<sup>2</sup> Subsequent to his purchase of the One Acre Parcel, Plaintiff received a Notice of Sanitation Violation from Itasca County Environmental Services, dated August 8, 2014. [See Exhibit 104.] The Notice stated that the septic system illegally discharged sewage discharge into a public road ditch and would need to be repaired or replaced.

“garage issue;” however, at a minimum Plaintiff was on notice that some outstanding issue with the garage could affect the sale of the One Acre Parcel.

32. As further discussed below, Amy Weber and Ann Anderson both reside in Arizona and were unable to attend the memorial service for their father, Robert Weber, following his death in January 2013. Both sisters were deeply hurt and disappointed that they were unable to attend the memorial service, and blamed their brother, Defendant Roger Weber, and his wife, Defendant Mary Jo Weber, for scheduling the service at a time they were unable to attend. [Testimony of Amy Weber.]
33. Based in part on the acrimony between siblings Ann Anderson, Amy Weber, and Defendant Roger Weber, sisters Ann Anderson and Amy Weber tried to keep the pending sale of the property to Plaintiff secret from the rest of their siblings. [See Exhibit 28, March 17, 2013 e-mail from Amy Weber to Plaintiff, stating “Mark, our brothers do not know we are in the process of this deal with you, and we want to keep it that way so we can close without any more family feuds.”]
34. Furthermore, an un-notarized copy of Robert Weber’s will named Ann Anderson and Amy Weber as executors of Robert Weber’s estate, and an addendum to the will provided that Defendant Roger Weber would have the first option to purchase the One Acre Parcel at a price agreed upon by executors Ann Anderson and Amy Weber. [See Exhibit 30.] After his death in January 2013, Robert Weber’s will was never admitted to probate. [Testimony of Amy Weber.]<sup>3</sup>
35. In April 2013, Ann Anderson and her husband Bruce Anderson sold the One Acre Parcel to Plaintiff, by Quit Claim Deed dated April 12, 2013, and filed with the Itasca County Recorder April 22, 2013, as Document No. 674691. [Exhibit 6.] Neither party to the sale obtained a survey of the boundary lines between the One Acre Parcel and 39 Acre Parcel prior to the sale. Plaintiff purchased the One Acre Parcel for \$15,000, in “as is” condition. [See Exhibits 4-9.]
36. Plaintiff took possession of the One Acre Parcel on or near April 22, 2013, the date the Quit Claim Deed transferring title to him was recorded. [Testimony of Plaintiff.] Before Plaintiff took possession of the parcel, sisters Amy Weber and Ann Anderson and their husbands visited the property to clean out the contents of the house and outbuildings.
37. Ann Anderson and Plaintiff met at the house on the One Acre Property and finished all relevant paperwork on April 18, 2013. [Testimony of Amy Weber.] Sisters Ann Anderson and Amy Weber requested that Plaintiff allow them to continue cleaning the house over the weekend; Plaintiff agreed and took possession the following week, on or around April 22, 2013. [Testimony of Amy Weber; Testimony of Plaintiff.]

---

<sup>3</sup> Based on the e-mails and testimony received, it is unclear whether either Ann Anderson or Amy Weber was aware of the un-notarized will of their father, Robert Weber, prior to Plaintiff’s purchase of the One Acre Parcel. If the sisters were aware of the will and its contents, it would have provided an additional incentive to keep the pending sale to Plaintiff secret.



38. It is undisputed that Defendant Mary Jo Weber had a verbal altercation with Ann Anderson on April 18, 2013, while sisters Ann Anderson and Amy Weber were cleaning out their father's house on the One Acre Parcel. [Testimony of Amy Weber; Testimony of Roger Weber.] However, neither Defendant Mary Jo Weber nor Ann Anderson testified at the January 2015 trial; it is unclear whether they discussed the pending sale of the property to Plaintiff at that time.
39. It is undisputed that, beginning April 22, 2013, Defendant Roger Weber removed the single-stall shed, a portion of the lean-to, and a portion of the three-stall garage located near the boundary line between Plaintiff's One Acre Parcel and Defendants' 39 Acre Parcel. [Testimony of Roger Weber; *see also* Exhibit 63, Itasca County Sheriff's Office Incident Detail Report and Case Supplemental Information, dated May 21, 2013.]
40. Defendant Roger Weber removed the shed, the lean-to, and a portion of the three-stall garage using a chainsaw. He completed the task unassisted. [Testimony of Roger Weber.] Neither Plaintiff nor any other witness saw Roger Weber remove the buildings. [Testimony of Plaintiff; Testimony of Roger Weber.]
41. Defendant Roger Weber claims that, based on a conversation he had with his sister Ann Anderson in November 2012, prior to their Father's death in January 2013, he believed that Ann Anderson wanted the garage and outbuildings to be removed from the property. Roger Weber allegedly believed he was acting with Ann Anderson's permission when he began removing the garage, lean-to, and shed in April 2013. Roger Weber claims that he did not know that the One Acre Parcel had been sold when he removed the structures in April 2013, even though his wife had been involved in a verbal altercation with Ann Anderson approximately four days prior. Roger Weber further claims that it was merely coincidental that he cut the three-stall garage directly along the boundary line between the One Acre and the 39 Acre Parcels, and removed only that section of the building on the 39 Acre Parcel. Roger Weber also alleges that he did not completely remove the three-stall garage because he wanted to salvage the garage doors, and was waiting for help to take down the remainder of the building. As further discussed below, Defendant Roger Weber's testimony regarding his mindset when he destroyed and removed the shed, lean-to and a portion of the three-stall garage is neither credible nor accepted.
42. Plaintiff learned of the damage to the garage and removal of the lean-to and shed on or around April 27, 2013. Plaintiff resided approximately 45 miles away from the One Acre Parcel at that time and did not visit his property every day. [Testimony of Plaintiff.]
43. On May 9, 2013, real estate agent Darlene Majkich, with whom Ann Anderson and her siblings had previously discussed listing the One Acre Parcel for sale, contacted Ann Anderson by e-mail to let her know that the garage had been partially removed, and to inquire whether Ann and her siblings wanted to list the property with Majkich. [See Exhibit 11.] Majkich did not know the One Acre Parcel had already been sold. [Testimony of Majkich.]
44. After receiving notice of the destruction and removal of the shed and a portion of the garage, Ann Anderson and Amy Weber contacted Plaintiff by e-mail and urged him to

obtain a survey of the property or take legal action against their brothers, Frank Weber and Defendant Roger Weber. [See Exhibits 11-12, May 10, 2013 e-mails of Amy Weber to Plaintiff, and May 12, 2013 e-mails of Amy Weber to Plaintiff.]

45. On May 12, 2013, Plaintiff contacted Defendant Roger Weber by telephone. Plaintiff and Roger Weber have vastly different recollections of this conversation. Plaintiff testified that he contacted Defendant Roger Weber in an attempt to settle their differences amicably and prevent law enforcement from becoming involved. Plaintiff testified that he offered to purchase a small portion of Defendants' property to resolve the issue. Defendant Roger Weber testified that Plaintiff did not properly introduce himself when he telephoned on May 12, 2013; that Plaintiff demanded to buy some of Defendant's property; and that Plaintiff threatened to report Roger Weber to the Sheriff's Office if he did not comply with Plaintiff's request.
46. After the May 12, 2013 telephone conversation between Plaintiff and Defendant Roger Weber failed to resolve the parties' dispute, Plaintiff contacted the Itasca County Sheriff's Office on May 21, 2013. Deputy Thomas Williams responded to the scene and documented Plaintiff's concerns. On May 21, 2013, Defendant Roger Weber admitted that he had removed the shed and a portion of the garage, but agreed not to take further action regarding the garage until a survey was completed. The Itasca County Sheriff's Office was contacted three additional times, twice by Plaintiff and once by Defendant Roger Weber, regarding this dispute in July 2013, August 2013, and June 2014. [Testimony of Deputy Williams; *see also* Exhibit 63, Itasca County Sheriff's Office Incident Detail dated May 21, 2013; July 25, 2013; August 27, 2013; and June 5, 2014.]
47. Despite the involvement of the Itasca County Sheriff's Office, the parties were not able to resolve their dispute. Plaintiff commenced this civil action against Defendants by personal service on December 26, 2013.

Credibility of the Witnesses, as it relates to Plaintiff's Claims

48. Plaintiff is the owner of the One Acre Parcel in the County of Itasca, State of Minnesota, legally described as follows:

The West 208 feet of the East 238 feet of the North 241 feet of the Northeast Quarter of the Northwest Quarter (NE  $\frac{1}{4}$  NW  $\frac{1}{4}$ ), Section Sixteen (16), Township Fifty-seven (57) North, Range Twenty-three (23), West of the Fourth Principal Meridian. [See Exhibit 6.]

49. Plaintiff alleges that, through adverse possession, his predecessors in title acquired title to the parcel of property in the County of Itasca, State of Minnesota, legally described as follows:

The West **308** feet of the East **338** feet of the North **290** feet of the Northeast Quarter of the Northwest Quarter (NE  $\frac{1}{4}$  NW  $\frac{1}{4}$ ), Section Sixteen (16), Township Fifty-seven (57) North, Range Twenty-three (23). (emphasis added.)

[See Exhibit 62, Survey of Plaintiff's Property by Northern Lights Land and Surveying, P.S.C., with the boundaries of Plaintiff's claimed property marked in red.] Plaintiff claims that his predecessors in title acquired title to a substantial amount of additional property, over and above that which was granted to Plaintiff by Quit Claim Deed, such that the three-stall garage and lean-to, the shed, and the septic system would fall well within the boundaries of Plaintiff's claimed property. [*Id.*]

50. Plaintiff's claims for adverse possession and prescriptive easement require proof of the historic possession and use of Plaintiff's One Acre Parcel and Defendants' 39 Acre Parcel, by their respective predecessors in title. Plaintiff's trespass claim also hinges on his ability to prove that he owned the land upon which the damaged garage and shed were located.
51. Plaintiff and Defendants called several witnesses to testify as to the historic use of the property. Plaintiff's witnesses included Amy Weber, daughter of Robert Weber and sister of Defendant Roger Weber, and Lesley (Les) Gangl, Robert Weber's half-brother, who had a close relationship with Robert Weber and who resided in Nashwauk, Minnesota his entire life. Defendant's witnesses included Defendant Roger Weber; Frank Weber, brother of Defendant Roger Weber, and Paul Katalinich and Lori Mo, a husband and wife who used to hunt deer each year with Robert Weber. Notably, Ann Anderson, sibling of Defendant Roger Weber who sold Plaintiff the One Acre Parcel, did not appear or testify.
52. The credibility of several witnesses is at issue in this proceeding.
53. Amy Weber resided at the home on the One Acre Parcel with her father, Robert Weber, and her Mother, Colleen Weber, from her date of birth, on August 31, 1959, until her parents' divorce in 1968, when she was approximately eight years old. [Testimony of Amy Weber; Testimony of Frank Weber.] Following her parents' divorce, Amy Weber resided primarily with her mother in Bemidji, Minnesota, and later Blackduck, Minnesota, although she spent significant time in Nashwauk, Minnesota, during the summer months. [*Id.*] In 1980-81, when she was approximately 21 years old, Amy Weber relocated to San Diego, California. She has not resided in the State of Minnesota since that time. [*Id.*] Amy Weber has never owned an interest in either the One Acre or the 39 Acre Parcel.
54. Amy Weber's testimony regarding her memories of her relatives' possession and use of the One Acre Parcel is of limited persuasive value, since Amy Weber has not primarily resided on or near the One Acre Parcel since she was approximately eight years old.
55. Amy Weber's general credibility is undermined by her strong feelings of animosity toward her brothers Frank Weber and Defendant Roger Weber, and especially Defendant Mary Jo Weber. [See, e.g., e-mails of Amy Weber contained in Exhibit 13 (referring to her brother Frank Weber as a "psychopath"); Exhibit 33 (stating that she "hate[s] Mary Jo [Weber] with every cell of her body" and "hope[s] she gets hit by a bus"); Exhibit 136.] The level of anger evidenced in Amy Weber's e-mails and through her testimony undermines her ability to be an impartial witness.

56. Defendant Roger Weber resided on the One Acre Parcel with his father, Robert Weber, and his Mother, Colleen Weber, from his date of birth, on November 5, 1954, until his parents' divorce in 1968, when he was approximately fourteen years old. [Testimony of Roger Weber; Testimony of Frank Weber.] For the remainder of the school year following his parents' divorce, Roger Weber resided with his mother in Bemidji, Minnesota. Afterward, Roger Weber, along with his brothers Frank Weber and James Weber, returned to Nashwauk, Minnesota, to reside with their father. [*Id.*] In 1972 Roger Weber moved to Blackduck, Minnesota, to live with his mother for 8 months to attend and graduate from high school there. Roger Weber returned in 1973 and lived with his father on the One Acre Parcel until he moved to Buck Lake in 1978 for less than a year. He thereafter returned and has lived within one mile of his father's One Acre Parcel since approximately 1979 to the present. [*Id.*]
57. Defendant Roger Weber's testimony regarding his own use and possession of the disputed property, as well as his memories of his relatives' possession and use of the One Acre Parcel, is credible and accepted. Defendant Roger Weber has, with the exception of approximately three non-consecutive years away, continuously resided on or near the One Acre Parcel and 39 Acre Parcel. Roger Weber has owned interests in both Parcels for significant durations of time. Furthermore, Roger Weber's testimony regarding the historic use of the property is largely corroborated by the testimony of Frank Weber.
58. However, Defendant Roger Weber's testimony regarding his mindset when he destroyed and removed the three-stall garage situated on the boundary line between the One Acre Parcel and 39 Acre Parcel is neither credible nor accepted. Defendant Roger Weber testified that he believed he was acting with Ann Anderson's permission when he removed the garage and lean-to in April 2013. However, Roger Weber was in the middle of a contentious dispute with his sisters Ann Anderson and Amy Weber, who were unable to attend their father's memorial service in Minnesota and who blamed Defendants for the inconvenient scheduling of that service. Roger Weber claims that he did not know that the One Acre Parcel had been sold when he removed the structures in April 2013, even though his wife had been involved in a verbal altercation with Ann Anderson approximately four days prior. Roger Weber further claims that it was merely coincidental that he cut the three-stall garage directly along the boundary line between the One Acre and the 39 Acre Parcels, and removed only that section of the building on the 39 Acre Parcel.
59. Defendant Roger Weber's lack of candor with the Court concerning his destruction of the three-stall garage, lean-to, and shed undermines the credibility of all Roger Weber's testimony. However, Defendant Roger Weber's testimony as to the historic uses of the One Acre and 39 Acre parcel remains persuasive, as his testimony is largely corroborated by the testimony of Roger Weber's uncle Les Gangl, and brother Frank Weber.
60. Frank Weber resided on the One Acre Parcel with his father, Robert Weber, and his Mother, Colleen Weber, from his birth in 1952 until his parents' divorce in 1968, when he was approximately 16 years old. [Testimony of Frank Weber.] For the remainder of the school year following his parents' divorce, Frank Weber resided with his mother in Bemidji, Minnesota. Afterward, Frank, along with his brothers James Weber and

Defendant Roger Weber, returned to Nashwauk, Minnesota, to reside with their father. In 1979, Frank Weber entered the Navy. During his years in the service, he would typically stay with his father on the One Acre Parcel when on leave, for approximately one to 1.5 months per year. In 2002, Frank Weber retired from the military and has lived within approximately one mile of the One Acre Parcel from 2002 to the present. [*Id.*]

61. Frank Weber's testimony regarding his memories of the One Acre Parcel, as well as his relatives' possession and use of the One Acre Parcel and 39 Acre Parcel, are credible and accepted. Frank Weber's testimony was the most persuasive testimony received at the trial. Frank Weber is highly familiar with the property, having resided on or near the One Acre Parcel from 1952 through 1979, and from 2002 to the present, and having stayed with his father Robert Weber for at least one month per year during his years in the military, from 1979 through 2002. Furthermore, Frank Weber is not embroiled in the family controversy to the same extent as either Amy Weber or Defendant Roger Weber, and Frank Weber was not aware of, nor did he participate in, Roger Weber's destruction and removal of the garage, lean-to, and shed.

#### Plaintiff's Adverse Possession and Prescriptive Easement Claims

62. To prove adverse possession, the disseizor or adverse possessor must show, by clear and convincing evidence, an actual, open, hostile, continuous, and exclusive possession of the disputed property for a requisite period of 15 years. *Ehle v. Prosser*, 293 Minn. 183, 189, 197 N.W.2d 458, 462 (1972). Additionally, the general rule is that "the existence of a close family relationship between the claimant of land and the record owner. . . creates the inference, if not the presumption, that the original possession by the claimant of the other's land was permissive and not adverse." *Wojahn v. Johnson, et al.*, 297 N.W.2d 298, 306 (Minn. 1980).
63. Prior to 1953, Defendant Roger Weber's maternal grandparents, W. Raymond Dodson and Mary Dodson, owned a parcel of property which included both the One Acre Parcel and 39 Acre Parcel, which had not yet been divided.
64. In 1953, the Dodsons carved out the One Acre Parcel and gave it to their daughter, Colleen Weber, and her husband, Robert Weber. Colleen and Robert Weber had a son, Frank Weber, who had been born in 1952, and were expecting their second child, James Weber. Robert and Colleen Weber had been residing on the property that would become the One Acre Parcel since approximately 1947. The Dodsons wanted their daughter, her husband, and their family to remain nearby. [Testimony of Frank Weber.] After the parcels were divided, the Dodsons retained ownership of the 39 Acre Parcel until 1978.
65. In 1960, Robert Weber constructed a new house for his family. The house still stands in its original location, entirely within the boundaries of the One Acre Parcel, as depicted in the May 5, 2014 Survey of the property completed by Northern Lights Land Surveying P.S.C. [See Exhibit 62; Testimony of Frank Weber; Testimony of Defendant Roger Weber.]

66. After the new house was constructed, the house in which Robert and Colleen Weber and their children had been residing prior to 1960 was moved to its current location, and was converted into the three-stall garage at issue in this proceeding. [Testimony of Frank Weber; Testimony of Defendant Roger Weber.]
67. Based on a recent survey of the One Acre Parcel, completed by Northern Lights Land Surveying P.S.C. on May 5, 2014, it is undisputed that the three-stall garage, prior to its partial destruction by Defendant Roger Weber in April 2013, sat atop the westerly boundary line between the One Acre Parcel and the 39 Acre Parcel, such that approximately one-third of the structure was located on Plaintiff's One Acre Parcel, and two-thirds of the structure was located on Defendants' 39 Acre Parcel. [See Exhibit 62.] The garage has been in that location since it was moved in 1960.<sup>4</sup>
68. In 1960, when the original house was moved to its current location and converted to a three-stall garage, Robert Weber, his father-in-law W. Raymond Dodson, and Defendant Roger Weber's "Uncle Pat" were all present to help move the structure. [Testimony of Defendant Roger Weber; Testimony of Frank Weber; Testimony of Les Gangl.] Defendant Roger Weber and Frank Weber testified that, as young boys, they had vivid memories of the event.
69. In order to move the structure that would become the three-stall garage, Robert Weber and his father-in-law W. Raymond Dodson used two tractors to move the structure onto poplar logs, and then to roll the logs and the structure to its current location. [Testimony of Frank Weber.]
70. On cross-examination, Amy Weber acknowledged that her maternal grandfather, W. Raymond Dodson, was a "distrusting" person and that the placement of the three-stall garage at its current location was probably done with his permission, based on his involvement in moving the structure. [Testimony of Amy Weber.]
71. The placement of the three-stall garage at its current location, upon the westerly boundary line between the One Acre and 39 Acre Parcels, was done with the knowledge and assistance of W. Raymond Dodson, who—along with his wife Mary Dodson—owned the adjacent 39 Acre Parcel.
72. The Weber siblings disagree on when the family first became aware that the three-stall garage sat atop the westerly boundary line of the One Acre Parcel.
73. Amy Weber contends that neither she nor the members of her family were aware of the boundary line issue until January 2013, when she and Ann Anderson contacted real estate agent Tim Skelly regarding the possible sale of the One Acre Parcel following the death of their father, Robert Weber. After consulting the website of the Itasca County Department of Surveying and Mapping to view a map of the One Acre Parcel [See Exhibit 64], Skelly informed Ann Anderson and Amy Weber that—according to the

---

<sup>4</sup> Prior to 2014, the most recent survey of the property had occurred in the 1920's, before the garage had been constructed or moved to its current location. [See Exhibit 45, January 28, 2013 e-mail from Deputy Itasca County Surveyor Guy Carlson to Ann Anderson.]

County website—the garage was partially located on the One Acre Parcel and partially located on the adjoining 39 Acre Parcel. [Testimony of Amy Weber.]

74. However, Frank Weber and Defendant Roger Weber credibly testified that they were aware of One Acre Parcel’s boundary lines, and the garage’s location atop the westerly boundary line, much earlier than 2013.
75. Frank Weber observed a large rock stacked atop a smaller rock, which were intended to serve as monuments to mark the western boundary of the One Acre Parcel, as early as the 1960’s. Frank Weber remembered the monument rocks clearly because he hit one of the rocks with his father Robert Weber’s new lawnmower in either 1992 or 1993, which caused substantial damage to the mower. As a result, the monument rocks were later removed. [Testimony of Frank Weber.]
76. At trial, Frank Weber was presented with a copy of Exhibit 64, a topographical photograph of the One Acre Parcel and the surrounding land from the website of the Itasca County Department of Surveying and Mapping, printed December 12, 2014, depicting the One Acre Parcel shaded in red. Frank Weber drew an “X” on Exhibit 64 to indicate where the monument rocks had been located. Frank Weber indicated that the monument rocks had been placed north of the three-stall garage, south of County Road 8, along the slope of the ditch next to County Road 8, and on the westerly boundary of the One Acre Parcel shaded in red. The location of the monument rocks, as identified by Frank Weber, would have resulted in the boundary line running through the middle of the garage.
77. Defendant Roger Weber corroborated Frank Weber’s testimony that two monument rocks had been used to mark the westerly border of the One Acre Parcel. Defendant Roger Weber remembered the location of the monument rocks because, while waiting for the bus along County Road 8 on his first day of kindergarten, he threw an object at the monument rocks and it ricocheted back at him, causing an injury which required several stitches. [Testimony of Defendant Roger Weber.]
78. Defendant Roger Weber and his father Robert Weber were also made aware of the One Acre Parcel’s boundary lines in 1987 or 1988, when they were contacted by the Itasca County Highway Department concerning a right-of-way easement that the County wished to obtain with respect to both the 39 Acre Parcel and the One Acre Parcel. Roger Weber signed and granted the County an easement with respect to the 39 Acre Parcel, and Defendant Robert Weber signed and granted an easement with respect to the One Acre Parcel. [Testimony of Defendant Roger Weber.] The easements were subsequently filed with the Itasca County Recorder as Document Nos. 394087 and 394088. [See Exhibits 101, 102].<sup>5</sup> The visual depiction of the easements show the garage located in its present

---

<sup>5</sup> The Court notes that, at the time Defendant Roger Weber granted Itasca County an easement in the 39 Acre Parcel in 1998, Roger Weber was not the record owner of the 39 Acre Parcel; ownership of the parcel had been transferred from Defendant Roger Weber to his mother, Colleen Blade, by Warranty Deed dated September 3, 1986, and filed with the Itasca County Recorder September 19, 1986, as Document No. 382705. Regardless of whether he actually possessed the authority to grant such easement to Itasca County, the fact that Defendant Roger Weber granted the

location, straddling the westerly property line between the 39 Acre Parcel and the One Acre Parcel.

79. In contrast, Amy Weber testified that, sometime in the late 1980's, she helped her father Robert Weber measure his property bordering County Road 8, when the County was preparing to widen the road. Based on the measurements that she took with her father, her father believed that the westerly boundary of his parcel was located to the west of the garage, such that the garage fell entirely within his One Acre Parcel. [Testimony of Amy Weber.]
80. In addition to testimony regarding the location of the One Acre Parcel's boundary lines, extensive testimony was also provided regarding Robert Weber's use of the One Acre Parcel.
81. From the time the One Acre Parcel was deeded to Robert Weber and his wife in 1953 by Defendant Roger Weber's maternal grandparents, W. Raymond and Mary Dodson, most of the parcel had been cleared of trees. Initially, the area to the west of the house built in 1960 was wooded, and the structure that became the three-stall garage was bordered by a line of trees to the west. [Testimony of Amy Weber; Testimony of Frank Weber; Testimony of Defendant Roger Weber.]
82. Les Gangl, who was Robert Weber's half-brother and was approximately 10 years younger than Robert Weber, resided in the same household as Robert Weber as a child, and remained in Nashwauk, Minnesota his entire life. Les Gangl testified that he had a close relationship with Robert Weber, that he was familiar with the One Acre Parcel, and that he visited Robert Weber at the property at least weekly throughout his life.
83. Les Gangl testified that, sometime in the 1970's or 1980's, a storm knocked down several trees on the property, and at least one tree hit the house and caused a power outage. Gangl assisted Robert Weber in clearing several trees from the property, located to the west of the house and garage. [Testimony of Les Gangl.]
84. Defendant Roger Weber credibly testified that, after the storm that caused a power outage at the property, several trees were removed from the property with explicit permission and direction from his maternal grandfather, W. Raymond Dodson.
85. After the trees to the west of the house and the garages were cleared, Robert Weber maintained the lawn and mowed in that area. [Testimony of Frank Weber; Testimony of Amy Weber; Testimony of Defendant Roger Weber.] The area of lawn that Robert Weber maintained included the western edge of his One Acre Parcel, but also extended over the boundary line onto the 39 Acre Parcel, since he was mowing west of the garage.
86. Sometime in the 1980's, Robert Weber expanded the garage and built a new shed near the garage. Robert Weber attached a lean-to the southeast portion of the garage. [Testimony of Frank Weber; Testimony of Defendant Roger Weber.] Approximately 3

---

easement demonstrates that he remained involved in the day to day affairs of the disputed property, even when he was not the record owner.



or 4 years later, the lean-to was expanded to the east. [*Id.*] The door to the lean-to aligned with front of the garage, and the lean-to also sat atop the property line between the 39 Acre Parcel and the One Acre Parcel.

87. Sometime in or around the late 1980's, Robert Weber built a shed, located to the south and west of the garage. [Testimony of Defendant Roger Weber.] The shed was located entirely within the boundaries of the 39 Acre Parcel. [See Exhibit 62.]
88. Robert Weber stored his belongings—including several vehicles, a boat, and hunting gear—in the garage, lean-to, and shed. [Testimony of Amy Weber; Testimony of Frank Weber.] Although Defendant Roger Weber claims to have stored some tools in Robert Weber's garage, Frank Weber credibly testified that neither he nor anyone else stored anything substantial in their father's outbuildings. [Testimony of Defendant Roger Weber; Testimony of Frank Weber.]
89. Paul Katalinich and Lori Mo, a husband and wife who used to hunt deer each year with Robert Weber, both testified that they used the garage and lean-to during hunting season, and hung deer from the trusses in the lean-to. Both Katalinich and Mo testified that they always referred to the structure as "Bob's garage," and that they had never heard Defendant Roger Weber contest the boundary line or make a claim of ownership of a portion of the garage.
90. Defendant Roger Weber's maternal grandparents, W. Raymond and Mary Dodson, who owned the 39 Acre Parcel until 1978, maintained hay fields to the east and to the south of the One Acre Parcel. [Testimony of Frank Weber; Testimony of Amy Weber.] W. Raymond Dodson continued to cut hay from the fields surrounding the One Acre Parcel until he had a stroke sometime in the 1970's. When W. Raymond Dodson was no longer able to cut the hay, Defendant Roger Weber arranged for a third party to cut the fields. [Testimony of Frank Weber.]
91. Frank Weber and Defendant Roger Weber credibly testified that their maternal grandfather, W. Raymond Dodson, did not pay much attention to or demonstrate concern over the location of the westerly boundary line of the One Acre Parcel. Rather, Dodson was concerned about his hay fields and routinely scolded the children to stay out of the fields.
92. As further discussed below, the house, garage, lean-to, shed, and septic system on Robert Weber's property were falling into disrepair. No substantial updates had been made to the house on the One Acre Parcel since it was built in 1960. The basement in the house leaked substantially, and Robert Weber had dug a series of trenches in the basement floor to divert accumulated water. [Testimony of Frank Weber; Testimony of Roger Weber.] When Paul Katalinich and Lori Mo hunted with Robert Weber each year, Robert Weber instructed the men not to use the indoor bathroom, and told Lori Mo not to use too much water because the septic system had a tendency to back up. [Testimony of Lori Mo.] The lean-to and shed were constructed of Oriented Strand Board (OSB), a material that is not meant to be exposed to the elements. The lean-to leaked and required frequent repairs. [Testimony of Frank Weber.]

93. Robert Weber frequently undertook minor repairs of the structures and septic system on the property. For example, Robert Weber, with the help of his sons Frank Weber and Defendant Roger Weber, would attempt to fix the leak in the lean-to using roof tar, would patch areas of the garage with rolled roofing, and would cut back tree roots that had grown into the septic system. [Testimony of Frank Weber; Testimony of Defendant Roger Weber.] Robert Weber's favorite saying about property repairs was "good enough," so he completed many low-cost, quick-fix projects on an ongoing basis. [Testimony of Paul Katalinich.]
94. Robert Weber paid the yearly real estate taxes for all of the buildings on or near the One Acre Parcel, including the house, the garage and lean-to, and the shed. [See Exhibit 67.] Although the garage was located partially on the adjoining 39 Acre Parcel, and the shed was located entirely on the 39 acre parcel, neither Defendants nor their predecessors in title paid any property taxes on the buildings.
95. In summary, Plaintiff failed to prove by clear and convincing evidence that Plaintiffs' predecessors in title adversely possessed the disputed property to the west of the One Acre Parcel, encompassing that garage, lean-to, shed, and septic system, for more than 15 years. Although Plaintiff arguably proved by clear and convincing evidence that Robert Weber's possession of the disputed property was actual, open, continuous, and exclusive, Plaintiff wholly failed to prove that such possession was hostile.
96. The general rule is that "the existence of a close family relationship between the claimant of land and the record owner. . . creates the inference, if not the presumption, that the original possession by the claimant of the other's land was permissive and not adverse." *Wojahn v. Johnson, et al.*, 297 N.W.2d 298, 306 (Minn. 1980). The inference of permissive possession applies in this case. At the time the garage was moved to its current location spanning the boundary line between the One Acre and 39 Acre Parcels, Robert Weber and his wife Colleen Weber owned the One Acre Parcel, and Colleen's parents, W. Raymond Dodson and Mary Dodson, owned the adjoining 39 Acre Parcel.
97. Furthermore, the placement of the garage at its current location, upon the boundary line between the One Acre and 39 Acre Parcels, was done with the knowledge and assistance of W. Raymond Dodson. The garage was moved to its current location using logs and tractors; W. Raymond Dodson drove one of the tractors during this process. The fact that W. Raymond Dodson helped to determine where the garage would be located on the property is the strongest possible evidence that Robert Weber's use of the garage was permissive, despite its encroachment onto the Dodsons' 39 Acre Parcel.
98. From 1953 to 2013, all of the transfers of ownership of the One Acre Parcel and 39 Acre Parcel were intra-family transfers within the Dodson and Weber families. Plaintiff, who purchased the One Acre Parcel in April 2013, is the first non-relative to purchase either of the parcels. The nature of Robert Weber's possession of the disputed property and structures did not become hostile by virtue of any of the property transfers.
99. Robert Weber did not take any affirmative actions to assert hostile title to the disputed property, including the garage, lean-to, and shed, during his lifetime. The evidence

presented at trial establishes that Robert Weber had a cooperative, non-contentious relationship with the owners of the 39 Acre Parcel over time: first his in-laws, then his ex-wife Colleen Blade, and finally his son Defendant Roger Weber. None of the witnesses who testified in these proceedings were aware of any boundary line disputes regarding the garage, lean-to, or shed—thus supporting a conclusion that Robert Weber’s use of the disputed property was not hostile in nature.

100. A prescriptive easement claim “involves the same elements of proof as an adverse possession claim,” but the actual, open, hostile, continuous, and exclusive elements apply to use, rather than to possession, of the property. *Boldt v. Roth*, 618 N.W.2d 393, 396 (Minn. 2000). The presence of a familial relationship between the parties gives rise to “the inference, if not the presumption” that the use is permissive for both adverse possession and prescriptive easement claims. *Id.* at 396-97.
101. Plaintiff’s claim for a prescriptive easement fails on the same grounds as Plaintiff’s adverse possession claim. Plaintiff failed to prove, by clear and convincing evidence, that his predecessor in title used the disputed property to the west of the One Acre Parcel, encompassing that garage, lean-to, shed, and septic system, in a manner hostile to Defendants’ predecessors in title.

#### Plaintiff’s Claim for Trespass

102. “The tort of trespass is committed when a person intentionally enters or causes direct and tangible entry upon the land in possession of another.” *Johnson v. Paynesville Farmers Union Co-op. Oil Co.*, 817 N.W.2d 693, 701 (Minn. 2012) (internal quotations omitted). The law of trespass aims to prevent “disruption to the landowner’s exclusive possessory interest” in his land. *Id.* at 702.
103. Plaintiff alleges that Defendant Roger Weber wrongfully damaged the outbuildings located on Plaintiff’s property, and seeks \$20,000 in damages for the alleged trespass and property damage. Plaintiff’s trespass claim hinges on his ability to prove that he owned the land upon which the damaged garage, lean-to, and shed were located.
104. As discussed above, based on a 2014 survey of Plaintiff’s One Acre Parcel, completed by Northern Lights Land Surveying P.S.C., it is undisputed that the three-stall garage and attached lean-to, prior to their partial destruction by Defendant Roger Weber in April 2013, sat atop the westerly boundary line between the One Acre Parcel and the 39 Acre Parcel, such that approximately one-third of the structure was located on Plaintiff’s One Acre Parcel, and two-thirds of the structure was located on Defendants’ 39 Acre Parcel. [See Exhibit 62.] The survey further establishes that the single stall shed was located entirely within the boundaries of the 39 Acre Parcel. [*Id.*]
105. Plaintiff failed to prove his claims for adverse possession or prescriptive easement. Accordingly, the shed removed by Defendant Roger Weber, and the damaged portion of the garage and lean-to, were all located on Defendant’s 39 Acre Parcel, rather than on Plaintiff’s One Acre Parcel. Defendant Roger Weber removed the shed, which was

located entirely on his 39 Acre Parcel, and only that portion of the garage located on his side of the boundary line.

106. The tort of trespass “requires only two essential elements: a rightful possession in the plaintiff and unlawful entry upon such possession by the defendant.” *Wendinger v. Forst Farms, Inc.*, 662 N.W.2d 546, 550 (Minn. Ct. App.2003). Plaintiff failed to prove either of these elements.
107. Because his claims for adverse possession and prescriptive easement failed, Plaintiff was not able to prove that he rightfully possessed the land upon which the damaged portions of the garage, lean-to, and shed were located. Additionally, Plaintiff did not observe Defendant Roger Weber enter his property when removing the shed and a portion of the garage; the only evidence of Defendant Roger Weber’s entry onto Plaintiff’s land were some ruts in the mud from a vehicle and some debris left in the driveway of Plaintiff’s one acre parcel. [Testimony of Plaintiff.] Plaintiff was not able to prove other unlawful entry onto Plaintiff’s property by Defendants, and Plaintiff did not seek damages associated with the ruts or debris left on his One Acre Parcel, caused by Defendant Roger Weber’s removal of the structures on Defendants’ side of the property line.
108. In the alternative, even if Plaintiff were able to demonstrate trespass to his land, Plaintiff failed to prove an appropriate measure of damages for such intrusion.
109. Plaintiff hired real estate appraiser Gregory Perrella to complete an appraisal of the value of the One Acre Parcel. [Exhibit 66, Transcript of December 30, 2014 Deposition of Gregory Perrella, p. 11) At the time Perrella viewed the property in July 2013, the shed had been totally removed, except for the concrete pad, and a substantial portion of the garage and lean-to had been removed. [*Id.* a pp. 23-24.]
110. Appraiser Perrella determined the “as is” value of the One Acre Parcel, without any functional garage stalls, to be \$28,600, and determined that the property’s fair market value with the addition of four useable garage stalls would be \$48,600, representing a \$20,000 increase in value. [See Exhibit 66, Exhibit B attached to Perrella Deposition, Uniform Residential Appraisal Report for the One Acre Parcel.] Perrella reached this conclusion by applying the general rule that, in his experience, each stall of useable garage space on a residential property for a property similar to Plaintiff’s typically adds approximately \$5,000 in value to the property. [Exhibit 66, Perrella Deposition at pp. 64, 82-85.] Perrella admitted that, in concluding that four additional garage stalls would increase the value of the property by \$20,000, he did not take into account the condition of the particular structures at issue in this case. [*Id.*]
111. Additionally, Perrella’s opinion as to the value of the garage and shed at issue in this case did not reflect that the garage was located on the boundary line between the One Acre Parcel and the 39 Acre Parcel, or that the shed was located entirely within the boundaries of the 39 Acre Parcel. [Exhibit 66, Perrella Deposition at p. 49-50.]
112. The appraisal provided by Plaintiff’s expert witness, Gregory Perrella, is of no persuasive value to the Court in determining the amount of damages sustained by Plaintiff as a result

of Defendants' alleged trespass. Perrella's appraisal did not account for the condition of the buildings at issue, or the fact that the damaged garage and lean-to were located partially on Defendants' property, and the damaged shed was located entirely on Defendants' property. The appraisal provided by Gregory Perrella was insufficient to support Plaintiff's claim for damages resulting from Defendants' alleged trespass.

113. Furthermore, the weight of the testimony provided in this case establishes that the garage, lean-to, and shed were in such poor condition that the structures had little to no value.
114. The garage, which was a converted house built in the 1920's that had been pulled by tractor to its current location, had walls and a roof of plywood covered by rolled roofing material. [Testimony of Frank Weber.] The three garage doors on the garage and lean-to were manual-lift style and did not match. Robert Weber installed one of the garage doors, which was a wooden door he had found at a landfill and cut to fit the garage. [*Id.*] The other garage door was made of steel and had been purchased and installed by Defendant Roger Weber. [Testimony of Defendant Roger Weber.] The door to the lean-to had been salvaged from Frank Weber's property. The garage's electrical wiring was a system of tar and fiber coated wiring from the 1950's, and the fuse would blow almost every time someone attempted to use a tool in the garage. [Testimony of Frank Weber.]
115. The lean-to was built of two-by-four boards and Oriented Strand Board (OSB). [Testimony of Frank Weber; Testimony of Roger Weber.] The exterior walls were covered by a rolled roofing material. OSB material is not meant to be exposed to the elements, since it is constructed of pressure-treated wood chips and glue, and is prone to expand when exposed to heat or moisture. [Testimony of Roger Weber.] The lean-to's ceiling rafters and trusses had significant water damage; Robert Weber had nailed additional two-by-four boards to the trusses in an attempt to strengthen them. [*Id.*] Lori Mo credibly testified that, when a large deer was hung from the lean-to's trusses for cleaning during hunting season, the whole structure moved and she feared that the ceiling of the lean-to would cave in.
116. Before Defendant Roger Weber removed it in April 2013, there had been a detached shed located south of the lean-to, located entirely within the 39 Acre Parcel. The shed, which Robert Weber had used to store a boat, was approximately five and one-half feet tall, 20 feet deep and 9 feet wide. [Testimony of Frank Weber; Testimony of Roger Weber.] The shed was built by driving poles into the ground, and the shed's walls were constructed by nailing OSB to the poles. The roof of the shed was made of OSB covered with rolled roofing material. The shed had a homemade door of OSB strips wired together that could be folded up for entry. The shed was not structurally sound, and—each spring—the shed would lean so badly that either Robert Weber or one of his sons would use a piece of heavy equipment to push the shed until it stood vertically again. [Testimony of Frank Weber.]
117. Frank Weber credibly testified that he had encouraged his father Robert Weber to replace the garage and outbuildings beginning in the 1980's, but that Robert Weber did not want to invest the money in the property.

118. According to real estate agent Darlene Majkich, who had been contacted by Amy Weber and Ann Anderson regarding the possible sale of the One Acre Parcel following Robert Weber's death in January 2013, the garage, lean-to, and shed were "eyesores," and removal of those structures would make the property easier to sell. [Testimony of Majkich.]
119. In summary, Plaintiff's trespass claim fails because Defendant Roger Weber damaged structures that were located upon his own property; Plaintiff did not prove that he rightfully possessed the land upon which Defendant Roger Weber damaged the shed and a portion of the garage. Additionally, even if Plaintiff were able to demonstrate trespass to his land, Plaintiff failed to prove an appropriate measure of damages for such intrusion.

Based upon the above Findings of Fact the Court makes the following:

### **CONCLUSIONS OF LAW**

1. Plaintiff failed to prove by clear and convincing evidence his claim for adverse possession of the parcel of property in the County of Itasca, State of Minnesota, legally described as follows:

The West 308 feet of the East 338 feet of the North 290 feet of the Northeast Quarter of the Northwest Quarter (NE  $\frac{1}{4}$  NW  $\frac{1}{4}$ ), Section Sixteen (16), Township Fifty-seven (57) North, Range Twenty-three (23).

Possession of the above-named property by Plaintiff's predecessors in title was permissive in nature, based upon close familial relationships between Plaintiff's predecessors in title and Defendants' predecessors in title. Plaintiff's predecessor in title did not take any affirmative actions to assert hostile title to the disputed property during his lifetime. Plaintiff failed to prove hostile possession of the disputed property, thus defeating his claim for adverse possession.
2. Plaintiff failed to prove by clear and convincing evidence his claim for a prescriptive easement for use of the garage, shed, and septic system located on the disputed property describe in Paragraph No. 1 above. Use of the above-named property by Plaintiff's predecessors in title was permissive in nature, based upon close familial relationships between Plaintiff's predecessors in title and Defendants' predecessors in title. Plaintiff's predecessor in title did not take any affirmative actions to assert hostile use of the disputed property during his lifetime. Plaintiff failed to prove hostile use of the disputed property, thus defeating his claim for a prescriptive easement.
3. Defendants are entitled to a declaratory judgment declaring that Plaintiff does not have any right or title to land or fixtures on Defendants' property legally described as follows:

The Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$  NW $\frac{1}{4}$ ), Section Sixteen (16), Township Fifty-seven (57) North, Range Twenty-three (23), West of the Fourth Principal Meridian, LESS the West 208 feet of the East

238 feet of the North 241 feet thereof, subject to reservations, restrictions and easements of record.

4. Plaintiff's trespass claim fails because Defendant Roger Weber damaged structures that were located upon his own property; Plaintiff did not prove that he rightfully possessed the land upon which Defendant Roger Weber damaged property. Additionally, even if Plaintiff were able to demonstrate trespass to his land, Plaintiff failed to prove an appropriate measure of damages for such intrusion.
5. Defendants failed to prove their counterclaim for ejectment. Defendant Roger Weber has already removed the portions of the disputed structures, including the garage, lean-to, and shed, located upon Defendants' property, and by order of Itasca County Environmental Services, the current septic system serving Plaintiff's house, and located on Defendants' property, must be replaced. Relief in the form of ejectment is not appropriate under these circumstances.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Court makes the following:

#### **ORDER FOR JUDGMENT**

1. Plaintiff's claims against Defendants are hereby dismissed with prejudice.
2. Defendants' counterclaim against Plaintiff for ejectment is hereby dismissed with prejudice.
3. Judgment is entered in favor of Defendants and against Plaintiff on their claim for declaratory judgment.
4. The Court grants declaratory judgment in favor of Defendants and against Plaintiff and hereby declares that Plaintiff does not have any right or title to land or fixtures on Defendants' property legally described as follows:

The Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$  NW $\frac{1}{4}$ ), Section Sixteen (16), Township Fifty-seven (57) North, Range Twenty-three (23), West of the Fourth Principal Meridian, LESS the West 208 feet of the East 238 feet of the North 241 feet thereof, subject to reservations, restrictions and easements of record.

5. Defendants are entitled to their costs and disbursements.

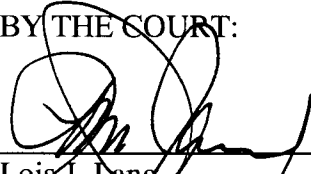
**LET JUDGMENT BE ENTERED ACCORDINGLY**

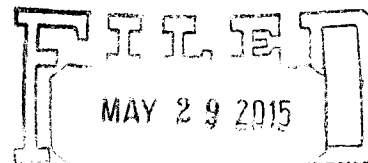
Pursuant to Rule 125 of the General Rules of Practice for District Courts, the Court Administrator shall stay entry of judgment for thirty days.


The attached memorandum is incorporated herein and expressly made a part of this order.

DATE: May 29, 2015

BY THE COURT:

  
\_\_\_\_\_  
Lois J. Lang  
Judge of District Court



COURT ADMINISTRATOR  
ITASCA COUNTY, MINN.  
BY 



## **MEMORANDUM**

### **I. Introduction**

This case involves an acrimonious dispute between siblings following their father's death, and the unfortunate consequences that followed when an unrelated third party purchased land from one sibling involved in the dispute, adjacent to land owned by another sibling involved in the dispute.

Plaintiff Mark W. Besemann [hereinafter 'Plaintiff'] purchased a 1.15 acre parcel of land [hereinafter 'One Acre Parcel'] from Defendant Roger Weber's sister, Ann Anderson, in April 2013. Defendants Roger T. Weber and Mary Jo Weber [hereinafter 'Defendants'] own the adjoining 39 Acre Parcel of land. Plaintiff alleges that, in April 2013, Defendant Roger Weber removed two-thirds of a three-stall garage and completely removed a one-stall garage from Plaintiff's portion of the property. Plaintiff seeks relief under theories of adverse possession, trespass, and prescriptive easement. Plaintiff alleges that he owns the disputed property upon which the damaged garages and a septic system are located in its entirety, because his predecessors in title satisfied all the elements of adverse possession. In the alternative, Plaintiff alleges that his predecessors in title obtained a prescriptive easement for use of the garage, shed, and septic system on the disputed property. Plaintiff further alleges that Defendant Roger Weber committed trespass when he entered onto Plaintiff's property without consent and removed two-thirds of a three-stall garage and completely removed a one-stall garage; Plaintiff seeks damages in the amount of \$20,000 for the alleged trespass. Defendants oppose Plaintiff's claims, and assert counterclaims for declaratory judgment confirming the boundary line of their property and ejectment.

## **II. Plaintiff failed to prove his claims for adverse possession and prescriptive easement by Clear and Convincing Evidence.**

### **A. Adverse Possession**

To prove adverse possession, the disseizor or adverse possessor must show, by clear and convincing evidence, an actual, open, hostile, continuous, and exclusive possession of the disputed property for a requisite period of 15 years. *Ehle v. Prosser*, 293 Minn. 183, 189, 197 N.W.2d 458, 462 (1972). The evidence presented in support of adverse possession must be strictly construed, “without resort to any inference or presumption in favor of the disseizor, but with every presumption against him.” *Ebenhoh v. Hodgman*, 642 N.W.2d 104, 108 (Minn. Ct. App. 2002). An individual can gain title by adverse possession “even though the disseizor does not intend to take land not belonging to him so long as he does intend to exclude all others.” *Ehle*, 293 Minn. at 189, 197 N.W.2d at 462.

Although an individual’s use of land not belonging to him may presumptively be hostile or adverse, this presumption is rebutted by evidence that the use was permissive. *Id.* at 463. Permissive use of land generates no prescriptive rights, and, if the use was permissive at inception, it must become adverse with the owner’s knowledge before any prescriptive rights can arise. *Id.* When determining whether use of land was adverse or permissive for purposes of an adverse possession claim, cases involving close familial relations are analyzed pursuant to the general rule that “the existence of a close family relationship between the claimant of land and the record owner. . . creates the inference, if not the presumption, that the original possession by the claimant of the other’s land was permissive and not adverse.” *Wojahn v. Johnson, et al.*, 297 N.W.2d 298, 306 (Minn. 1980).

Plaintiff failed to prove by clear and convincing evidence that Plaintiff’s predecessors in title adversely possessed the disputed property to the west of the One Acre Parcel, encompassing

the garage, lean-to, shed, and septic system, for more than 15 years. Although Plaintiff arguably proved by clear and convincing evidence that Robert Weber's possession of the disputed property was actual, open, continuous, and exclusive, Plaintiff wholly failed to prove that such possession was hostile.

Based on the close familial relationships between the adjoining landowners in this case, the inference of permissive possession applies. At the time the garage was moved to its current location spanning the boundary line between the One Acre and 39 Acre Parcels, Robert Weber and his wife Colleen Weber owned the One Acre Parcel, and Colleen's parents, W. Raymond Dodson and Mary Dodson, owned the adjoining 39 Acre Parcel. Furthermore, the placement of the garage at its current location was done with the knowledge and assistance of W. Raymond Dodson. The garage was moved to its current location using logs and tractors; W. Raymond Dodson drove one of the tractors during this process. The fact that W. Raymond Dodson helped to determine where the garage would be located on the property is the strongest possible evidence that Robert Weber's use of the garage was permissive, despite its encroachment onto the Dodsons' 39 Acre Parcel.

Robert Weber's possession of the disputed property, encompassing that garage, lean-to, shed, and septic system, commenced as permissive possession and was not converted to hostile possession through Robert Weber's actions or through subsequent title transfers. From 1953 to 2013, all of the transfers of ownership of the One Acre Parcel and 39 Acre Parcel were intra-family transfers within the Dodson and Weber families. Plaintiff, who purchased the One Acre Parcel in April 2013, is the first non-relative to purchase either of the parcels. The nature of Robert Weber's possession of the disputed property and structures did not become hostile by virtue of any of the property transfers.

Additionally, Robert Weber did not take any affirmative actions to assert hostile title to the disputed property, including the garage, lean-to, and shed, during his lifetime. The Minnesota Supreme Court has stated that, “[p]ossession or use beginning in permission can become adverse only upon a ‘notorious assertion of right.’” *Lustmann v. Lustmann*, 283 N.W. 387 (Minn. 1938) (citing *Collins v. Colleran*, 86 Minn. 199, 90 N.W. 364, 366 (Minn. 1902)). The case of *Collins v. Colleran* provides further guidance. There, the Minnesota Supreme Court held that:

where the relationship of father and son exists between the parties, it is held ... that the possession of the land of the one by the other is presumed to be permissive, and not adverse. To make such possession adverse, there must be *some open assertion of hostile title other than mere possession*, and knowledge thereof must be brought home to the one who owns the land. This doctrine is not affected by the fact that the occupant has paid all taxes for a number of years, has made valuable improvements, and apparently is exercising complete dominion over the property (emphasis added).

90 N.W. at 364. In *Collins*, the Court held that, given a close familial relationship, such as father and son, between claimant and record owner of land, even acts by the claimant such as “exercising complete dominion over the property” and “pay[ing] all taxes for a number of years” are not sufficient to defeat the permissive nature of the claimant’s possession. The evidence presented at trial falls squarely within the purview of *Collins*. The testimony presented indicated that Robert Weber had a cooperative, non-contentious relationship with the owners of the 39 Acre Parcel over time: first his in-laws, then his ex-wife Colleen Blade, and finally his son Defendant Roger Weber. None of the witnesses who testified in these proceedings were aware of any boundary line disputes regarding the garage, lean-to, or shed—thus supporting a conclusion that Robert Weber’s use of the disputed property was not hostile in nature.

Although Amy Weber testified that her father thought his property encompassed the garage, lean-to, and shed, as demonstrated when she and her father used a tape measure to

measure the One Acre Parcel sometime in the late 1980's, those acts did not constitute an open assertion of hostility against the record owner of the adjoining parcel (who was likely Colleen Blade at that time). Regardless of Robert Weber's subjective beliefs regarding the location of the westerly boundary line of his parcel, Robert Weber would have needed to make a notorious assertion of his hostile title to the record owner of the adjoining parcel to convert his permission possession of the land into hostile possession. Robert Weber did not make such an assertion.

Plaintiff claims that the facts of this case are analogous to the facts set forth in *Ebenhoh v. Hodgman*, 642 N.W.2d 104 (Minn. Ct. App. 2002), in which the court determined that the claimants' claim of possession against the record owners was hostile, rather than permissive, even though the claimants and owners were part of a close family that regularly socialized together. Plaintiff's argument is not persuasive. The language cited by Plaintiff from the *Ebenhoh* opinion clearly recognizes that "this hostility [in possession] commenced when Sanders, who was unrelated to claimant's [family], owned the [adjoining] parcel." Thus, the period of hostile possession commenced in *Ebenhoh* when the affected properties were owned by non-relatives. As discussed above, from 1953 to 2013, all of the transfers of ownership of the parcels were intra-family transfers within the Dodson and Weber families. Plaintiff, who purchased the One Acre Parcel in April 2013, was the first non-relative to purchase either of the parcels.

To the extent that Plaintiff appears to argue that Colleen Blade's ownership of the 39 Acre Parcel from 1986 to 1998 was sufficient to convert Robert Weber's possession of the property from permissive to hostile, such argument lacks merit. Defendant Roger Weber, Colleen Blade's son, and his father Robert Weber held the One Acre Parcel as joint tenants from 1976 to 1996. Regardless of the relationship between ex-spouses Colleen Blade and Roger

Weber, Plaintiff has not met the high burden to show hostility of possession between Defendant Roger Weber, as a joint tenant, and his mother. As the Minnesota Supreme Court has recognized, in adverse possession cases, the presumption of permissive possession is strongest as between parent and child, and “[adverse possession] cases arising between parent and child are in a class by themselves.” *Beitz v. Buendiger*, 144 Minn. 52, 55, 174 N.W. 440, 441 (Minn. 1919).

Plaintiff failed to prove by clear and convincing evidence that Plaintiff’s predecessors in title possessed the disputed property to the west of the One Acre Parcel, encompassing the garage, lean-to, shed, and septic system, with the required hostility necessary to support a claim for adverse possession.

#### **B. Prescriptive Easement**

A prescriptive easement claim “involves the same elements of proof as an adverse possession claim,” but the actual, open, hostile, continuous, and exclusive elements apply to use, rather than to possession, of the property. *Boldt v. Roth*, 618 N.W.2d 393, 396 (Minn. 2000). The presence of a familial relationship between the parties gives rise to “the inference, if not the presumption” that the use is permissive for both adverse possession and prescriptive easement claims. *Id.* at 396-97. Plaintiff’s claim for a prescriptive easement fails on the same grounds as Plaintiff’s adverse possession claim. Plaintiff failed to prove, by clear and convincing evidence, that his predecessor in title used the disputed property to the west of the One Acre Parcel, encompassing that garage, lean-to, shed, and septic system, in a manner hostile to Defendants’ predecessors in title.

### **III. Plaintiff failed to prove his claim for trespass.**

“The tort of trespass is committed when a person intentionally enters or causes direct and tangible entry upon the land in possession of another.” *Johnson v. Paynesville Farmers Union Co-op. Oil Co.*, 817 N.W.2d 693, 701 (Minn. 2012) (internal quotations omitted). The law of trespass aims to prevent “disruption to the landowner's exclusive possessory interest” in his land. *Id.* at 702. Additionally, the tort of trespass is conceptually distinct from the property-related torts of nuisance or negligence, which are predicated upon the duties adjoining landowners owe to each other, in that: “trespass claims address tangible invasions of the right to exclusive possession of land, and nuisance claims address invasions of the right to use and enjoyment of land.” *Paynesville Farmers Union Co-op. Oil Co.* 817 N.W.2d at 705.

Plaintiff alleges that Defendant Roger Weber wrongfully damaged the outbuildings located on Plaintiff's property, and seeks \$20,000 in damages for the alleged trespass and property damage. Plaintiff's trespass claim hinges on his ability to prove that he owned the land upon which the damaged garage, lean-to, and shed were located. Based on a 2014 survey of Plaintiff's One Acre Parcel, completed by Northern Lights Land Surveying P.S.C., the three-stall garage and attached lean-to, prior to their partial destruction by Defendant Roger Weber in April 2013, were located atop the westerly boundary line between the One Acre Parcel and the 39 Acre Parcel, such that approximately one-third of the structure was located on Plaintiff's One Acre Parcel, and two-thirds of the structure was located on Defendants' 39 Acre Parcel. The survey further establishes that the single stall shed was located entirely within the boundaries of the 39 Acre Parcel.

Plaintiff failed to prove his claims for adverse possession or prescriptive easement, through which Plaintiff attempted to obtain title to disputed land located west of Plaintiff's One

Acre Parcel, including the garage, lean-to, and shed. Since Plaintiff did not prevail in his adverse possession claim, the structures damaged by Defendant Weber were located on Defendants' side of the boundary line. Defendants were the rightful owners of the buildings Roger Weber destroyed.

The tort of trespass "requires only two essential elements: a rightful possession in the plaintiff and unlawful entry upon such possession by the defendant." *Wendinger v. Forst Farms, Inc.*, 662 N.W.2d 546, 550 (Minn. Ct. App.2003). Plaintiff failed to prove either of these elements. Because his claims for adverse possession and prescriptive easement failed, Plaintiff was not able to prove that he rightfully possessed the land upon which the damaged portions of the garage, lean-to, and shed were located. Additionally, Plaintiff did not observe Defendant Roger Weber enter his property when removing the shed and a portion of the garage; the only evidence of Defendant Roger Weber's entry onto Plaintiff's land were some ruts in the mud from a vehicle and some debris left in the driveway of Plaintiff's one acre parcel. Plaintiff was not able to prove other unlawful entry onto Plaintiff's property by Defendants, and Plaintiff did not seek damages associated with the ruts or debris left on his One Acre Parcel, caused by Defendant Roger Weber's removal of the structures on Defendants' side of the property line.

In the alternative, even if Plaintiff were able to demonstrate trespass to his land, Plaintiff failed to prove an appropriate measure of damages for such intrusion. Plaintiff hired real estate appraiser Gregory Perrella to complete an appraisal of the value of the One Acre Parcel. For the reasons discussed below, the appraisal provided by Gregory Perrella is insufficient to support Plaintiff's claim for damages resulting from Defendants' alleged trespass.

At the time Perrella viewed the property in July 2013, the shed had been totally removed, except for the concrete pad, and a substantial portion of the garage and lean-to had



been removed. Perrella determined the “as is” value of the One Acre Parcel, without any functional garage stalls, to be \$28,600, and determined that the property’s fair market value with the addition of four useable garage stalls would be \$48,600, representing a \$20,000 increase in value. Perrella reached this conclusion by applying the general rule that, in his experience, each stall of useable garage space on a residential property for a property similar to Plaintiff’s typically adds approximately \$5,000.00 in value to the property. Perrella admitted that, in concluding that four additional garage stalls would increase the value of the property by \$20,000, he did not take into account the condition of the particular structures at issue in this case, nor did he account for the fact that a portion of the garage and lean-to, and the entirety of the shed, were located on Defendants’ property.

#### **IV. Conclusion**

Although the Court is sympathetic to Plaintiff’s plight, and in no way condones the rash actions of Defendant Roger Weber, Plaintiff has not pled claims or established facts in support of those claims that entitle him to relief under the circumstances. Plaintiff failed to prove his claims for adverse possession and prescriptive easement by clear and convincing evidence. Plaintiff failed to prove hostile possession or use of the disputed property by his predecessors in title, thus defeating his claims for adverse possession and prescriptive easement.

Plaintiff’s trespass claim fails because Defendant Roger Weber damaged structures that were located upon his own property; Plaintiff did not prove that he rightfully possessed the land upon which Defendant Roger Weber damaged property. Additionally, even if Plaintiff were able to demonstrate trespass to his land, Plaintiff failed to prove an appropriate measure of damages for such intrusion.

L. J. L.