

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31294

PHIL DOHN and EVELYN DOHN,

Plaintiffs and Appellees,

v.

DUMONT HOLDINGS, LLC, and all
Unknown persons who may claim any interest
in the subject matter of this action,

Defendants and Appellants.

APPEAL FROM THE CIRCUIT COURT
FIRST JUDICIAL CIRCUIT
YANKTON COUNTY, SOUTH DAKOTA

THE HONABLE DAVID D. KNOFF
Circuit Court Judge

APPELLANT, DUMONT HOLDINGS, LLC'S BRIEF

Robert W. Klimisch
KLIMISCH LAW. P.C
101 West 2nd Street
Yankton, SD 57078
Telephone: (605) 665-9495

Michael L. Snyder
Reece M. Almond
DAVENPORT, EVANS, HURWITZ &
SMITH, LLP
206 West 14th Street
Sioux Falls, SD 57101
Telephone: (605) 336-2880

ATTORNEY FOR APPELLANT,
Dumont Holdings, LLC

ATTORNEY FOR APPELLEES

Notice of Appeal filed on November 14th, 2025.

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JURISDICTIONAL STATEMENT

Defendant, Dumont Holdings, LLC appeals from an ORDER AND JUDGMENT TO QUIET TITLE TO REAL PROPERTY dated the 14th day of October, 2025, and filed in the office of the Clerk of Courts within and for Yankton County, South Dakota on October 14th, 2025, by the Honorable David D. Knoff, wherein the Court granted the Plaintiff's Motion for Summary Judgment awarding property titled in the Defendant, Dumont Holdings, LLC to the Plaintiff. The Plaintiff filed their Notice of Entry of Judgement on October 15th, 2025. The Defendant, Dumont Holdings, LLC, filed its Notice of Appeal on November 14th, 2025.

LEGAL ISSUES

1. Whether genuine issues of material fact precluded summary judgment on the statutory requirements of substantial enclosure or usual cultivation or improvement under SDCL 15-3-13.

The Court held that a fence was a substantial enclosure.

List of relevant cases:

Lewis v. Aslesen, 635 N.W.2d 744 (2001 S.D. 131)

2. Whether genuine issues of material fact preclude summary judgment on the open and notorious element of adverse possession.

The Court held that Dohns had grazed livestock on the area that is in dispute.

List of relevant cases:

Hamad Assam Corp. v. Novotny, 737 N.W.2d 922 (2007 S.D. 84)

3. Whether genuine issues of material fact preclude summary judgment on the continuous and exclusive possession of elements of adverse possession.

The Court held that the Dohns had exclusive possession of the disputed area for the required statutory period.

List of relevant cases:

Lewis v. Aslesen, 635 N.W.2d 744 (2001 S.D. 131)

Lewis v. Moorhead, 522 N.W.2d 1 (S.D. 1994)

STATEMENT OF THE CASE AND FACTS

This matter was before the Honorable David D. Knoff, Circuit Court Judge, First Judicial Circuit, pursuant to an action to quiet title in real property. On August 5th, 2025, the Court heard the Plaintiff's Motion for Summary Judgment. On October 14th, 2025, an Order and Judgment to Quiet Title to Real Property was filed granting the Plaintiff's Motion awarding property titled in the Defendant, Dumont Holdings, LLC to the Plaintiff.

All references to the record will be as follows:

- a. Parties: Plaintiff, Phil Dohn ("Dohn"); Plaintiff, Phil Dohn and the Plaintiff, Evelyn Dohn, collectively ("Dohns"); Defendant, Dumont Holdings, LLC ("Dumont").
- b. Plaintiff's Statement of Undisputed Material Facts dated 6/03/2025 shall be referenced by paragraph (PUF ¶___).
- c. Deposition of Phil Dohn dated June 27th, 2025 shall be referenced by page and line (Dep Page ___ Line___). Appendix #3.
- d. Affidavit of Ethan Klimisch dated July 21st, 2025 shall be referenced by paragraph (AEthan ¶___). Appendix #4.

The Dohns are record title holders and owners in fee of certain real estate in

Yankton County, South Dakota, described as:

Lot 3, Block 2, English Heights, in the Northeast Quarter, Section 13, Township 93 North, Range 57 West of the 5th P.M., containing 0.63 Acres, more or less;

Dohn's Addition in the Northeast Quarter of the Northeast Quarter, Section 13, Township 93 North, Range 57 West of the 5th P.M., containing 3.45 Acres, more or less; and

The West 24 Feet of Dohn's Addition extending from the north line of Dohn's Addition to the south line of the Northeast Quarter of the Northeast Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$), and that area designated as a "private road," according to the duly recorded plat of Dohn's 2nd Addition and Wright's Addition located in the Northeast Quarter of the Northeast Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$), Section Thirteen (13), Township 93 North, Range 57 West of the 5th P.M., Yankton County, South Dakota, recorded in Book S13, page 135. (the "Dohn Land"). PUF ¶1.

The Dohns obtained title to the Dohn Land in June 1976. PUF ¶2. Dumont is the record title holder and owner in fee of certain real estate located in Yankton County, South Dakota, including the real estate immediately to the west of, and adjoining, the Dohn Land (the "Dumont Land"). PUF ¶3. The Dohn Land and the Dumont Land share a common property line border extending from North-to-South between the neighboring parcels. PUF ¶4. There is a barbed wire fence that also runs North-to-South that is situated between the Dohn Land and the Dumont Land (the "Fence"). PUF ¶5. While its exact age is unknown, the Fence was in existence when the Dohns purchased the Dohn Land in 1976. PUF ¶6. The Fence also encroaches approximately twenty-four feet beyond the true boundary line of the Dohn Land and onto the Dumont Land. PUF ¶8. This boundary area is referred to as the "Disputed Land," and its dimensions are

described as follows:

. . . the East 24 Feet of the Northwest Quarter of the Northeast Quarter of Section 13, Township 93 North, Range 57 West of the 5th P.M., Yankton County, South Dakota, lying West of Dohn's Addition, more fully described as follows:

Beginning at the NE 1/16 Corner of said Section 13, thence N00°18'45"W, along the N-S 1/16th line, a distance of 934.46 feet to the northwest corner of Dohn's Addition; thence N89°45'51"W a distance of 23.94 feet; thence S00°18'28"E a distance of 934.68 feet to the E-W 1/16 line; thence N89°44'15"E a distance of 24.02 feet to the Point of Beginning containing ± 0.51 Acres.

PUF ¶9.

In an earlier effort to address the issue with the Fence's location, a quitclaim deed was drafted and dated December 30, 1992, purporting to convey from Jean Marie English to the Dohn's certain real estate in Yankton County, South Dakota. PUF ¶10. However, as reflected in the instrument itself, the quit claim deed simply "re deeded" the Western 24 feet of the Dohn Land to the Dohns, which they already owned. PUF ¶11. Jean Marie English did not own the Disputed Land to make such conveyance. AEthan ¶10.

Dohn's only claim is that he raised livestock on the Disputed Land not claiming any other agricultural or pastoral purpose. See Dep Page 58 Line 9-21. Dohn admits that any livestock on the Dohn Land would need to be fenced in. Dep Page 53 Line 9-12. Dohn admits that all the fences used to enclose livestock still exist today. Dep Page 53 Line 9-14. Dohn admits that all the fences that existed on the Dohn Land in 1992 still exist today besides a few temporary structures. See Dep Page 50 Line 25; See Dep Page 51 Line 1-10; Dep Page 52 Line 17-21. The Disputed Land is not enclosed to provide for the raising of livestock contrary to Dohn's assertion. See AEthan ¶6.b; See AEthan ¶8. In

addition, Dohn constructed a corral area completely on Dohn Land purported to be an area to raise livestock. See AEthan ¶6.b; See AEthan ¶6.e.; See AEthan ¶7; See AEthan ¶5. Furthermore, the Disputed Land is not enclosed to allow for livestock to graze. See AEthan ¶6.b; See AEthan ¶6.e.; See AEthan ¶7; See AEthan ¶5

Dohn claims that he maintained the Fence. See Dep Page 71 Line 25. Dep Page 72 Line 1-2. Dohn admits that only his son knows that Dohn repaired the Fence. See Dep Page 66 Line 16-19. Dohn admits that he would not contact Alvin Hacecky (owner of Dumont Land) when he claimed to repair the Fence. See Dep Page 68 Line 4-7. Dohn admits that he would not ask for compensation from Alvin Hacecky (owner of Dumont Land) or any other Dumont owner for fixing the Fence. See Dep Page 71 Line 1-18. Dohn admits he used left over materials to fix the Fence. See Dep Page 71 Line 14-18. Dohn admits that he is not aware of purchasing anything specifically to fix the Fence. Only odds and ends that he had from other jobs. See Dep Page 69 Line 25. Dep Page 70 Line 1-4. Dohn admits that the only maintenance he did on the Disputed Land was fixing the Fence. See Dep Page 71 Line 25; and, See Dep Page 72 Line 1-2. Dohn admits that the last maintenance he did on the fence at issue was fifteen years ago or more. See Dep Page 72 Line 3-5. Dohn has maintained Dohn Land and has failed to maintain Disputed Land to current times. See AEthan ¶5; See AEthan ¶6.c.; See AEthan ¶6.d.; and AEthan ¶9.

The Dohns never moved or caused the Fence to be moved from its original location, and it has remained at the same location since at least 1976. In addition, Dohn

admits that all the fences used to enclose livestock still exist today. Dep Page 53 Line 9-14. Dohn admits that all the fences that existed on the Dohn Land in 1992 still exist today besides a few temporary structures.” See Dep Page 50 Line 25; See Dep Page 51 Line 1-10; Dep Page 52 Line 17-21. Dohn admits that all fences remain besides “pulling cattle panel or moving a gate, but the periphery, everything stayed the same.” Dep Page 52 Line 17-21.

The Dohns also built a barn located in part on the Disputed Land, which is used for storage. (Aethan ¶7; PUF ¶20.) Dohn knew that the barn was not located on the correct property line. See Dep Page 42 Line 21-23. Dohn admits that Alvin Hacecky (prior Dumont Land owner) knew that the barn was on the Disputed Land. See Dep Page 42 Line 21-23. “So if Alvin knew that you had encroached onto his property and it was Alvin’s property, he would be okay with you being in that disputed area? Absolutely positive, yeah.” See Dep Page 55 Line 22-25. See Dep Page 56 Line 7-11. This barn was built in approximately 1980, the barn has been maintained over the years, and it still exists today. PUF ¶21 & 22.

Dohn admitted to a close and harmonious relationship with Alvin Hacecky and his family. Dohn admits that he had a nice relationship with Alvin Hacecky. See Dep Page 56 Line 17-18. Dohn admits that Alvin Hacecky was never too worried about incidents occurring between Dohn and Hacecky. See Dep Page 32 Line 22-25. Dohn admits Hacecky and Dohn never had a hard word between themselves ever. See Dep Page 33 Line 2-3. Dohn admits the relationship between Hacecky and himself was a nice

association. See Dep Page 33 Line 4. Dohn admits that Alvin Hacecky and Dohn were “fast friends because we were over the fence of each other.” See Dep Page 33 Line 6-7. Dohn admits that Alvin Hacecky’s daughters babysat for Dohn. See Dep Page 33 Line 14-15. Dohn admits they were close to the Haceckys and attended church. See Dep Page 33 Line 16-22. Dohn admits that Alvin Hacecky knew that the barn was on the Disputed Land. See Dep Page 42 Line 21-23. Dohn admits that he knew the barn was not on the correct property line. See Dep Page 42 Line 21-23. “So if Alvin knew that you had encroached onto this property and it was Alvin’s property, he would be okay with you being in that disputed area? Absolutely positive, yeah.” See Dep Page 55 Line 22-25.

ARGUMENT

The circuit court’s grant of summary judgment should be reversed because genuine issues of material fact existed regarding whether the statutory prerequisites of SDCL 15-3-13 were satisfied and whether the alleged possession was open and notorious, continuous, and exclusive for the statutory period. Summary judgment is improper where reasonable factfinders could differ on these fact-intensive elements, and all reasonable inferences must be drawn in favor of the non-moving party. *Morgan v. Baldwin*, 450 N.W.2d 783, 785 (S.D. 1990).

1. Whether genuine issues of material fact precluded summary judgment on the statutory requirements of substantial enclosure or usual cultivation or improvement under SDCL 15-3-13.

Under SDCL 15-3-13, adverse possession without written title may be established only if the claimed land itself was either protected by a substantial enclosure or usually cultivated or improved. These statutory requirements are prerequisites to a valid adverse possession claim. *Lewis v. Aslesen*, 2001 S.D. 131, ¶ 7, 635 N.W.2d 744, 746. Adverse possession must be established by clear and convincing evidence. *Id.*

Viewed in the light most favorable to Dumont, the record contains conflicting evidence regarding whether the Disputed Land was protected by a substantial enclosure. Portions of the Disputed Land lacked fencing altogether, leaving the property open, and the existing fence was deteriorated and partially composed of natural objects rather than functional fencing. (AETHAN ¶ 5; ¶ 6.b; ¶ 6.c; ¶ 8.) Further, a fenced corral enclosing Dohn Land was located along the correct boundary line, not on the Disputed Land. (AETHAN ¶ 7.) Taken together, this evidence creates a genuine dispute of material fact as to whether the Disputed Land was enclosed in a manner sufficient to satisfy SDCL 15-3-13.

Dohn alternatively claimed that the Disputed Land was cultivated or improved through livestock use and fence maintenance. However, evidence indicates that the Disputed Land itself was not enclosed for livestock and the only effective livestock enclosure was located entirely on Dohn Land rather than on the Disputed Land. (AETHAN ¶ 5; ¶ 6.b; ¶ 6.e; ¶ 7.) Dohn admitted that livestock required fencing and asserted that the fences used to contain livestock remained in place over time, stating that aside from minor adjustments, “the periphery... stayed the same.” (Dep Page 53 Line 9–14; Dep

Page 52 Line 17–21.) Yet evidence indicates that the Disputed Land lacked fencing along its southern boundary, leaving the property open and incapable of containing livestock. In addition, Dohn constructed a corral area on Dohn Land for raising livestock, indicating that livestock were confined on Dohn Land rather than on the Disputed Land. (AEthan ¶ 6.b; ¶ 6.e; ¶ 5; ¶ 7.) The existence of the corral further demonstrates that fencing of the Disputed Land was unnecessary because livestock were confined elsewhere. (AEthan ¶ 6.b; ¶ 8.) These facts create a genuine dispute of material fact regarding whether livestock could have been confined to the Disputed Land at all. Moreover, Dohn testified that his only claimed use of the Disputed Land was raising livestock and did not identify any other agricultural or pastoral use of the property. (Dep Page 58 Line 9–21.)

Nor does the record establish improvement through fence maintenance. Dohn admitted that any repairs were made with leftover materials and ceased more than fifteen years ago. (Dep Page 69 Line 25–Page 72 Line 5.) He further acknowledged that the only maintenance performed on the Disputed Land consisted of fence repairs. (Dep Page 71 Line 25–Page 72 Line 2.) He also admitted that he never contacted the adjoining owner regarding such repairs and that only his son allegedly knew of them. (Dep Page 66 Line 16–19; Page 68 Line 4–7.) Evidence also shows that the Disputed Land has not been maintained in recent years. (AEthan ¶5; ¶6.c–d; ¶9.) This evidence creates a genuine dispute of material fact as to whether such sporadic and informal repairs constitute usual cultivation or improvement under SDCL 15-3-13.

Genuine issues of material fact existed regarding whether the statutory prerequisites were satisfied; summary judgment was improper.

2. Whether genuine issues of material fact preclude summary judgment on the open and notorious element of adverse possession.

In South Dakota, possession is open and notorious only if it is visible and apparent so as to provide the true owner notice of the adverse claim and an opportunity to protect their rights; sporadic or concealed uses do not satisfy the requirement. *Hamad Assam Corp. v. Novotny*, 2007 S.D. 84, ¶ 11, 737 N.W.2d 922, 925.

Viewed in the light most favorable to Dumont, the record demonstrates a genuine dispute regarding whether Dohn's alleged use of the Disputed Land was visible or apparent to the true owner. Unlike Dohn's maintained property, the Disputed Land itself received no comparable maintenance or improvement. (AEthan ¶5; ¶6; ¶9.) Photographic exhibits depict the Disputed Land as a dense strip of trees, brush, and tall grass separating otherwise maintained land and Dumont Land. (AEthan ¶6.) These conditions concealed activity occurring within the strip and support a reasonable inference that any use would not have been readily visible from surrounding properties.

Dohn's primary assertion of use was that livestock occasionally grazed on the Disputed Land. (Dep. 58:9–21.) Yet Dohn admitted that livestock required fencing and that the fencing used to contain livestock remained in place elsewhere on his property. (Dep Page 53 Line 9–14; Page 50 Line 25–Page 52 Line 21.) Evidence further indicates

that the Disputed Land itself was not enclosed for livestock use and that the only effective livestock enclosure was located entirely on Dohn Land. (AETHAN ¶5; ¶6.b; ¶6.e; ¶7.) Viewed in the light most favorable to Dumont, this evidence supports a reasonable inference that any livestock activity occurred within enclosed areas on Dohn Land rather than on the Disputed Land and therefore would not have been visible or apparent so as to provide notice of an adverse claim.

The absence of outward acts of dominion or visible use on the Disputed Land creates a genuine issue of material fact as to whether the possession was open and notorious, precluding summary judgment.

3. Whether genuine issues of material fact precluded summary judgment on the continuous and exclusive possession of elements of adverse possession.

Adverse possession requires proof that possession was continuous and exclusive for the statutory period. *Lewis v. Aslesen*, 2001 S.D. 131, ¶ 7, 635 N.W.2d 744, 746. Exclusive possession requires acts demonstrating dominion over the property and the physical exclusion of others under a claim of right. *Lewis v. Moorhead*, 522 N.W.2d 1, 4 (S.D. 1994).

Viewed in the light most favorable to Dumont, the record demonstrates genuine issues of material fact regarding whether Dohn exercised continuous and exclusive dominion over the Disputed Land. Evidence indicates that Dohn did not exercise ongoing control or dominion over the Disputed Land comparable to that exercised over his own

property. (AETHAN ¶6.) The absence of ongoing maintenance, improvements, or other acts demonstrating ownership supports a reasonable inference that Dohn did not possess the property as an owner to the exclusion of the true titleholder.

The evidence regarding livestock use likewise undermines any claim of continuous possession. The effective livestock enclosure was located entirely on Dohn Land rather than on the Disputed Land, and evidence indicates the Disputed Land itself was not enclosed for livestock use. (AETHAN ¶5; ¶6.b; ¶6.e; ¶7.) A reasonable factfinder could therefore conclude that any livestock activity occurred on Dohn Land rather than on the Disputed Land, negating continuous possession of Disputed Land.

There is also no undisputed evidence that Dohn excluded Dumont from the property or exercised control inconsistent with Dumont's ownership rights. At most, the record reflects limited or ambiguous use of a largely natural strip of land, which is insufficient to establish exclusivity as a matter of law. Nothing in the record indicates that Dumont or prior owners were ever prevented from accessing or using the Disputed Land. Nor does the record reflect that Dohn paid real estate taxes on Disputed Land, an act typically associated with ownership and exclusive control.

Genuine issues of material fact therefore existed as to whether Dohn exercised continuous and exclusive possession of the Disputed Land for the statutory period, precluding summary judgment.

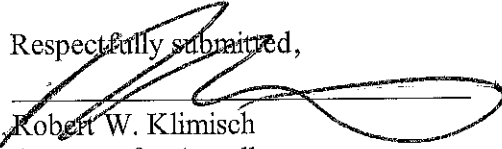
CONCLUSION

For the foregoing reasons, the circuit court erred in granting summary judgment. Genuine issues of material fact existed regarding whether the statutory prerequisites of SDCL 15-3-13 were satisfied and whether the alleged possession was open and notorious, continuous, and exclusive for the statutory period. When the evidence is viewed in the light most favorable to Dumont, Dohn was not entitled to judgment as a matter of law on Dohn's adverse possession claim, and summary judgment must be reversed.

Dumont respectfully requests that this Court reverse the judgment of the circuit court and remand for trial on the merits.

Dated this 23rd day of February 2026.

Respectfully submitted,



Robert W. Klimisch
Attorney for Appellant
101 West 2nd Street
Yankton, SD 57078
(605) 665-9495

CERTIFICATE OF COMPLIANCE

I, Robert W. Klimisch, hereby certify pursuant to SDCL 15-26A-66(b) (4), that the Appellant's brief was typed using Times New Roman – 12 point font; contains fifteen (15) pages inclusive of this page, has 3,522 words and 21,330 characters, exclusive of the spaces and words contained in the table of contents, table of cases, jurisdictional statement, and statement of legal issues.



Robert W. Klimisch

CERTIFICATE OF SERVICE

I, Robert W. Klimisch, hereby certify that the original and one copy were served upon the South Dakota Supreme Court and two (2) photocopies were served upon counsel for the Appellee, Reece M. Almond and Michael L. Snyder, via first class mail, postage pre-paid, to the following addresses on the ~~23~~²⁴ day of February, 2026, at the following addresses:

Clerk
South Dakota Supreme Court
500 East Capital
Pierre, SD 57501

Reece M. Almond
Michael L. Snyder
206 West 14th Street
PO Box 1030
Sioux Falls, SD 57101-1030


Robert W. Klimisch

APPENDIX

- #1. Order and Judgment Quiet Title to Real Property - October 14th, 2025. Consisting of two pages.
- #2. Memorandum Decision on Motion for Summary Judgement – October 2nd, 2025. Consisting of five pages.
- #3 Deposition of Philip Dohn – June 27th, 2025. Consisting of eighteen pages.
- #4 Affidavit of Ethan Klimisch – July 21st, 2025. Consisting of twenty-two pages.

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF YANKTON)

IN CIRCUIT COURT
FIRST JUDICIAL CIRCUIT

PHIL DOHN and EVELYN DOHN,

Plaintiffs,

vs.

DUMONT HOLDINGS, LLC, and all
unknown persons who may claim any interest
in the subject matter of this action,

Defendants.

66CIV. 24-000159

**ORDER AND JUDGMENT TO QUIET
TITLE TO REAL PROPERTY**

Plaintiffs, Phil Dohn and Evelyn Dohn, (the "Dohns"), having filed their Motion for Summary Judgment and the Court having held a hearing on said Motion before the Court on the 5th day of August, 2025, with the Honorable David Knoff presiding, the Dohns appearing by their counsel, Davenport, Evans, Hurwitz, & Smith, LLP, and Defendant Dumont Holdings, LLC, appearing by its counsel, Klimisch Law, P.C. The Court, having reviewed the pleadings, the records on file, and submissions of the parties, and hearing arguments of counsel, issued its Memorandum Opinion on Motion for Summary Judgment on October 2, 2025, which is incorporated in full herein, granting said Motion in full. Accordingly, it is hereby

ORDERED, ADJUDGED, and DECREED that Judgment be entered in favor of Plaintiffs Phil Dohn and Evelyn Dohn as follows:

1. Plaintiffs Phil Dohn and Evelyn Dohn are adjudged and declared to be the owners in fee simple absolute, based upon a claim of acquisition by adverse possession, of the following real property located in Yankton County, South Dakota, which dimensions are shown on Exhibit 1 to the Complaint dated May 6, 2024:

. . . the East 24 Feet of the Northwest Quarter of the Northeast Quarter of Section 13, Township 93 North, Range 57 West of the 5th P.M., Yankton County, South Dakota, lying West of Dohn's Addition, more fully described as follows:

Beginning at the NE 1/16 Corner of said Section 13, thence N00°18'45"W, along the N-S 1/16th line, a distance of 934.46 feet to the northwest corner of Dohn's Addition; thence N89°45'51"W a distance of 23.94 feet; thence S00°18'28"E a distance of 934.68 feet to the E-W 1/16 line; thence N89°44'15"E a distance of 24.02 feet to the Point of Beginning containing $\pm$ 0.51 Acres.

2. Defendant Dumont Holdings, LLC, and all unknown persons who may claim any interest in the above-described tract of real estate, have no right, title, or interest in and to the above-described tract of real property located in Yankton County, South Dakota.

BY THE COURT:

10/14/2025 1:53:40 PM

Attest:
Hall, Jessica
Clerk/Deputy



Honorable David Knoff
Circuit Court Judge

NO OBJECTION AS TO FORM BY COUNSEL

STATE OF SOUTH DAKOTA
COUNTY OF YANKTON

FILED

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July L. Johnson
Yankton County Clerk of Courts
1st Judicial Circuit Court of South Dakota

CIRCUIT COURT
FIRST JUDICIAL CIRCUIT

PHIL DOHN and EVELYN DOHN,

66CIV24-159

PLAINTIFF,

vs.

DUMONT HOLDINGS, LLC, and all
unknown persons who may claim any
interest in the subject matter of this action,

MEMORANDUM DECISION ON
MOTION FOR SUMMARY JUDGMENT

DEFENDANTS

This matter comes before the Court on Plaintiffs Motion for Summary Judgment. The Court has reviewed the briefs and submissions of the parties including affidavits and the Statements of Uncontested Material Facts as well as any objections to those statements and the depositions submitted.

FACTS

In 1976 Phil and Evelyn Dohn (Dohns) purchased property west of Yankton from Edward and Jean English. Dumont Holdings, LLC (Dumont) owns property adjacent to and directly west of the Dohn property. The legal descriptions of the property are not contested, nor are the basic facts about the disputed property. There is a strip of property approximately twenty-four feet wide of which Dumont is the record owner. This strip travels north-south along the parcels. There has been a fence twenty-four feet west of the east property line of Dumont since the Dohns owned the property. There has been a fence on the western side of the disputed property at least since Dohns have owned the property. The recent condition of the fence shows it is not well kept, however Dohns have owned the property for nearly 50 years.

Dohns were aware the fence line was not on the actual property line. The predecessor to Dumont, Alvin Hacecky (Hacecky), was also aware the fence was not on the true property line. Dohns went to Jim Goetz, an attorney in Yankton to get title to this property. Instead of preparing a quit claim deed from Hacecky to Dohns for the disputed property, Goetz prepared a

quit claim deed from Jean English to Dohns for the westernmost twenty-four feet of Dohns property that they already owned. This obviously did nothing for title to the disputed property. In approximately 1980 Dohns built a barn that sits partially on the disputed land. That building has been maintained and exists today. Only Dohns have used the building. There is also a fence from the barn for a corral that is near or on the property line. This is evidenced by a hand drawing on a survey (Defendant's exhibit A6). The corral does not run the entire length of the property and it is rectangular shaped.

There is no evidence Hacecky has ever used the property or asserted any type of ownership to the property. Dohns also claim to have run livestock on the disputed property, up to the fence line. This is disputed by Dumont, but not by any affirmative evidence that livestock were never on the property. Dumont claims that Phil Dohn testified the fence has not been modified or taken down in any way and exists in the way it did since 1976. Dumont claims that since there is not presently a south fence on the disputed property, there could be no livestock because there would not be an enclosure to hold them in and they would have walked out. This is not the entirety of the conversation, as Phil Dohn also testified that he had a sheep fence on the south end to hold in the livestock. In fact, in Phil Dohn's deposition he was asked specifically about whether or not animals could get out on the south end and he answered no and explained there was a fence in place. Phil Dohn deposition, page 29.

Dumont argued also that the requirements of adverse possession have not been shown by Dohns.

DECISION

Summary judgment is authorized under SDCL § 15-6-56(c), "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law." It also provides that all reasonable inferences drawn from the facts must be viewed in favor of the non-moving party. Furthermore, unsupported conclusions and speculative statements do not raise a genuine issue of fact." *Dakota Industries, Inc. v. Cabelas.com*, 2009 SD 39, ¶ 20, 766 N.W.2d 510, 516. "Summary judgment is not a substitute for a court trial or for trial by jury where any genuine issue of material fact exists." *Ahl v. Arnio*, 388 N.W.2d 532, 533 (S.D. 1986).

Those claiming ownership to land through adverse possession must show that their possession was "actual, open, visible, notorious, continuous, and hostile" for over twenty years. Under SDCL 15-3-13, adverse possession can be established only if it "has been protected by a substantial enclosure or [if] it has been usually cultivated or improved." This statute thus provides a prerequisite to a justiciable adverse possession claim. Failure to show either a substantial enclosure or usual cultivation or improvement preempts the claim. Furthermore, adverse possession must be shown by clear and convincing evidence. *Lewis v. Aslesen*, 2001 S.D. 131, ¶ 7, 635 N.W.2d 744, 746 (citations omitted).

The Court will first determine whether the property has been protected by a substantial enclosure or usually cultivated or improved. The response by Dumont for whether or not this parcel has been substantially enclosed is that it is not currently in good condition. The fence has been in place since at least 1976. Dohn has exclusively maintained the fence until the early 2000's. The fence between the Hacecky property and the disputed property, which is treed in, shows a true demarcation. This is sufficient to show a physical and visual basis for determining the property line. *Lewis v. Moorhead*, 522 N.W.2d 1, footnote 4, (S.D. 1994) citing *Klinefelter v. Dutch*, 467 N.W.2d 192, 194-195 (App. 1991).

The property has also been cultivated or improved. The uncontested facts are that Dohns have run livestock on the disputed property for more than 20 years. Dumont's argument that Dohn said no fences were removed did not impeach his own testimony. He was asked specifically about whether or not a fence would have stopped livestock from escaping to the south, and Dohn answered specifically that there was a fence.

Dohns also put a barn on the disputed property which shows an improvement. Dumont offers a statement by Phil Dohn in his deposition that if Hacecky had known the barn was built on his property, Hacecky would have been ok with it.¹ This is offered, assumably, to thwart any claim that the possession of the land was not hostile. This is insufficient evidence because the question asked in the deposition and the answer given are not actual evidence of what happened, but are speculative in nature. When a party opposes a motion for summary judgment, they

¹ As stated earlier, both parties were aware the fence line was not the actual property line. It is apparent the parties did not know the precise location of the true property line.

cannot rely on speculation. *Dakota Industries, Inc.* at ¶20. Hacecky never gave permission to use the ground. The only evidence is Hacecky honored the fence line.

Having met their prerequisite to their justiciable claim for adverse possession, we will turn to whether Dohns possession was “actual, open, visible, notorious, continuous, and hostile” for over twenty years. The claimant's occupation must be of such a nature as “to give the true owner notice of actual possession and to put him on inquiry as to the invasion of his rights.” *Fuoss v. Dahlke Fam. Ltd. P'ship*, 2023 S.D. 3, ¶24, 984 N.W.2d 693, 701. 51. Outside of meeting the required elements, there is nothing the adverse possessor needs to do to solidify the grant: “[a]dverse possession occurs by operation of law and does not require an action to commence it, nor to continue it.” *Johnson v. Biegelmeier*, 409 N.W.2d 379, 382 (S.D. 1987); 3 Am. Jur. 2d Adverse Possession § 7 (“At the end of the appropriate statutory limitations period, the presumption that there was a grant crystallizes into a rule of law and becomes irrebuttable.”).

Dohns occupation has been shown by the enclosure, cultivation and improvement of the disputed property. *Titus v. Chapman*, 2004 S.D. 106, ¶ 28. No evidence has been asserted by Dumont that they or their predecessors, or anyone else for that matter, have asserted any rights to the disputed property. Only Dohns have been utilizing the disputed property since 1976, going far beyond the 20 year period. Dohns ran livestock and built a barn on a portion of the disputed property. They maintained the fence. Any speculation that Hacecky would have allowed the barn to be built on his property or livestock allowed to roam is not the same as permission to use. The exclusive test of adverse possession is the physical exclusion of others under a claim of right. *Lewis*, 522 N.W.2d at 4. Dohns have established this.

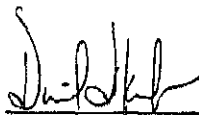
CONCLUSION

The disputed property has been under the exclusive possession of Dohns since 1976. The non-moving party in a motion for summary judgment has the obligation to provide competent facts that there is a legitimate dispute to adverse possession. They have simply not provided any evidence that the disputed property has been used by anyone other than Dohns for nearly fifty years. There is a sufficient fence that delineates the disputed property from Dumont property. There are several ways Dohns have established ownership, and only one is necessary. Dohns have run livestock on the property, they built a barn on the property and as stated earlier, their

property is enclosed by the fence line. All this was exclusive of any other person. Dohns are the owners of the disputed property by adverse possession.

Counsel for Dohns shall prepare an Order.

Dated October 2, 2025



David Knoff
Circuit Court Judge

ATTEST:

Jody Johnson
by J. H. Bell



1 STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
 :SS
 2 COUNTY OF YANKTON) FIRST JUDICIAL CIRCUIT
 3 *****
 4 PHIL DOHN and EVELYN DOHN,)
)
 5 Plaintiffs,)
) 66CIV. NO. 24-000159
 6 vs.)
)
 7 DUMONT HOLDINGS, LLC, and all)
 8 unknown person who may claim any)
 9 interest in the subject matter)
)
)
)
)
 10 Defendant.)
 11 *****
 D E P O S I T I O N O F
 12 Philip Dohn
 13 *****
 14 APPEARANCES: Mr. Michael L. Snyder
 Attorney at Law
 206 West 14th Street
 Sioux Falls, South Dakota 57101
 ATTORNEY FOR THE PLAINTIFFS;
 16 Mr. Robert W. Klimisch
 Attorney at Law
 101 West 2nd Street
 Yankton, South Dakota 57078
 ATTORNEY FOR THE DEFENDANT.
 19 PROCEEDINGS: The above-entitled matter commenced at
 20 1 o'clock p. m. on the 27th day of
 21 June, 2025, at the Yankton County
 Courthouse, Yankton, South Dakota.
 22
 23
 24 Dean Schaefer
 25 Freelance Court Reporter
 Yankton, South Dakota 57078

1 Philip Dohn,
2 called as a witness, being first duly sworn by the court
3 reporter, testified as follows:

4 (Counsel agreed to the following stipulation
5 with the addition of Mr. Snyder's statement)

6 S T I P U L A T I O N

7 It is stipulated and agreed by and between the
8 above-named parties through their attorneys of record,
9 whose appearances have been hereinabove noted, that
10 the deposition of Philip Dohn may be taken at this time and
11 place, that is, Courtroom D of the Yankton County
12 Courthouse, Yankton, South Dakota, on the 27th day of
13 June, 2025, commencing at the hour of 1 P.M.; said
14 deposition taken before Dean Schaefer, a Notary Public
15 within and for the State of South Dakota; said deposition
16 taken for the purpose of discovery or for use at trial or
17 for each of the said purposes, and insofar as counsel are
18 concerned the reading and signing of the transcript by the
19 witness is waived, and the original of the deposition will
20 be mailed or PDF'd to the defendant's counsel to be filed at
21 the appropriate time.

22 It is further stipulated that all objections are
23 reserved until the time of trial, except as to the form of
24 the question.

25

1 Q And, Phil, when --- in 1972, when you bought the
2 Dohn land, who owned the Dumont land?

3 A That was owned by Alvin Hacecky.

4 Q He would have owned in 1972?

5 A I think -- I can't tell you that. Alvin Heine came
6 to me and tried to interest me in buying that 40
7 that lies immediate to the west, but I was spending
8 my capital in my own enterprise and this was
9 secondary. So I didn't regretfully, but, hey, you
10 know, it was probably still the right decision this
11 wise. And then Alvin had it for a long time and he
12 ran his own cattle on it. And it wasn't unusual for
13 he to come up and check the fence, you know. And
14 the gate which Dumont has taken out now, I -- I
15 replaced that for him because they were going
16 through that. And you notice there is -- there is a
17 newer greener post there, but in essence the -- a
18 number of times I'd saddled my -- my roping horse
19 and with a white shirt and a tie go try to shag a
20 couple animals. They -- they get down on the golf
21 course and so here is the drug store cowboy herding
22 four or five cows back up and in. And Alvin, he was
23 -- he never really got excited about things. He --
24 you know, but -- and so you know when I -- when I
25 did things he was -- he was -- he was happy and he

1 could see that, you know, I was keeping his eastern
2 boundary, you know, maintained. And you know we
3 just -- we never had a hard word between us ever.
4 It was -- it was just a nice association.

5 Q So would you guys say friends?

6 A Oh, ab -- well, we -- we became fast friend because
7 we were over the fence of each other.

8 Q And he was happy with you looking over the fence
9 and you were happy helping him out when it needed to
10 be done?

11 A Well, I needed the integrity of that fence. Also
12 to keep his animals. Once in a while they get into
13 my yard or -- I had a little orchard I started
14 there. I didn't need that, you know, so. We used
15 his daughters as baby-sitters years back and so.

16 Q So you'd say you are close to the family?

17 A Yeah; yeah.

18 Q You guys do anything else social besides just
19 visiting at certain times or what was your social
20 interaction?

21 A You know, church once in a while, or, you know, but
22 you know his -- he had a son. I can't remember his
23 name now, but he -- he took over the cattle
24 operation and then had a heart attack and died and I
25 think that's when there was -- I believe there was

1 do that. Probably didn't include them, but I do
2 have -- I have pictures at home of it when we -- we
3 moved that on a stack mover from the high school and
4 went out and we laid a foundation and put it on
5 that. But it -- it -- I -- this is an honest guess,
6 maybe '76, '78. Somewhere in there.

7 Q Would be the barn?

8 A The barn, yeah.

9 Q Okay.

10 A Yeah.

11 Q And, Phil, have you added any other structures to
12 the Dohn land or your adjacent property that you've
13 owned except for the fencing we made reference to
14 and then the barn?

15 A Yeah. Here. Right here. I -- I moved in a
16 building I bought here in town and I used that for
17 my carriages. And -- and then after that I needed
18 something that I could access to put -- put my -- my
19 fishing boat in. And so we built that.

20 Q Okay.

21 A And -- and hang on. You know, I -- I said to Ed,
22 you know, this is going to come close to that fence
23 and he said, oh, I'll get that taken care of. That
24 was his words. That was over 30 years ago and
25 that's about when I built that.

1 addressing.

2 A Uh-huh.

3 Q Did you add anything to that fence, like make it

4 any longer or do anything to that fence?

5 A No.

6 Q And all the fences that are currently there are --

7 they've been there -- have you taken any fences down

8 on any of your property?

9 A No.

10 Q So any of the fences you have have been located

11 there since probably the early '90s, is that

12 probably fair?

13 A Well, the fence in question was there in '71.

14 Q Okay.

15 A And I had horses -- my math is failing me, but if

16 you'd -- at least 45 years.

17 Q Okay. No. So, Phil, sorry just to rephrase it.

18 All the fences that are currently located on Dohn

19 land in any adjacent property that you own are

20 fences that have been there for 45 years --

21 A No; no. The -- when I bought Dohn's addition --

22 Q Okay.

23 A -- to the west, whatever that date was, that would

24 be the -- be the date of that.

25 Q Okay. And I believe it was in '92, but whatever

1 date it is, from that date to today, those fences
2 were put in and they've been there since that time
3 --
4 A Yes.
5 Q -- is that fair?
6 A Yes.
7 Q Okay. So there is no fences on any of your
8 property that you've taken down on either Dohn land
9 and or your adjacent property?
10 A No.
11 Q Okay.
12 A No.
13 Q So all the fences look like they would have looked
14 like back whatever period of time at least to '92
15 and before?
16 A If they were there, yeah.
17 Q Okay.
18 A Yeah.
19 Q And then, Phil, looking at Exhibit 2, page four,
20 picture one.
21 A That's my son, Matt.
22 Q Picture two?
23 A My son John and Matt.
24 Q An picture three?
25 A I think it's two boys again, but -- yeah. Those

1 are two colts we bought in Valentine, yeah.

2 Q Okay. And regarding the fencing that's in each one

3 of those pictures, that fencing is all still located

4 there today?

5 A We used cattle panels to -- the vehicle in this

6 picture is mine.

7 Q In which picture are you referencing on page four?

8 A Yeah, page four, yeah. I think that was a '76

9 model or something. I don't know. Yeah, but we

10 kept more than just a couple years. You know, when

11 -- when you have bucket calves you do put in some

12 temporary things and that may have been what we're

13 looking at there. Yeah. And, truthfully, you know,

14 I can't give you an accurate picture -- accurate

15 answer on these two pictures as to -- about the

16 fence.

17 Q Okay. But all fences that are there -- you haven't

18 taken any fences down, you might have taken --

19 A May have -- may have -- may have pulled a cattle

20 panel or moved a gate or something, but the

21 periphery, everything stayed the same.

22 Q Okay. And is it fair to say you wouldn't allow

23 your horses to run free? Is that fair, you would

24 keep them fenced in?

25 A Well --

1 Q Right? They are not going to roam the
2 neighborhood?
3 A Too many of these to let them run free.
4 Q It would be too expensive to lose livestock of some
5 sort?
6 A Yeah.
7 Q Okay.
8 A No, no, a sound area for them is very important.
9 Q So they would be -- they would be fenced -- any
10 livestock you would have on your property would be
11 fenced in?
12 A Yes; yes.
13 Q And all those fences are in existence today?
14 A Yes.
15 Q Okay. Except for the north fence which has been
16 removed?
17 A Which will be addressed I pray. And -- and these
18 here -- these -- these may have been a couple
19 paddocks that we moved, but you know -- and that's
20 -- and that's nothing major.
21 Q Okay. And, Phil, regarding the barn that -- so I
22 note on say Exhibit 4, it doesn't reference that
23 the barn is located in the disputed area. Is the
24 barn located in the disputed area?
25 A Not the barn.

1 A But I did not talk to Goetz. I did not commission
2 him. I did not pay one dollar.

3 Q Okay. Phil -- and then you said that Alvin
4 Hacecky, you two became fast friends?

5 A Yes; yeah. He would -- I respected what he did and
6 he saw the -- the timber lot that I had built on my
7 -- on my lot -- my house is here and so he would
8 come and ask me about different varieties of pines
9 and spruce and, you, know, this and that. He -- he
10 did build north of me about two miles there and he
11 -- yeah, you know, he was nice.

12 Q So it's fair to say you were -- well, you said fast
13 friends, so meaning close friends, too?

14 A He -- he knew -- he knew me and my wife because of
15 our commercial enterprises, but I don't remember
16 ever him coming to our residence for anything. He'd
17 -- he'd find his way up the driveway and we'd sit
18 and talk.

19 Q Okay. And then I think you said some of his kids
20 then baby sat your kids?

21 A Yeah; yeah.

22 Q Okay. So if Alvin knew that you had encroached
23 onto this property and it was Alvin's property, he
24 would be okay with you being in that disputed area?

25 A Absolutely positive, yeah. To him that fence was

1 the border.

2 Q Uh-huh.

3 A And we call it the 16th line or something, and

4 Baldy Deal didn't survey it that way, but -- what

5 was Peterson's name? He was the one that did the

6 second one.

7 Q Yeah. But, Phil, but if Alvin knew that that

8 property would be his property and you would be in

9 that property and the fence wasn't on the right

10 spot, Alvin would be okay with it?

11 A He'd been fine with it, yeah.

12 Q Okay.

13 A You know, I - I saved his cookies a few times

14 rounding up -- I'm not a roper but driving his

15 animals back and -- and he knew that I was

16 maintaining the fence. But he -- but he just, you

17 know, he was -- he -- we -- we had a nice

18 relationship.

19 Q And then regarding -- regarding when you were

20 putting up fence you would get that fence surveyed

21 prior to you putting that fence up?

22 A Absolutely, yeah, yeah.

23 Q So when you were putting up that fence you knew

24 that that fence that was on the west side wasn't in

25 the right location because you were surveying the

1 property?

2 A It was still listed agricultural ground. Ed

3 English did everything that way. He would say what

4 are you interested in and then he would -- he would

5 bring in a surveyor and then that would be the lot.

6 And you'd be bordered by either another surveyed lot

7 or agricultural ground and he got away with that

8 just fine.

9 Q And, Phil, regarding your -- your claim of material

10 facts on number 13, you said beginning in 1976, the

11 Dohns utilized Dohn land including the disputed land

12 for agricultural and pastoral purposes?

13 A True.

14 Q Okay. And you're referencing you had quarter

15 horses, bucket calves and even miniature donkeys.

16 When you are referencing agriculture on pastoral

17 purposes, is that what you're referencing?

18 A Yes.

19 Q Okay. Any other agricultural purposes beside the

20 livestock you're referencing?

21 A No.

22 Q Okay. And that's also anything in addition to the

23 pastoral purposes is again referencing livestock, is

24 that fair?

25 A That's fair.

1 them.

2 Q Phil, did Tom Kuchta ever go to your residence at

3 Dohn land?

4 A Sure, sure.

5 Q He'd be a friend of yours?

6 A His son was one of my pharmacy students and later

7 owned part of the store. But at one time I had a

8 lot of alpha square bales and I wasn't going to use

9 them. I said, Tom, come get them. And that's the

10 only time I can remember him being there, so, you

11 know, he was familiar with the place.

12 Q This is during the -- from '82 to '88, roughly?

13 A That's when -- yeah, that's when Tom would have

14 probably come, you know, because I -- I can't, you

15 know, who knows, you know.

16 Q Regarding fixing the fence, who would know that you

17 were fixing the fence at issue, who would know you

18 would have fixed the fence?

19 A My son, John.

20 Q Okay. And John was born when?

21 A See, he would have been born in '69.

22 Q Okay.

23 A You were born in '68?

24 Q '7?

25 A '70.

1 in horses was zero, unless a girlfriend wanted to
2 ride, then he'd say, Dad, how -- how do you do that
3 cinch knot, you know, you know, but, yeah.

4 Q So, Phil -- and regarding fixing the fence, would
5 you ever contact Alvin Hacecky, for example, to say,
6 hey, this fence needs to be fixed?

7 A I don't think so, no, because it -- it was never --
8 Rob, it was never major. It might be a run like
9 from that wall to the door. It was never major
10 things. And -- and in the -- in snow and timber is
11 -- and the drifting didn't -- you know, I could go
12 along with a fencing plier and a bag full of those
13 -- those ties that put it around the steel posts. I
14 was just fine. You know, it wasn't -- it wasn't a
15 major thing. You know, I'd -- I'd spend two, three
16 hours after work at night. That was -- that was my
17 Xanax, you know -- you know, accomplish something
18 and see what I had done.

19 Q And sorry. And, Phil, did anybody ever see you fix
20 the fence at issue besides John?

21 A You know, my wife is afraid of snakes, so she --
22 she didn't venture into the hinterland. And I
23 suppose Matt may have been aware of it. I don't
24 know. You know, he just -- he -- he hunted and
25 fished, but he had zero interest, you know. I did

1 -- I did get him a goat once and he taught the goat
2 how to buck. And enough of this, you know, and his
3 other livestock was a pet raccoon. So we, you know,
4 just kind of left that be that way.

5 Q And, Phil, did you when -- regarding fixing, when
6 you would fix the fence, did -- did you ever have
7 any receipts regarding any materials or anything --
8 did you -- well, sorry. Did you purchase anything
9 to fix the fence?

10 A You know, I -- I used to help a man in Nebraska and
11 he -- if I need something, he'd say what are you
12 looking for and I'd tell him. He'd say I got a part
13 roll of that, take it, you know. Because that was
14 my remuneration for watching his herd when he was
15 away or whatever. And, so, yeah, I -- I know I went
16 and I bought t-posts, but did I buy them for that
17 fence in question or did I -- did I buy them for the
18 new -- the new pastures that I had. I mean, yeah,
19 there -- there I bought new t-posts and bought wire
20 and, you know, and I went with that barbles for a
21 while until we got the calves. Then I had to
22 change, you know, yeah, you know, and I think
23 probably Bomgaars was -- was my -- my source for
24 that stuff.

25 Q And, Phil, is it fair to say you are not aware of

1 purchasing anything specifically for the fence at
2 issue to -- to fix this fence?

3 A No; no, I'm not. It was just odds and ends that I
4 had from my other jobs.

5 Q And, too, are you aware, did Alvin Hacecky ever
6 come up and repair or fix that fence?

7 A He could have. I mean, you know, he -- you know,
8 my -- he had -- well, his -- on the north end there,
9 I know a east west fence takes a lot more
10 maintenance than a north south. And this was a
11 north south. You know, I think maybe once I
12 mentioned to him, but this was not on my property,
13 it was on Dumont's ground that, you know -- you
14 know, a healthy poodle dog could have stepped over
15 it, it had been drugged out so far.

16 Q And you are referencing which fence?

17 A That was jerked down so far?

18 Q Uh-huh.

19 A Oh, that would not been -- it was a -- it was part
20 of Alvin's east west fence on the north end of the
21 acreage to the west of me. So it -- it didn't
22 concern me and I -- actually, I think he owned -- he
23 owned both pastures, so he -- he probably just
24 didn't care to keep it maintained.

25 Q Sorry, Phil. I think you said it, but you never

1 contacted either Alvin Hacecky or Dennis Hacecky or
2 any owners of the Dumont property to say that the
3 fence needs to be fixed? And I'm referencing the
4 fence at issue.

5 A Yeah. No, I don't.

6 Q And to your knowledge, you never contacted Dennis
7 Hacecky, Alvin Hacecky or any of the owners of the
8 Dumont land over the years to say that you fixed the
9 fence at issue?

10 A No.

11 Q Did you ever incur any expense regarding any repair
12 to the fence at issue?

13 A Like I say, I -- I used -- I used leftover
14 materials from my other fencing. And so, you know,
15 no. I -- I -- that was just inherent with what I
16 did.

17 Q So you wouldn't have asked --

18 A For money for it, nah.

19 Q And regarding, do you recall any other repair to
20 the fence at issue besides what you've testified to?

21 A I can't say that I do.

22 Q And, Phil, I'm referencing if anything was major,
23 that's what I'm referencing.

24 A No; no.

25 Q Any other maintenance besides what you've made

1 reference to to these repairs or walking the fence?

2 A No.

3 Q When would be the last repair or any maintenance
4 you've done to the fence at issue?

5 A Probably -- probably 15 years ago or more.

6 Q And are you referencing at the time that the horses
7 were no longer in that area?

8 A Yeah; yeah.

9 Q Referencing the early two thousands?

10 A Yeah, somewhere in there, right.

11 Q Okay. Then, Phil, you -- you made comment about
12 Bob Edwards. You know Bob Edwards?

13 A I do.

14 Q And how well do you know Bob Edwards?

15 A Pretty well. He's a neighbor.

16 Q And then where you are referencing that the gate
17 was on that Dumont property, I note that Bob Edwards
18 had put a gate up there. Did you help him and
19 instruct him to put a --

20 A No.

21 Q -- post there?

22 A No.

23 Q Did you pay for any of that_--

24 A No.

25 Q -- at the time?

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF YANKTON)

IN CIRCUIT COURT
FIRST JUDICIAL CIRCUIT

PHIL DOHN and EVELYN DOHN,

Plaintiffs,

vs.

DUMONT HOLDINGS, LLC, and all
Unknown persons who may claim any interest
in the subject matter of this action,

Defendants.

CIV. 24-000159

**AFFIDAVIT
OF
ETHAN KLIMISCH**

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF YANKTON)

Ethan Klimisch, being first duly sworn upon his oath, deposes and states as follows, to-wit:

1. Your Affiant is currently in the nurse anesthetist doctorate program in Sioux Falls, South Dakota.
2. Your Affiant is very familiar with the Dumont Property, Dohn Land, Fence and Disputed Land.
3. In approximately, July of 2022, your Affiant walked the Fence between the Dumont Property and the Dohn Land to determine access to Dumont Property from Stackerl Avenue, Yankton SD.
4. Since said date, your Affiant has walked the Fence multiple times to include inspection of the condition of the Fence, access and to hunt the Dumont Property.
5. At the initial observation until today, the condition of the Fence is extremely poor to include natural objects used as fence material.
6. Regarding the condition of Dumont Property, Dohn Land, Fence and Disputed Land, your Affiant has the following:
 - a. The southern point of the Fence is approximately 30 feet from the Southern property line. See Exhibit A1 (1 page).
 - b. A decorative wooded entrance railing on Dohn Land. There is not a fence to the East upon Dohn Land from the Southern point of Fence. See Exhibit A2 (1 page).
 - c. A post from the Fence showing a natural object being used as a fence post. See Exhibit A3 (1 page)
 - d. The Disputed Land is over grown compared to the Dohn Corral

(hereinafter defined) and area around Dohn's house. See Exhibit A4 (9 pages)

- e. There is an improved upon fenced-in corral area ("Dohn Corral") which west improved fence line appears to be on correct property line. Fence is approximately 20 to 30 feet from the west of the Dohn Corral west fence line. See Exhibit A5 (7 pages).
7. Dohn Corral is located on Dohn Land as noted as such in black. See Exhibit A6
8. The Disputed Land is not enclosed to allow livestock to roam.
9. Since July, 2022, Dohn regularly maintained Dohn Land by moving, tree trimming and similar landscaping activities none of which involved or occurred in the Disputed Area to include any repairs or maintenance to the Fence as well as, no tree trimming or removal of trees or debris from the Disputed Land.
10. At that time of platting Dumont Land, Dohn objected. Dohn claimed ownership of the Disputed Land and the land to the North. In comprise, the Disputed Land and the land to the North was not included in the lots created on Dumont Land. See A7 (1 page).

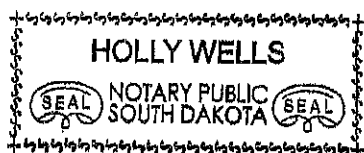
FURTHER YOUR AFFLIANT SAYETH NOT.

Dated this 21st day of July, 2025.



Ethan Klimisch
Affiant

Subscribed and sworn to before me this 21st day of July, 2025.



Notary Public - South Dakota
My Comm. Exp.: 3-20-2029

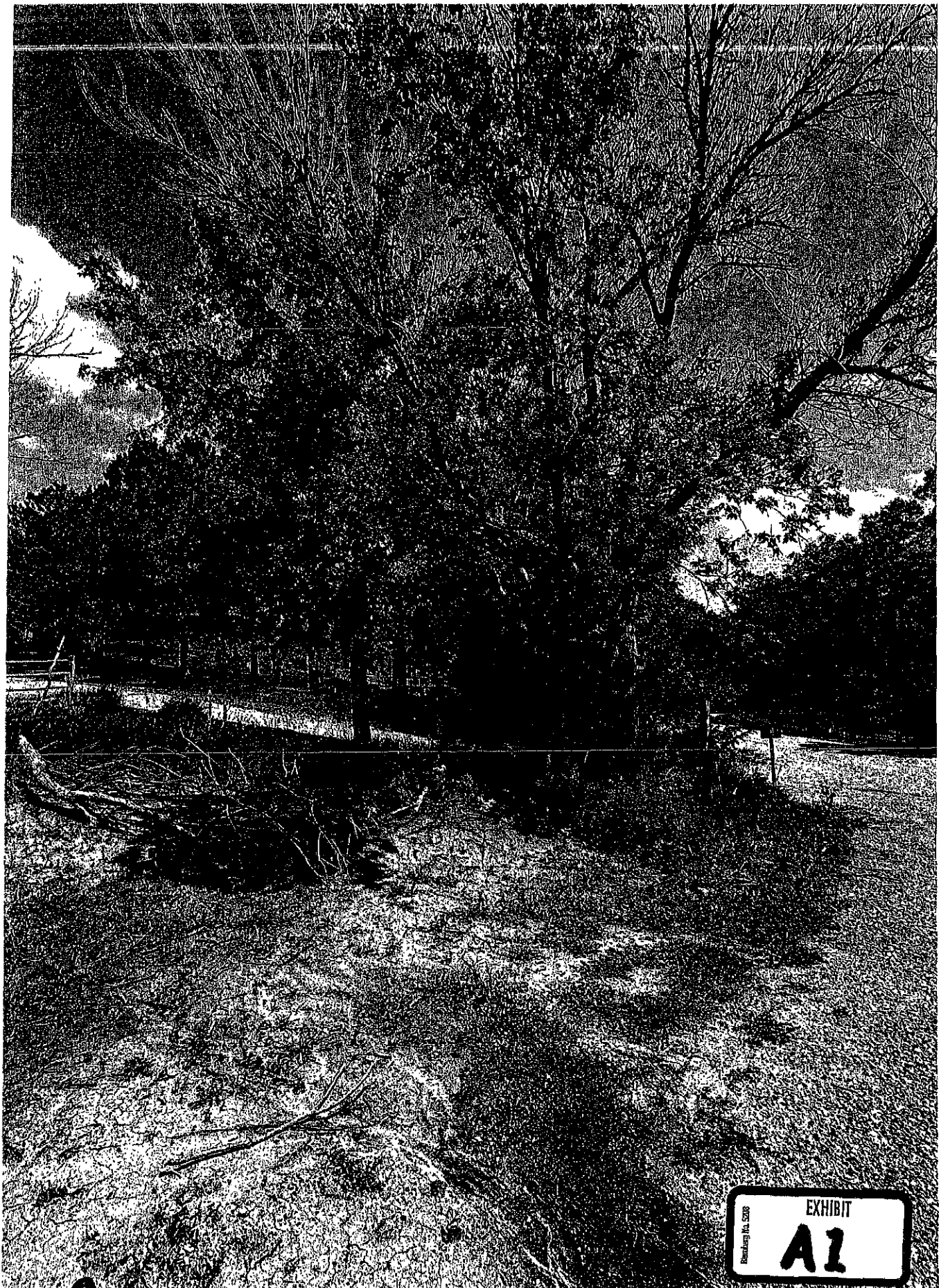


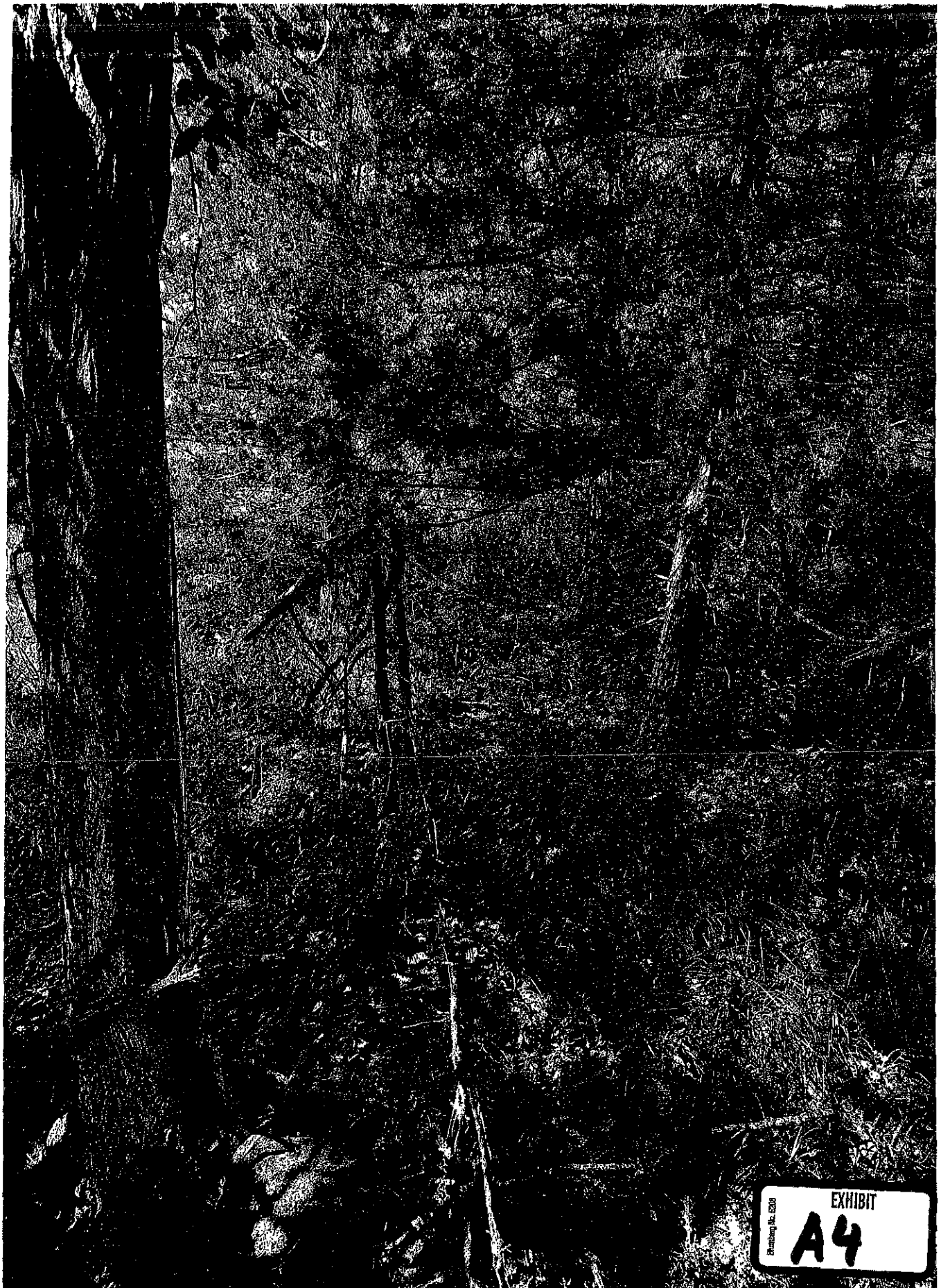
EXHIBIT
A1

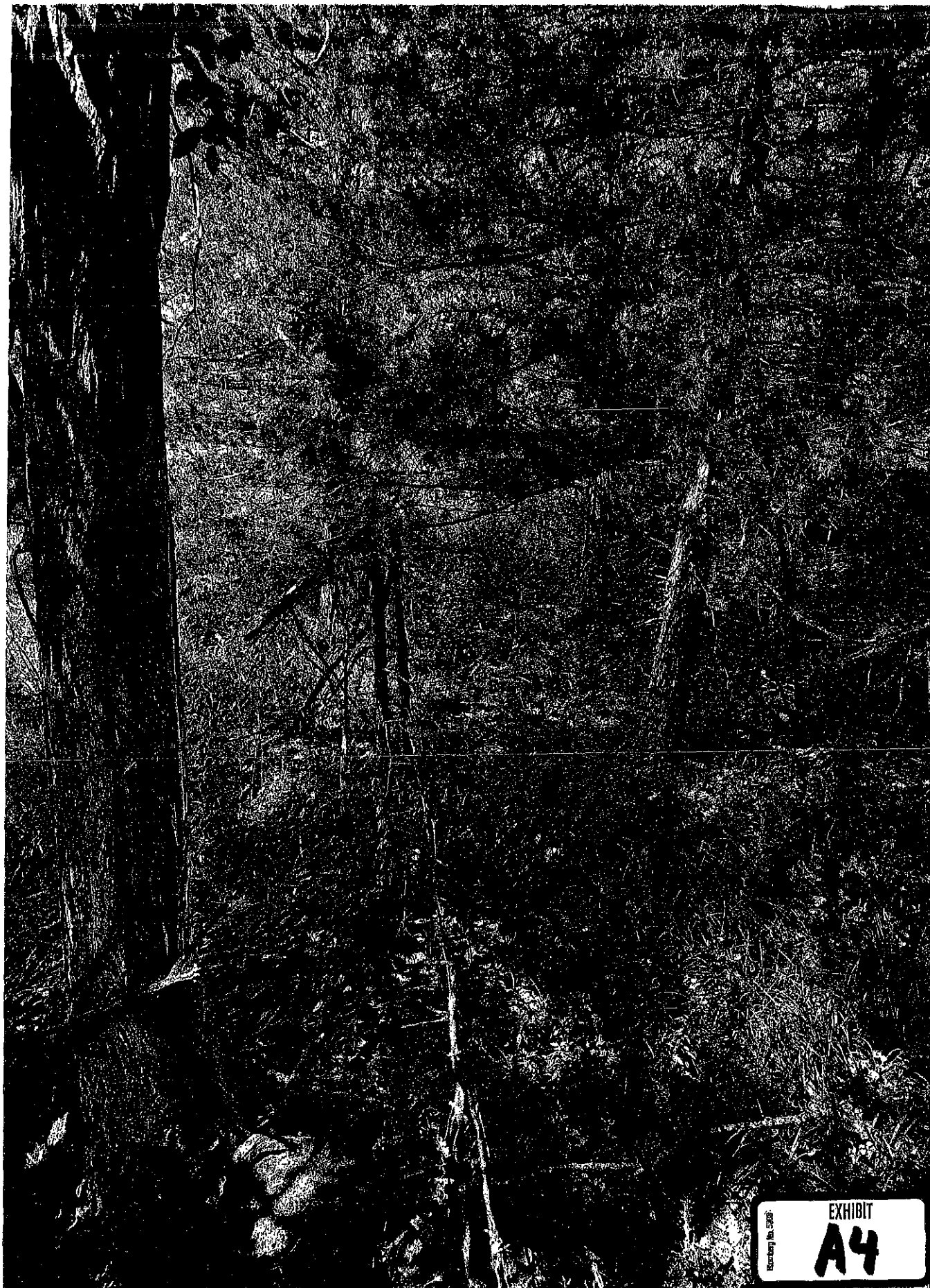


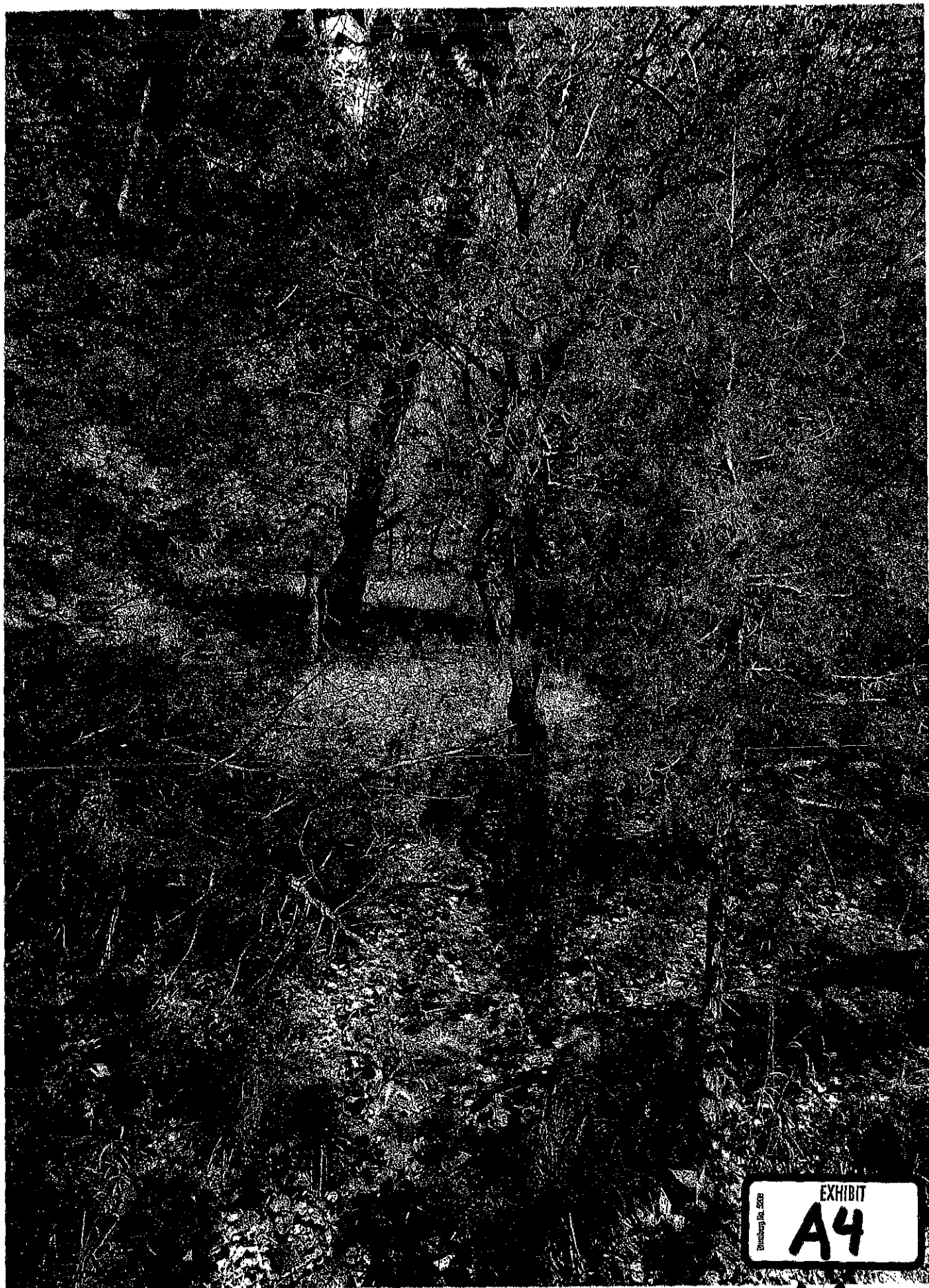


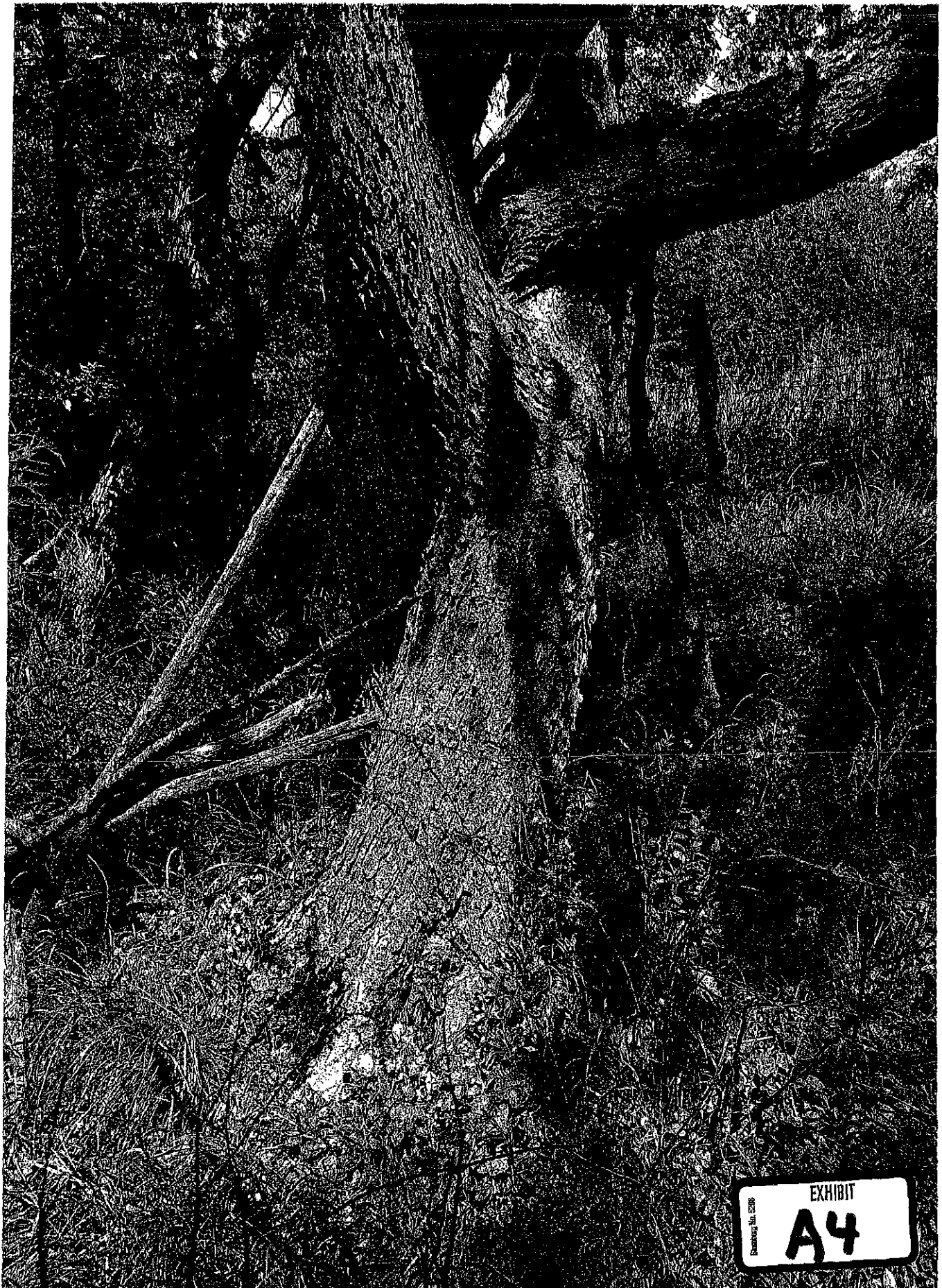
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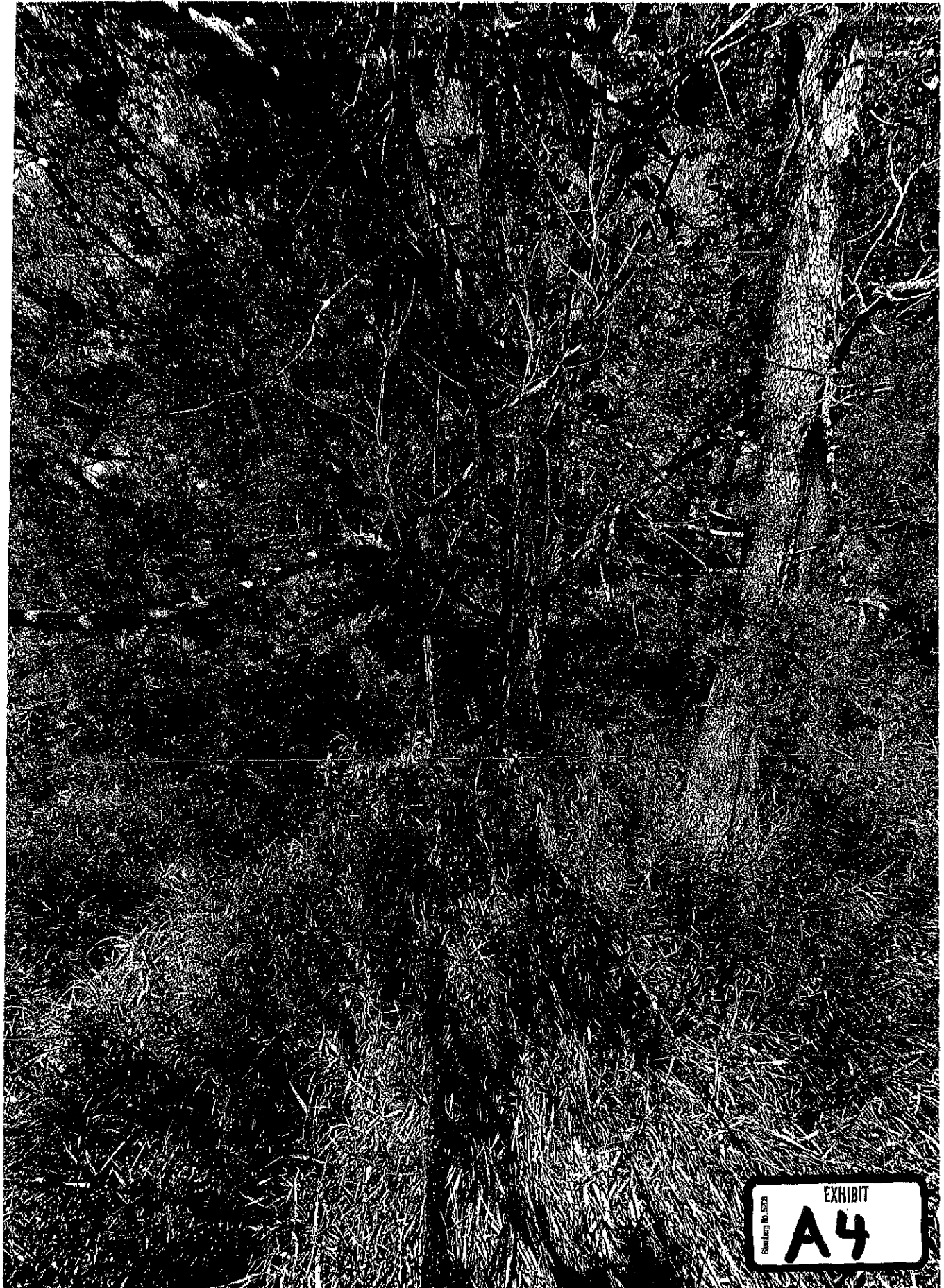




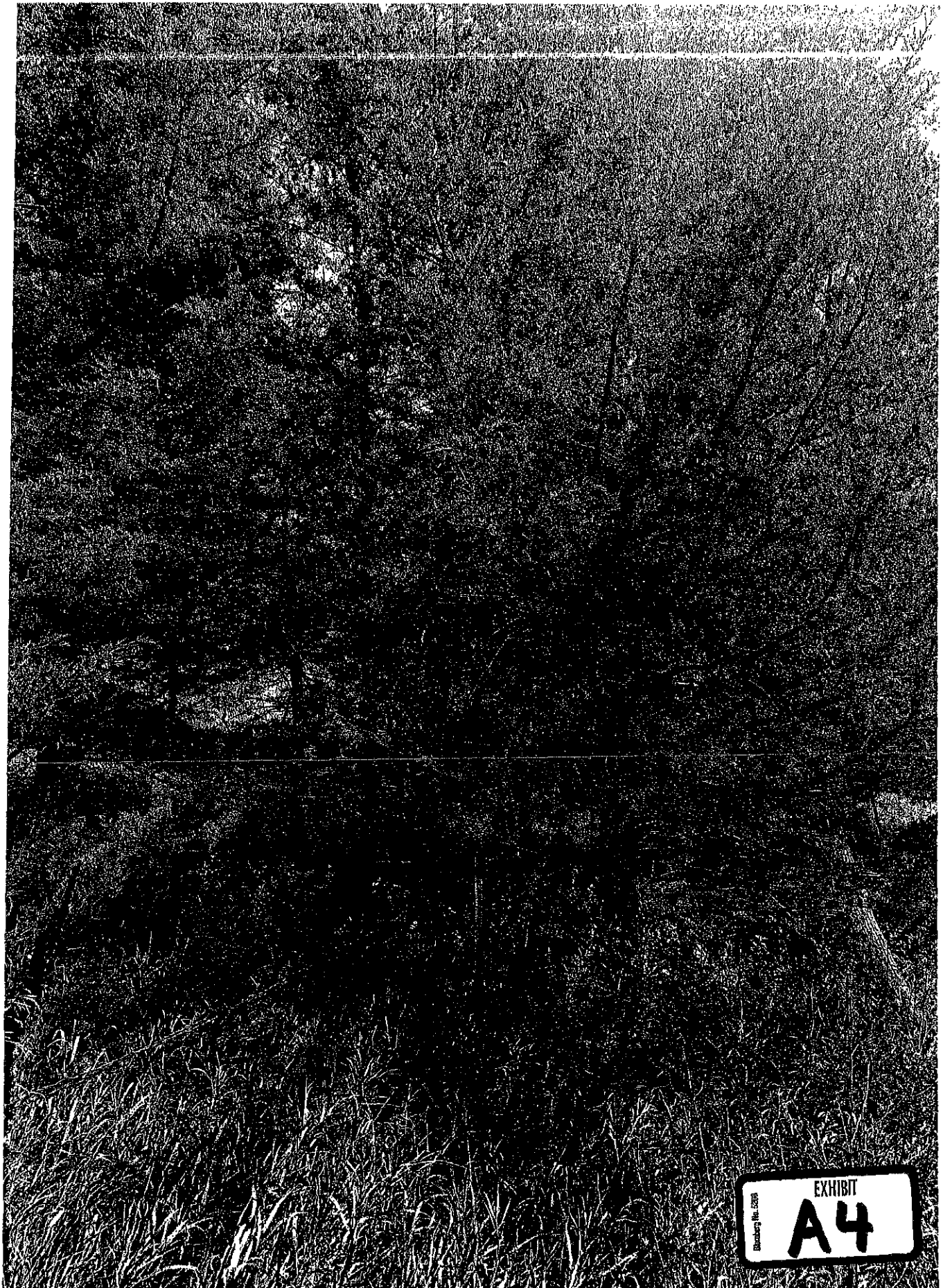












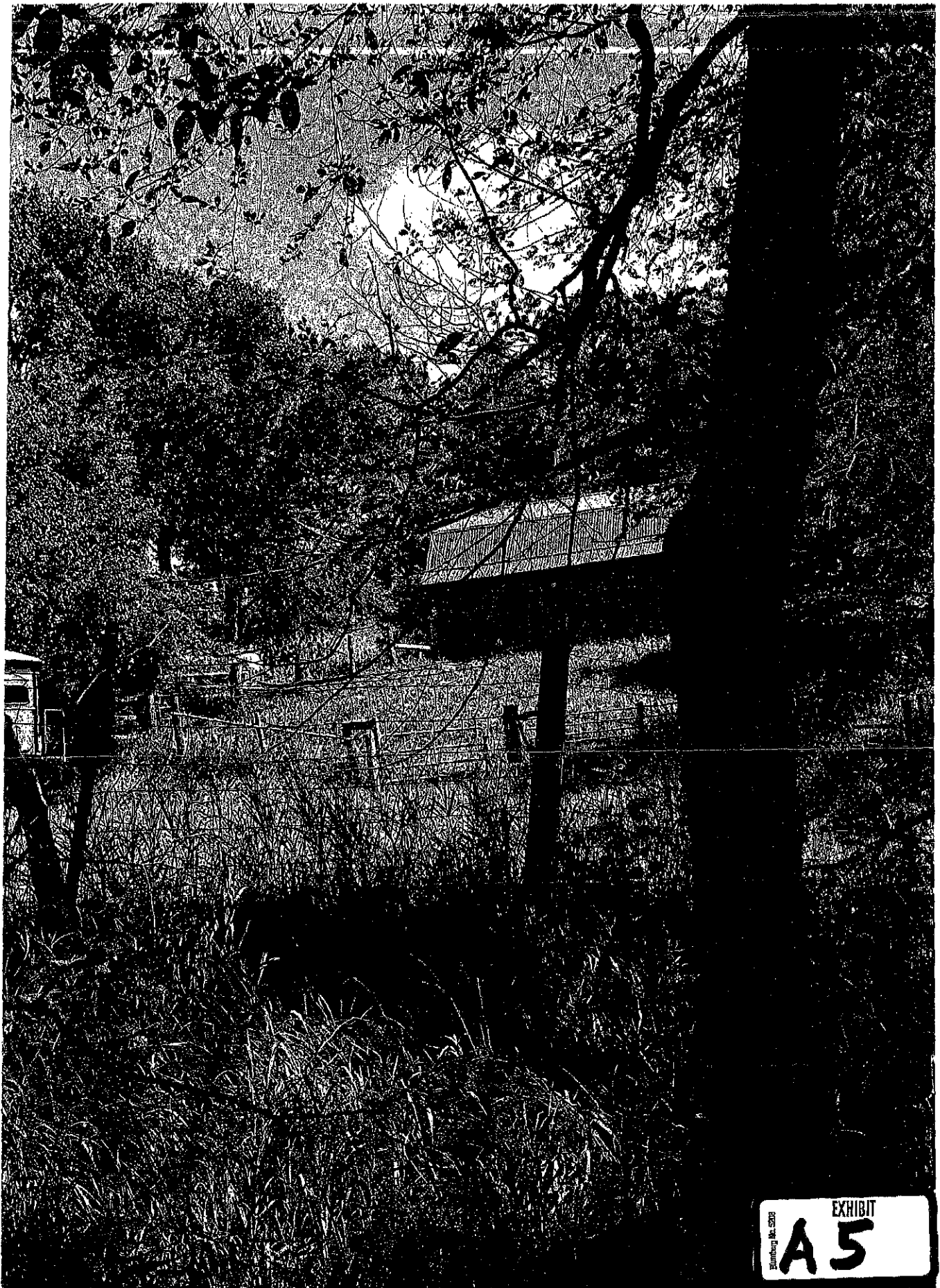
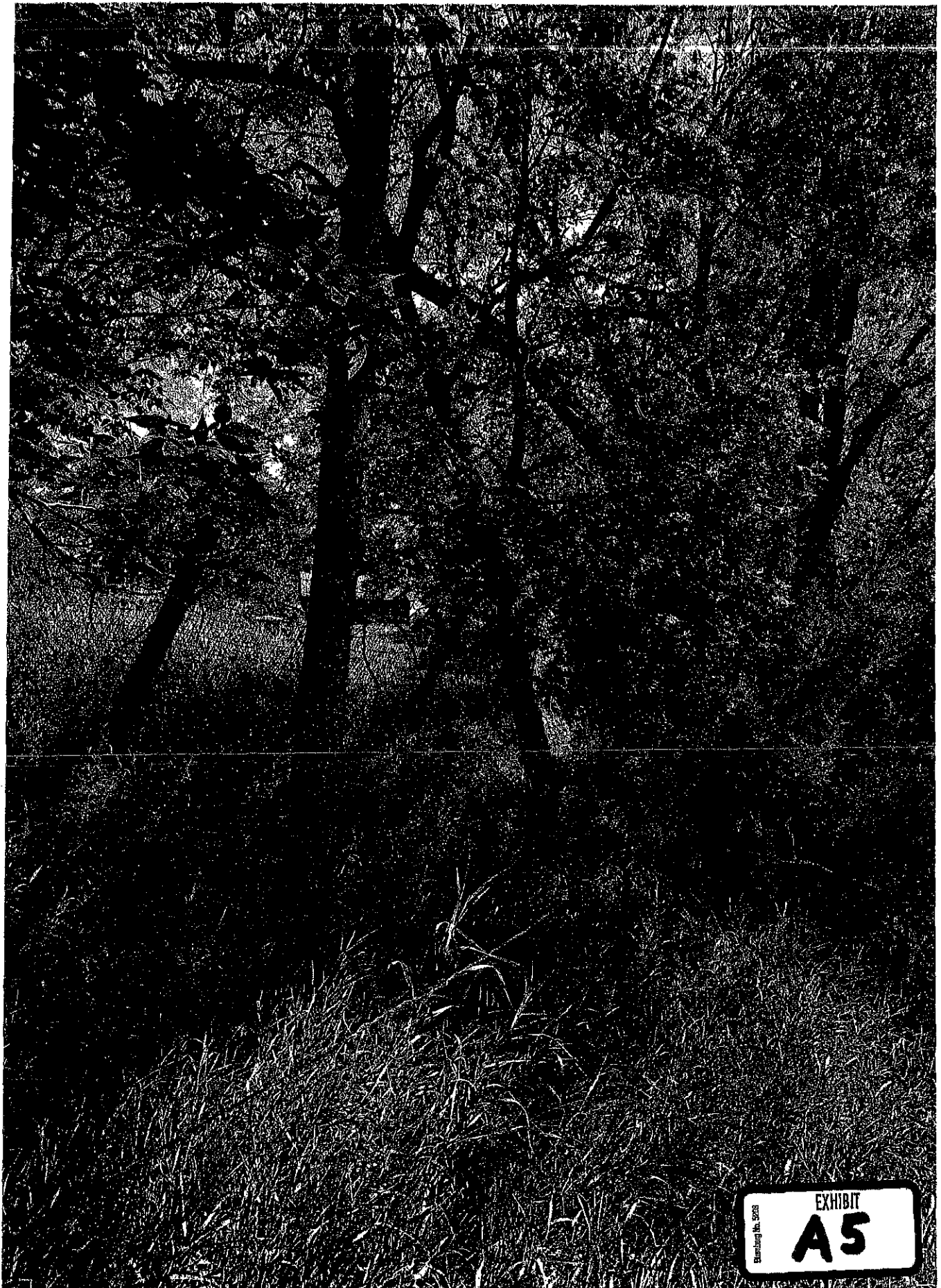
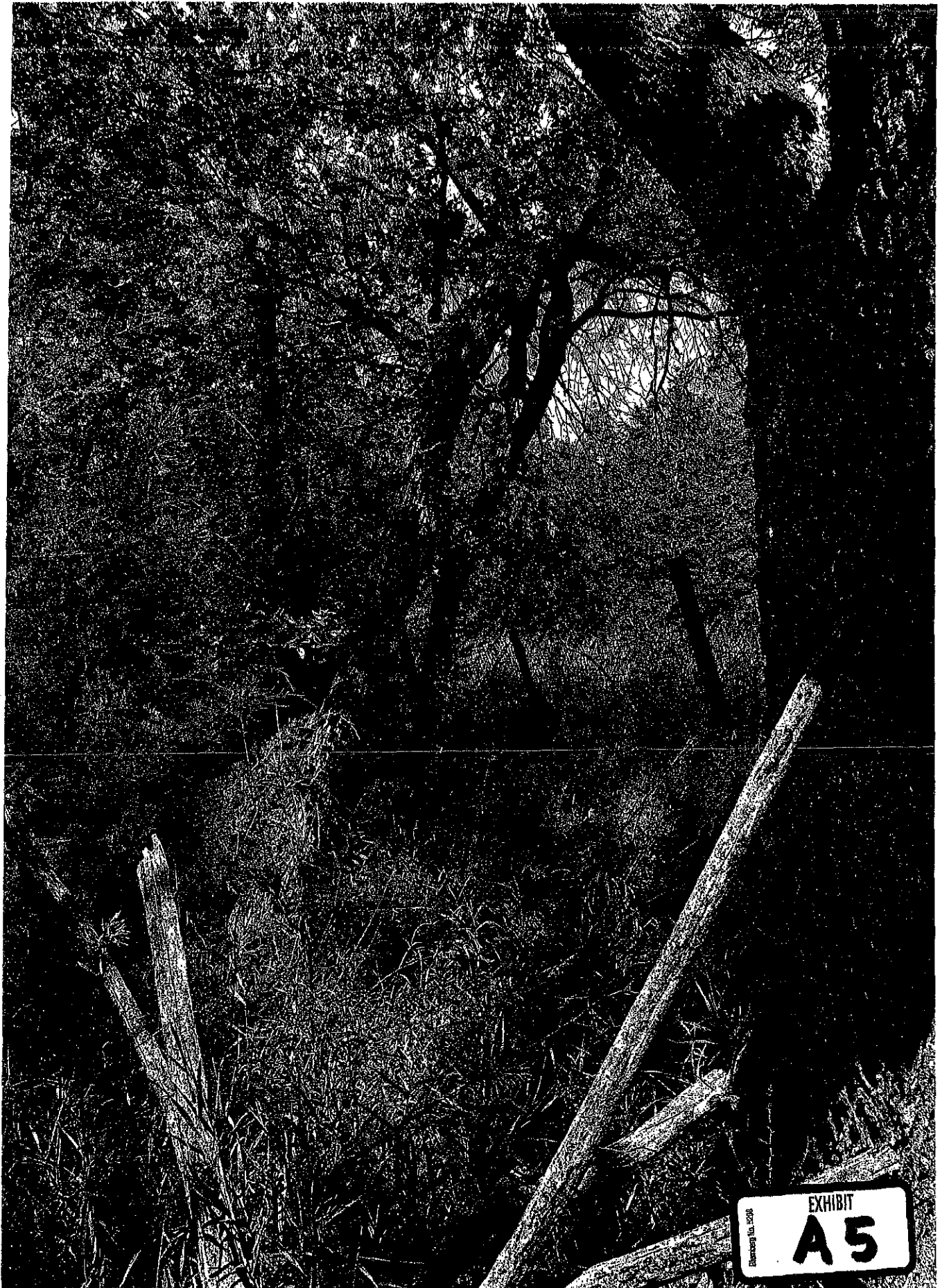
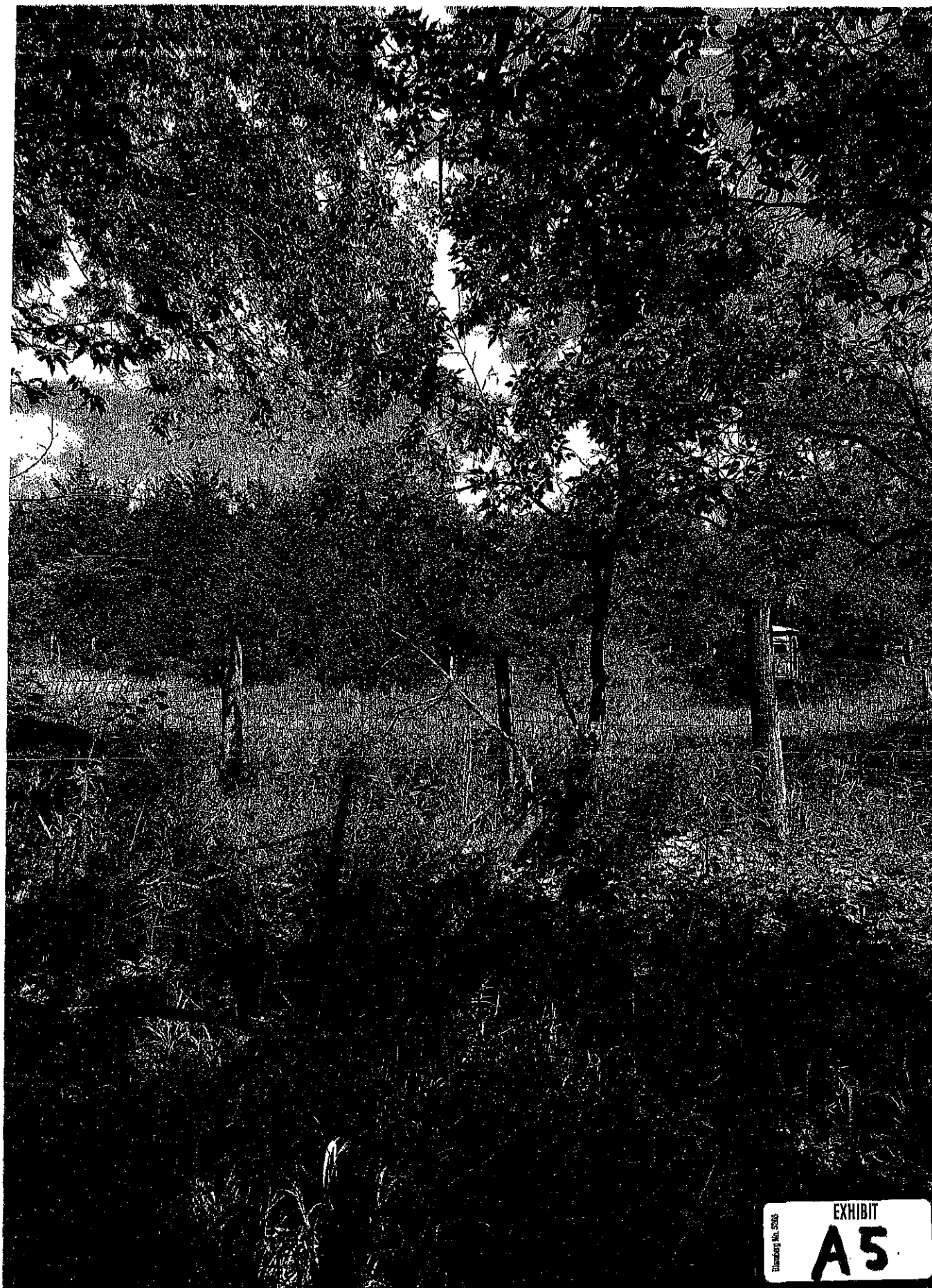


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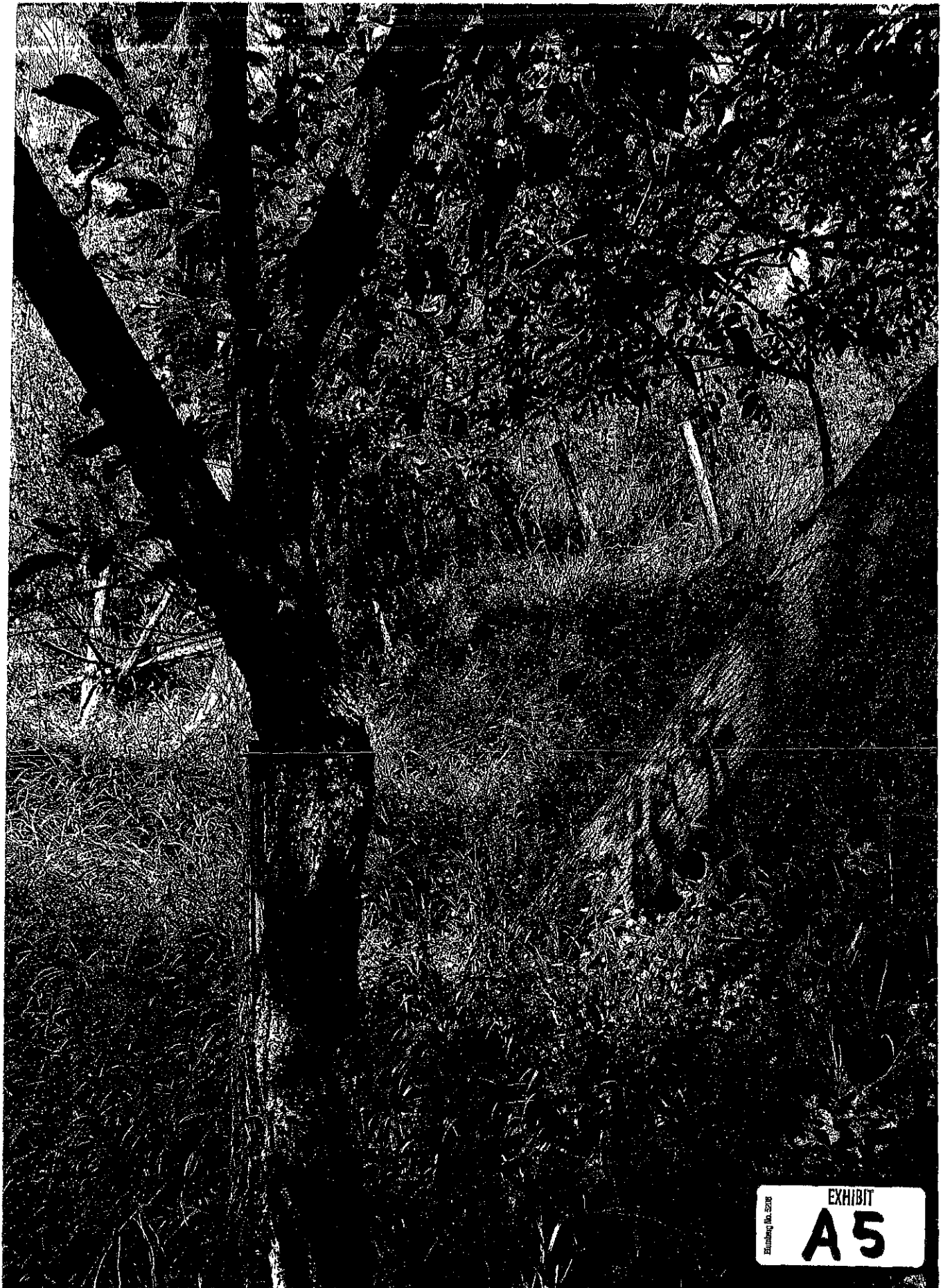
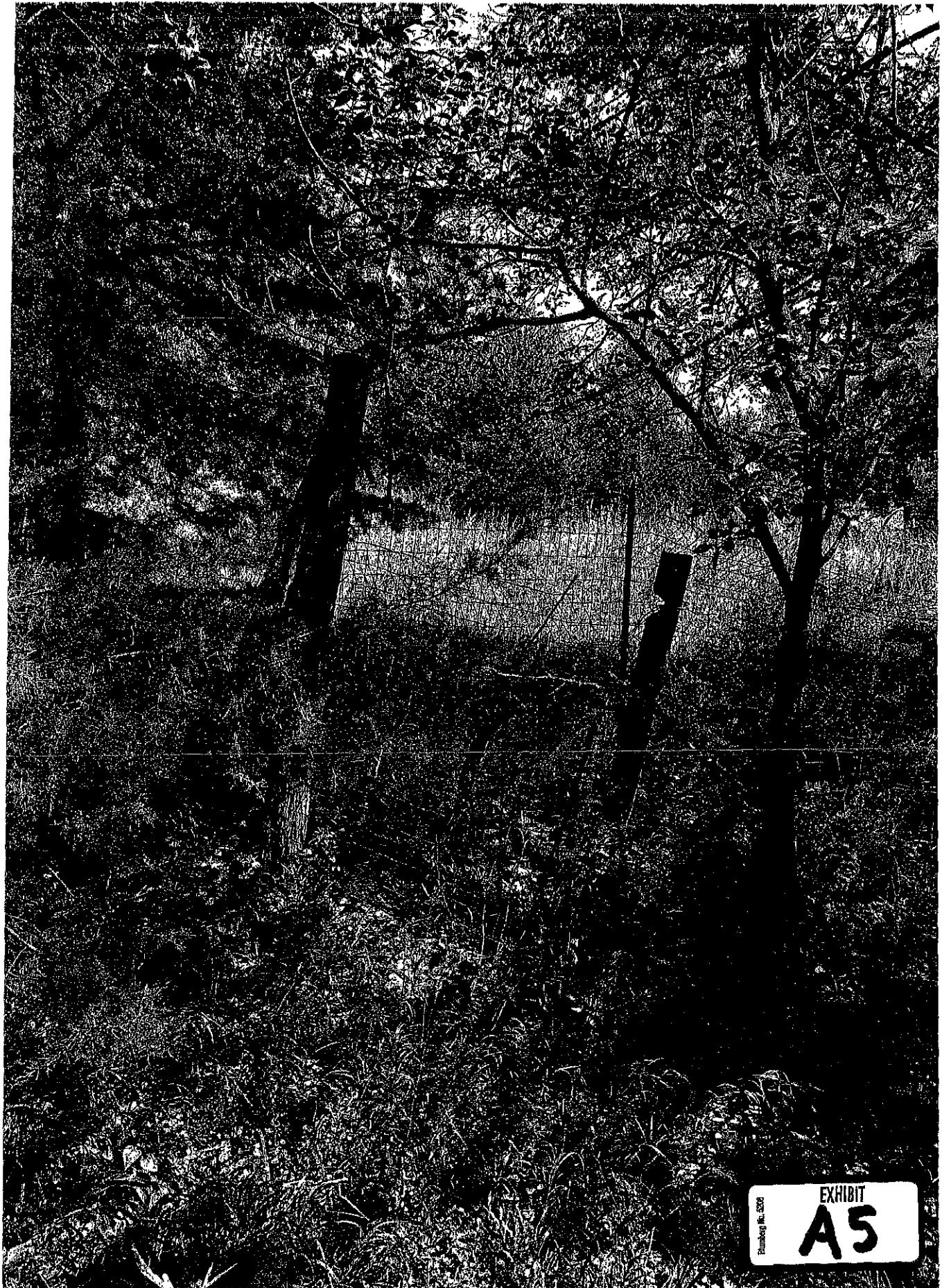
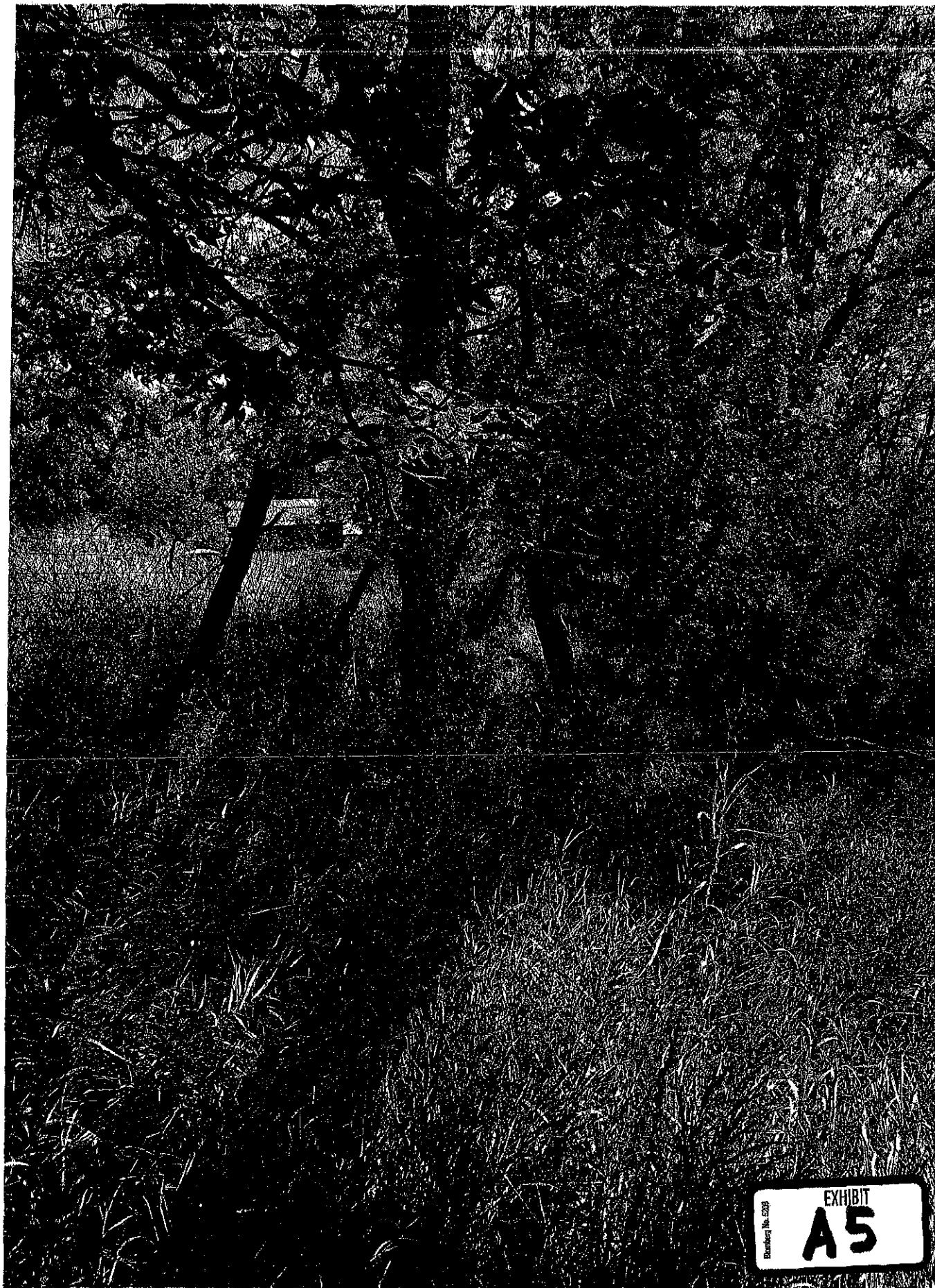
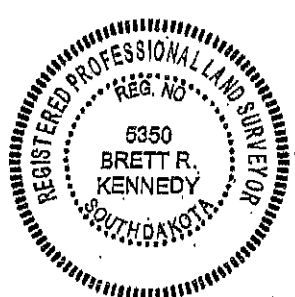
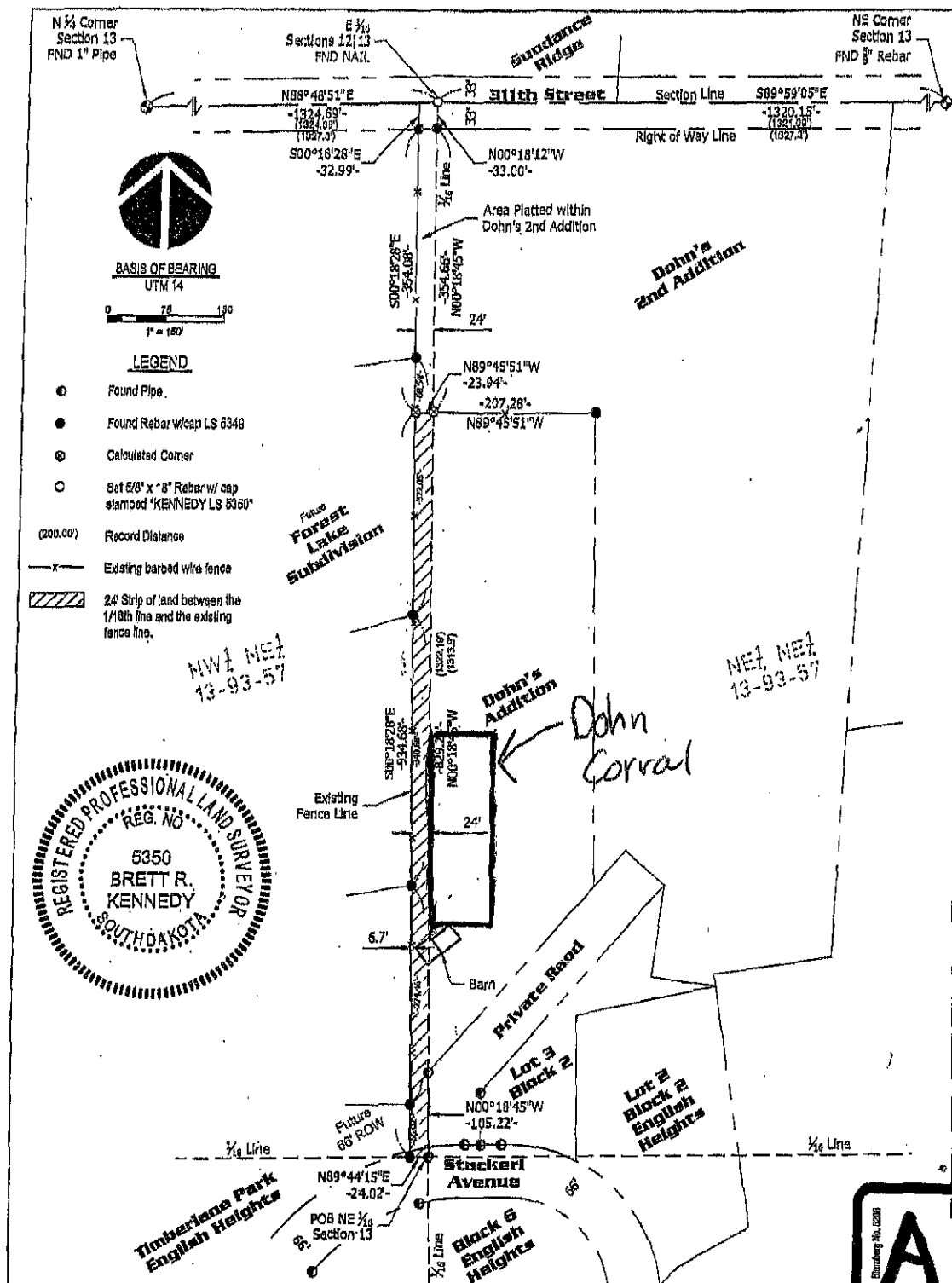


EXHIBIT
A5







SURVEYOR'S CERTIFICATE

I, Brett R. Kennedy, a Registered Land Surveyor in the State of South Dakota, did, on or prior to December 7, 2023, completed a survey of the East 24 Feet of the Northwest Quarter of the Northeast Quarter of Section 13, Township 93 North, Range 87 West of the 5th P.M., Yankton County, South Dakota, lying West of Dohn's Addition more fully described as follows:

Beginning at the NE $\frac{1}{4}$ Corner of said Section 13, thence N00°18'45"W, along the N-S 1/16th line, a distance of 934.46 feet to the northwest corner of Dohn's Addition; thence N89°45'51"W a distance of 23.94 feet; thence S00°18'28"E a distance of 934.88 feet to the E-W $\frac{1}{16}$ line; thence N89°44'15"E a distance of 24.02 feet to the Point of Beginning containing ± 0.81 Acres.

This Certificate is to the best of my knowledge and belief a true description of said survey. I hereby certify that this survey was performed by me or under my direct supervision, and I have executed this document this 1st day of May, 2024.

Brett R. Kennedy
Brett R. Kennedy, LS 5350

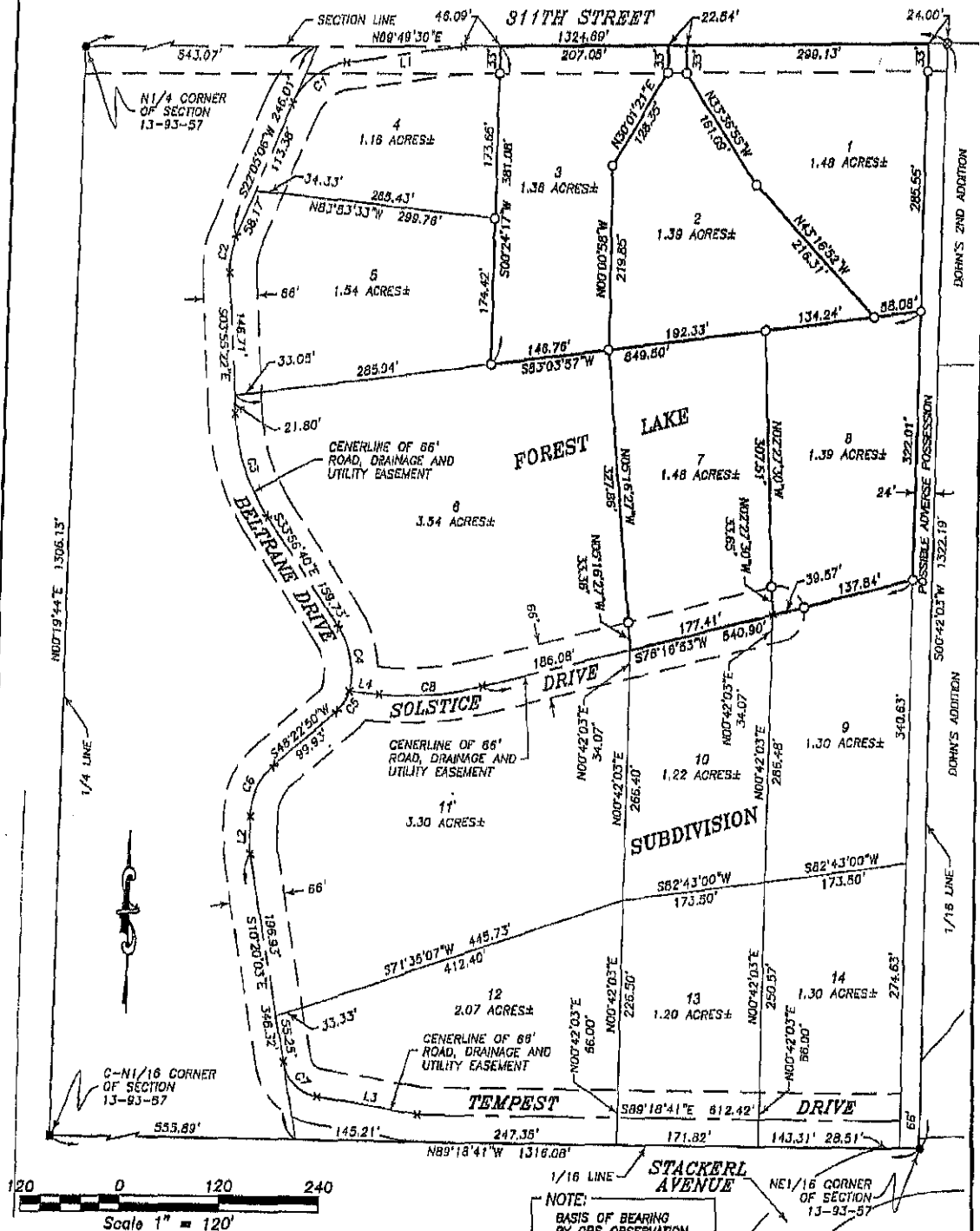
23397 PAGE 1 OF 1

Prepared By:

STOCKWELL
STOCKWELL ENGINEERS, INC.
231 WALNUT STREET
YANKTON, SD 57478
PH: 605.465.2012
www.stockwellengineers.com

EXHIBIT
A6

PLAT OF LOTS 1, 2, 3, 7 AND 8, FOREST LAKE SUBDIVISION,
IN THE NW1/4 OF THE NE1/4 OF SECTION 13, T93N, R57W OF THE 6TH P.M.,
YANKTON COUNTY, SOUTH DAKOTA.



LEGEND

- SET 5/8" REBAR WITH L.S. CAP
STAMPED "SD 5349 NE 708 BRANDT"
- FOUND IRON PIPE
- FOUND 1/2" REBAR
- ⊙ FOUND NAIL
- × CALCULATED CORNER

JOB NO. 22221

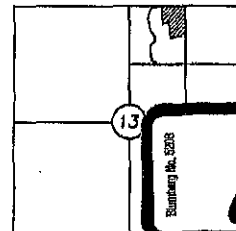
PAGE 1 OF 2

LINE	BEARING	DISTANCE
L1	S82°08'10"W	149.02'
L2	S01°18'30"E	44.93'
L3	S80°22'43"E	126.00'
L4	N88°02'08"W	37.44'

CURVE	RADIUS	LENGTH	CHORD	BEARING	CHORD LENGTH
C1	80.00'	81.48'	60°33'03"	S82°08'38"W	50.08'
C2	100.00'	45.39'	28°00'28"	S08°04'52"W	48.00'
C3	250.00'	130.99'	30°01'18"	S18°38'01"E	129.80'
C4	100.00'	81.25'	48°33'10"	S10°40'05"E	78.03'
C5	45.00'	28.10'	38°28'20"	S22°29'40"W	27.64'
C6	80.00'	65.31'	49°38'20"	S23°13'40"W	67.18'
C7	50.00'	61.13'	70°08'42"	S45°11'24"E	67.39'
C8	400.00'	130.80'	18°39'01"	S68°38'24"W	128.83'

NOTE:
BASIS OF BEARING
BY GPS OBSERVATION

PREPARED BY:
BRANDT LAND SURVEYING
1202 WILLOWDALE ROAD
YANKTON, SD 57078
(605) 685-8455



EXHIBIT

A7

LOCATION (N.T.S.)
SECTION 13-93-57

**IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA**

No. 31294

PHIL DOHN and EVELYN DOHN,

Plaintiffs/Appellees,

vs.

DUMONT HOLDINGS, LLC, and all unknown persons who may claim any
interest in the subject matter of this action,

Defendant/Appellant.

Appeal from the Circuit Court
First Judicial Circuit
Yankton County, South Dakota

The Honorable David D. Knoff, Presiding Judge

BRIEF OF APPELLEES

Robert W. Klimisch
Klimisch Law, P.C.
101 West 2nd Street
Yankton, SD 57078
Telephone: (605) 665-9495

Reece M. Almond
Michael L. Snyder
Davenport, Evans, Hurwitz & Smith, L.L.P.
206 West 14th Street
PO Box 1030
Sioux Falls, SD 57101-1030
Telephone: (605) 336-2880

Attorneys for Defendant/Appellant

Attorneys for Plaintiffs/Appellees

Notice of Appeal filed November 14, 2025

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PRELIMINARY STATEMENT

Citations to the settled record in this matter appear as “SR.” followed by the page number assigned by the Yankton County Clerk of Courts in its indices. The Plaintiffs/Appellees, Phil Dohn and Evelyn Dohn, will be referred to collectively as the “Dohns,” whereas the Defendant/Appellant, Dumont Holdings, LLC, will be referred to as “Dumont Holdings,” respectively.

This matter concerns the Dohns’ claim of ownership through adverse possession to a modestly sized piece of land located in Yankton County, which the parties have referred to as the “Disputed Land.” The Dohns filed a motion for summary judgment with respect to their ownership of the Disputed Land, and their statement of undisputed material facts will be referred to as “Dohn SUMF” followed by the relevant paragraph. A copy of the Dohn SUMF is included in the Appendix of this Brief (Appellee Appx. 1-5). Copies of the supporting declarations are also included in the Appendix (Appellee Appx. 6-19).

Citations to exhibits the Dohns filed in support of their summary judgment motion will be denoted as “Dohn Ex.,” followed by the exhibit number or letter. Finally, citations to the transcript of the deposition of Phil Dohn will be referred to as “Dohn Depo.,” followed by the page and line numbers as they appear in the transcript. These deposition transcript excerpts are included in the Appendix (Appellee Appx. 20-30).

JURISDICTIONAL STATEMENT

Dumont Holdings appeals from the Order and Judgment to Quiet Title to Real Property filed on October 14, 2025, in the matter numbered 66CIV24-000159, in the First Judicial District Court of South Dakota, the Honorable David Knoff presiding, following

the Circuit Court's decision to grant a motion for summary judgment filed by the Dohns. SR. 197-98. The Dohns filed a Notice of Entry of Order and Judgment on October 15, 2025, SR. 199-202, and Dumont Holdings filed its Notice of Appeal on November 14, 2025. SR. 212.

STATEMENT OF THE ISSUES

- 1) Whether the Circuit Court correctly held the Dohns proved their adverse possession claim to title over the Disputed Land by showing it was "substantially enclosed" for the requisite statutory period?

The Circuit Court concluded there was no genuine issue of material fact that the Disputed Land was substantially enclosed since at least 1976 and continuing through the requisite statutory period. Therefore, the Circuit Court concluded the Dohns were entitled to judgment as a matter of law confirming their ownership of the Disputed Land through adverse possession.

- *City of Deadwood v. Summit, Inc.*, 2000 S.D. 29, 607 N.W.2d 22
- *Taylor v. Tripp*, 330 N.W.2d 542 (S.D. 1983)
- *Lewis v. Moorhead*, 522 N.W.2d 1 (S.D. 1994)
- *Johnson v. Biegelmeier*, 409 N.W.2d 379 (S.D. 1987)

- SDCL 15-3-7
- SDCL 15-3-13

- 2) Alternatively, or in addition, whether the Circuit Court correctly held the Dohns also proved their adverse possession claim to title over the Disputed Land by showing it was "usually cultivated or improved" for the requisite statutory period?

The Circuit Court concluded there was no genuine issue of material fact that the Dohns usually cultivated or improved the Disputed Land since at least 1976 and continuing through the requisite statutory period. Therefore, the Circuit Court concluded the Dohns were entitled to judgment as a matter of law confirming their ownership of the Disputed Land through adverse possession.

- *Cuka v. Jamesville Hutterian Mut. Soc.*, 294 N.W.2d 419 (S.D. 1980)
- *Schultz v. Dew*, 1997 S.D. 72, 564 N.W.2d 320
- *Underhill v. Mattson*, 2016 S.D. 69, 886 N.W.2d 348
- *Hofmeister v. Sparks*, 2003 S.D. 35, 660 N.W.2d 637

- SDCL 15-3-7
- SDCL 15-3-13

STATEMENT OF THE CASE

The Dohns own land in Yankton County, South Dakota, referred to by the parties as the “Dohn Land.” Dumont Holdings also owns land in Yankton County, South Dakota, referred to by the parties as the “Dumont Land,” and which is immediately to the West of, and adjoining, the Dohn Land. The Dohn Land and the Dumont Land share a common property line border extending from North-to-South between the two properties, and there is a barbed wire fence (the “Fence”) running along this boundary. However, the Fence encroaches onto the Dumont Land approximately twenty-four feet beyond the true property line between the Dohn Land and the Dumont Land, which creates the area referred to as the “Disputed Land.” A survey depicting the Disputed Land, and which provides its legal description, is appended to the Complaint as Exhibit 1. *See* SR. 8. This survey was commissioned by Mr. Dohn. Dohn SUMF, ¶ 7; Dohn SUMF Ex. 2.

The Dohns filed a Summons and Complaint on May 6, 2024, asserting their claim of ownership of the Disputed Land through adverse possession. SR. 1-8. Service was perfected on May 9, 2024. SR. 9. Approximately one year later, on June 3, 2025, the Dohns filed a motion for summary judgment, arguing there was no genuine issue of material fact and that they were entitled to judgment as a matter of law confirming their ownership of the Disputed Land through adverse possession. SR. 13-14. Among other things, this motion was supported by a Declaration of Phil Dohn that attested to the genuineness of several documents, and which set forth the undisputed material facts giving rise to the Dohns’ adverse possession claim. SR. 29-39.

The Dohns’ summary judgment motion was set to be heard on August 5, 2025. SR. 40-41. In the interim, Phil Dohn’s deposition was taken on June 27, 2025. *See* SR.

45. Dumont Holdings then filed its response to the Dohns' summary judgment motion on July 22, 2025. *See* SR. 46-168. The Dohns filed their reply brief in support of their summary judgment motion on July 29, 2025. SR. 169-89. Finally, and after the August 5, 2025, hearing, the Circuit Court issued its Memorandum Decision on Motion for Summary Judgment and granted summary judgment in favor of the Dohns, which confirmed their ownership of the Disputed Land through adverse possession. *See* Appellant Appx. Tab 2.

The Circuit Court then entered its Order and Judgment to Quiet Title to Real Property, which was filed on October 14, 2025. *See* SR.197-98. The Dohns filed a Notice of Entry of the Order and Judgment on October 15, 2025, SR. 199-202, and Dumont Holdings filed its Notice of Appeal on November 14, 2025. SR. 212.

STATEMENT OF FACTS

It is undisputed the Dohns are record title holders and owners in fee of the aforementioned "Dohn Land," which has a legal description as follows:

Lot 3, Block 2, English Heights, in the Northeast Quarter, Section 13, Township 93 North, Range 57 West of the 5th P.M., containing 0.63 Acres, more or less;

Dohn's Addition in the Northeast Quarter of the Northeast Quarter, Section 13, Township 93 North, Range 57 West of the 5th P.M., containing 3.45 Acres, more or less; and

The West 24 Feet of Dohn's Addition extending from the north line of Dohn's Addition to the south line of the Northeast Quarter of the Northeast Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$), and that area designated as a "private road," according to the duly recorded plat of Dohn's 2nd Addition and Wright's Addition located in the Northeast Quarter of the Northeast Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$), Section Thirteen (13), Township 93 North, Range 57 West of the 5th P.M., Yankton County, South Dakota, recorded in Book S13, page 135.

Dohn SUMF, ¶ 1. The Dohns obtained title to the Dohn Land in June 1976. *Id.*, ¶ 2.

It is likewise undisputed Dumont Holdings is the record title holder and owner in fee of the aforementioned "Dumont Land," which includes real estate located immediately to the West of, and adjoining, the Dohn Land. *Id.*, ¶ 3. As a result of their respective locations, the Dohn Land and the Dumont Land share a common property line border extending from North-to-South between the neighboring parcels. *Id.* ¶ 4.

The aforementioned "Fence" also runs North-to-South and is situated between the Dohn Land and the Dumont Land. *Id.*, ¶ 5. While its exact age is unknown, it is undisputed the Fence was in existence when the Dohns purchased the Dohn Land in 1976. *Id.*, ¶ 6. The Fence creates both a border and a clear demarcation line between the Dohn Land and the Dumont Land. *Id.*, ¶ 7. However, it is undisputed the Fence also encroaches approximately twenty-four feet beyond the true boundary line of the Dohn Land and onto the Dumont Land. *Id.*, ¶ 8. The Fence's encroachment creates what the parties refer to as the "Disputed Land," and its dimensions are described as follows:

... the East 24 Feet of the Northwest Quarter of the Northeast Quarter of Section 13, Township 93 North, Range 57 West of the 5th P.M., Yankton County, South Dakota, lying West of Dohn's Addition, more fully described as follows:

Beginning at the NE 1/16 Corner of said Section 13, thence N00°18'45"W, along the N-S 1/16th line, a distance of 934.46 feet to the northwest corner of Dohn's Addition; thence N89°45'51"W a distance of 23.94 feet; thence S00°18'28"E a distance of 934.68 feet to the E-W 1/16 line; thence N89°44'15"E a distance of 24.02 feet to the Point of Beginning containing ± 0.51 Acres.

Id., ¶ 9; *see also* Dohn SUMF, Ex. 2 (depicting the Disputed Land).

In an earlier effort by the Dohns to address the issue with the Fence's location, a quitclaim deed was drafted and dated December 30, 1992, purporting to convey from Jean Marie English to the Dohns certain real estate in Yankton County, South Dakota. Dohn SUMF, ¶ 10. However, as reflected in the instrument itself, the quitclaim deed

simply “re-deeded” the Westernmost 24 feet of the Dohn Land to the Dohns, which they already owned. *Id.*, ¶ 11. In other words, this did not add to or alter the dimensions of the Dohn Land, and it did not affect how the Dohns continued to use their property, including using the property located in the Disputed Land and up to the Fence. *Id.*, ¶ 12.

In any event, beginning in 1976, the Dohns utilized the Dohn Land, including the Disputed Land, for agricultural and pastoral purposes. *Id.*, ¶ 13. The Dohns raised livestock over the years that were allowed to graze and exercise on the Dohn Land, including the Disputed Land, such as quarter horses, bucket calves, and even miniature donkeys. *Id.*, ¶ 14. This practice continued until approximately 2007, which is a period of approximately 31 years. *Id.*, ¶ 15. Mr. Dohn was specifically asked about these statements of fact in his deposition and confirmed their accuracy. Dohn Depo. 58:9-18; Dohn Depo. 59:7-14; Dohn Depo. 63:23-25.

In addition, the Dohns regularly maintained the Fence over the years and as the need arose. Dohn SUMF, ¶ 16. For instance, periodic repairs were made over the years both to keep the Dohn livestock contained on their side of the Fence, but also because certain of Dumont Holdings’ predecessors in interest raised cattle on the Dumont Land that needed to be kept on the other side of the Fence. *Id.*, ¶ 17. The area is also heavily wooded, and occasionally a tree or branch would fall onto a portion of the Fence, which the Dohns would repair. *Id.*, ¶ 18. Nonetheless, the Dohns never moved or caused the Fence to be moved from its original location, and it is undisputed the Fence has remained at the same location since at least 1976. *Id.*, ¶ 19.

It is undisputed the Dohns also built a barn located in part on the Disputed Land, which is used for storage. *Id.*, ¶ 20. This was done in approximately 1980, and the Dohns

added to or otherwise built onto the barn at various points in the mid-to-late 1980s. *Id.*, ¶ 21. The barn, which again is partially located in the Disputed Land, has been maintained over the years, and it still exists today. *Id.*, ¶ 22.

ARGUMENT

I. Legal Standards

A. Summary Judgment

The Court reviews a Circuit Court’s grant or denial of summary judgment under the de novo standard. *Davies v. GPHC, LLC*, 2022 S.D. 55, ¶ 17, 980 N.W.2d 251, 258. Summary judgment is proper where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. SDCL 15-6-56(c); *Hanson v. Big Stone Therapies, Inc.*, 2018 S.D. 60, ¶ 23, 916 N.W.2d 151, 158. The Court views “all reasonable inferences drawn from the facts in the light most favorable to the non-moving party.” *Luther v. City of Winner*, 2004 S.D. 1, ¶ 6, 674 N.W.2d 339, 343 (quoting *Roden v. General Cas. Co. of Wis.*, 2003 S.D. 130, ¶ 5, 671 N.W.2d 622, 624). “When no genuine issue of material fact exists, summary judgment is looked upon with favor.” *City of Lennox v. Mitek Indus., Inc.*, 519 N.W.2d 330, 332 (S.D. 1994) (citation omitted). “[S]ummary judgment should never be viewed as a disfavored procedural shortcut, but rather as an integral part of our rules as a whole, which are designed to secure the just, speedy, and inexpensive determination of every action.” *Accounts Mgmt., Inc. v. Litchfield*, 1998 S.D. 24, ¶ 4, 576 N.W.2d 233, 234 (citation omitted). Finally, the Court will “will affirm the circuit court’s summary judgment decision if there exists any basis which supports the ruling of the trial court.” *Davies*, 2022 S.D. 55, at ¶ 17 (quotation omitted).

B. Adverse Possession

South Dakota Codified Laws Ch. 15-3 pertains to adverse possession. As relevant here, adverse possession is established by possessing land adversely to its title holder for the statutory period of twenty years. *City of Deadwood v. Summit, Inc.*, 2000 S.D. 29, ¶ 15, 607 N.W.2d 22, 26 (citing SDCL 15-3-7). Once this statutory period closes, “[a]dverse possession occurs by operation of law and does not require an action to commence it, nor to continue it.” *Johnson v. Biegelmeier*, 409 N.W.2d 379, 382 (S.D. 1987).

This Court has held that land must be actually and continuously possessed “under a claim of title exclusive of any other right” for the twenty-year period. *Deadwood*, 2000 S.D. 29, at ¶ 15 (citing SDCL 15-3-12). In the traditional vernacular, the “elements of adverse possession require the ‘actual, open, visible, notorious, continuous and hostile’ occupation of the property for the statutory period.” *Id.* By statute, however, “the property in question must either have been protected by a ‘substantial [e]nclosure’ or must have been ‘usually cultivated or improved.’” *Id.* (quoting SDCL 15-3-13). A claim for adverse possession must be established by clear and convincing evidence. *Id.* Although proof of either statutory requirement is sufficient, the Court should find it is undisputed that the Dohns satisfied both the “substantial enclosure” and the “usually cultivated or improved” statutory criteria.

II. The Disputed Land Was “Substantially Enclosed” for the Statutory Period

The Court should find it is undisputed that the Fence substantially enclosed the Disputed Land for the twenty-year statutory period. Thus, the Court should conclude as a matter of law the Dohns are the owners of the Disputed Land through adverse possession.

This Court has held a fence created a “substantial enclosure” in a quiet title action based on a claim of adverse possession with facts similar to those here. *See Taylor v. Tripp*, 330 N.W.2d 542, 544 (S.D. 1983). In *Taylor*, a woven and barbed wire fence formed the putative boundary line between two parcels of land. *Id.* at 543. The fence, however, was not located on the true boundary line. *Id.* Rather, it extended approximately eleven feet beyond the plaintiffs’ property line and onto the defendants’ property. *Id.* This created a disputed “eleven-foot wide and one hundred forty-nine foot strip of land” along the fence line. *Id.* at 544. The fence had existed since at least 1945 and remained in place for over twenty years until it was destroyed in 1977. *Id.* at 543. The Court held the “fence line acted as a substantial [e]nclosure,” and affirmed the circuit court’s conclusion the plaintiff established her claim to the disputed strip of land by adverse possession. *Id.* at 544; *see also Lewis v. Moorhead*, 522 N.W.2d 1, 3 n.4 (S.D. 1994) (noting even a partial fence that “did not run the entire distance between the lots” nonetheless “provide[d] a physical and visual basis for determining the property lines” for purposes of the “substantial enclosure” criterion).

Here, the Court should conclude there is no genuine dispute the Fence created a “substantial enclosure” of the Disputed Land for the requisite statutory period. The Fence runs along and forms the North-to-South boundary and creates a clear demarcation line between the Dohn Land and the Dumont Land. Dohn SUMF, ¶¶ 5, 7. The Dohns also made various repairs to the Fence over the years, such as for ensuring the containment of their own livestock, for keeping neighboring livestock out, and simply because the Fence was damaged or otherwise in need of repair. *Id.*, ¶¶ 16 – 18. The Fence has never been removed or relocated, and it has remained in place since at least 1976. *Id.*, ¶ 19. The

Fence still exists today, which is well-beyond the statutory 20-year period (*i.e.*, from June 1976 - 1996) required for adverse possession. “Adverse possession occurs by operation of law and does not require an action to commence it, nor to continue it.” *Johnson*, 409 N.W.2d at 382. Thus, the Court should conclude the Dohns established ownership of the Disputed Land through adverse possession as a matter of law.

Dumont Holdings does not genuinely dispute any of the foregoing. Significantly, Dumont Holdings only acquired title to the Dumont Land relatively recently, and it failed to adduce any evidence disputing the Fence’s location, its obviousness, or its existence during the statutory period of June 1976 – 1996. This is critical, because the only evidence offered by Dumont Holdings concerned the Fence’s condition as it exists today, which is long after title to the Disputed Land vested in the Dohns through adverse possession. *Johnson*, 409 N.W.2d at 382. For instance, Dumont Holdings suggests “[t]he Disputed Land is not enclosed to provide for the raising of livestock contrary to Dohn’s assertion.” Dumont’s Brief at 4. In support, Dumont Holdings offered an affidavit from Mr. Ethan Klimisch who stated that “[i]n approximately, *July of 2022*” he visited the property and “walked the Fence between the Dumont [Land] and the Dohn Land.” *See* Affidavit of Ethan Klimisch, ¶ 3. Mr. Klimisch then offered various opinions about the current state of the Fence, and concluded that “[t]he Disputed Land is not enclosed to allow livestock to roam.” *Id.*, ¶ 8.

These contemporary observations, even if true, are not relevant because they have no bearing on whether the Dohn Land was substantially enclosed during the statutory period that ran between June 1976 – 1996. In contrast, the Dohns introduced evidence based on their own personal knowledge, observations, and first-hand experience that the

Fence existed during (and long after) this statutory period, and Dumont Holdings failed to introduce any evidence to the contrary.

This same principle arose in *Taylor* where the boundary fence was completely removed prior to the commencement of litigation but long after the statutory period closed. *See Taylor*, 330 N.W.2d at 543. The Court had no difficulty in concluding the fence, nonetheless, acted as a substantial enclosure for adverse possession purposes. *Id.*, at 544. Similarly, the Court has recognized that even a partial fence can satisfy the “substantial enclosure” criterion if it otherwise “provide[s] a physical and visual basis for determining the property line,” and Dumont Holdings could not introduce any evidence suggesting the Fence was deficient in this regard during at least June 1976 – 1996. *See Moorhead*, 522 N.W.2d at 4, n.4; *see also Titus v. Chapman*, 2004 S.D. 106, ¶ 32, 687 N.W.2d 918, 926 (“An enclosure need not be absolutely secure to satisfy the ‘substantial enclosure’ statutory requirement”).

Essentially, Dumont Holdings asks the Court to speculate that, based on the Fence’s current condition, it must have been “insubstantial” during the statutory period. Yet, as this Court has consistently recognized, “[m]ere speculation and general assertions, without some concrete evidence, are not enough to avoid summary judgment.” *Godbe v. City of Rapid City*, 2022 S.D. 1, ¶ 21, 969 N.W.2d 208, 213; *see also* SDCL 15-6-56(e) (providing “an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in SDCL 15-6-56, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.”). Dumont

Holdings' failure to introduce "specific facts" showing a genuine dispute of fact remains for trial is fatal to its position.

The other criticisms raised by Dumont Holdings are immaterial. For instance, Dumont Holdings attempts to discredit the extent to which the Dohns maintained the Fence because they did not keep records of the work they performed decades ago and because they did not discuss this work with Dumont Holdings' predecessors in title. *See* Dumont Brief at 5. On one hand, Dumont Holdings misses the point of this maintenance work, which is to illustrate that the Fence was never removed or replaced over the years, and so it existed continuously for the statutory period. On the other hand, the fact that the Dohns did this work and may not have discussed it with their neighbors or others is consistent with their exclusive ownership of the Disputed Land. Regardless, Mr. Dohn attested to this repair work based on his own personal knowledge in performing it. Dumont Holdings has no evidence to the contrary, nor is there a requirement that Mr. Dohn keep receipts or records for work he completed decades ago.

Next, Dumont Holdings claims that because the Dohns built another livestock pen on the interior of their property, that this somehow acts as a forfeiture of their adverse possession claim. *See* Dumont Brief at 8. Dumont Holdings did not identify when this pen was built. Nonetheless, Dumont Holdings also failed to cite any authority for this contention, because there is none. The point remains that the Disputed Land was substantially enclosed during the statutory period, and the fact that the Dohns continued to develop or use their land over time is not evidence to the contrary. In addition, respectfully, but Mr. Klimisch is not a surveyor and has no apparent qualification to

claim the corral is “located on the correct boundary line,” notwithstanding the irrelevance of this claimed fact. *See* Dumont Brief at 8 (citing Klimisch Aff., ¶ 8).

The closest Dumont Holdings can get is by claiming “the Disputed Land lacked fencing along its southern boundary, leaving the property open and incapable of containing livestock.” Dumont Brief at 9. Notably absent, however, is any citation to the record supporting this contention, much less a citation demonstrating the Disputed Land was “insubstantially enclosed” during the requisite statutory period. In fact, it is undisputed the Fence was and still is fully enclosed along its Western border, which means the entirety of the Disputed Land is located on the Dohns’ side of the Fence. Moreover, the Disputed Land is only approximately 24-feet wide. Dumont Holdings has failed to cite any authority suggesting that a modestly sized piece of land like this is not “substantially enclosed” even if it were true (which it is not) that the Disputed Land was unfenced on its Southern border only. *Titus*, 2004 S.D. 106, at ¶ 32.

That said, Mr. Dohn confirmed several times in his deposition that the Southern part of the Dohn Land has fencing. For example, Mr. Dohn was asked what structures were present on the Dohn Land when the Dohns purchased it in 1976, and he testified the Southern portion of his land contained fencing:

Q: Okay. And the only thing that would have been there – the fence at issue would be the only thing that would have been located on [the Dohn Land when it was purchased], is that fair?

A: On the west edge of that property. On the north edge there was a fence. And on the east there was fence. *And then, you know, on the south coming back to my – to my residence.*

Dohn Depo. 20:1-8 (emphasis added).

Later on, Mr. Dohn was similarly asked, “And then on the south portion of your property was there a fence down there?” to which he confirmed, “There was. There was.” Dohn Depo. 28:15-17. Despite this clear testimony, counsel Dumont Holdings then asked Mr. Dohn whether he “would have a problem with [his] livestock going south on [his] property if [he] didn’t have a fence or some other enclosure of some sort?” to which Mr. Dohn gave a correction stating, “There was some fence down there. *This whole thing had been a sheep farm before [the prior owner] owned it.*” Dohn Depo. 29:1-5 (emphasis added). Finally, Mr. Dohn was asked once more,

Q: And then you have a fence on the south side of your property?

A: Yes.

Q: Okay.

A: *That’s there. You can come up the driveway and see that, yeah.*

Dohn Depo. 38:12-17 (emphasis added). Consequently, and while the Disputed Land was fully enclosed on the Dohns’ side of the Fence, it is undisputed the Dohn Land also had fencing on its Southern border.

In sum, Dumont Holdings failed to cite any factual or legal support for its contentions, and the Court should find the Disputed Land was substantially enclosed during the statutory period. Therefore, the Court should conclude there is no genuine issue of material fact, and that the Dohns are owners of the Disputed Land through adverse possession. Thus, the Circuit Court should be affirmed.

III. The Disputed Land was “Usually Cultivated or Improved” for the Statutory Period

The Court need not address this issue if it concludes the Disputed Land was “substantially enclosed” for the statutory period. *Schultz v. Dew*, 1997 S.D. 72, ¶ 12, 564

N.W.2d 320, 323 (“Since these provisions are stated in the disjunctive, a claim of adverse possession may succeed if the claimant establishes either a substantial enclosure or cultivation or improvement”) (citing SDCL 15-3-13). Nonetheless, to the extent the Court considers this issue, the Court should conclude the Dohns also “usually cultivated or improved” the Disputed Land for the statutory period. Thus, either way, the Court should conclude as a matter of law the Dohns are the owners of the Disputed Land through adverse possession.

The Court has taken a broad view of the types of activities that satisfy the “usually cultivated or improved” criteria, which are also stated in the disjunctive. For example, the Court has held a plaintiff met its burden of proof by showing it utilized a disputed area “for more than twenty years by continuous clearing and improving of the land and then by farming it or using it to graze cattle, all without interruption.” *Cuka v. Jamesville Hutterian Mut. Soc.*, 294 N.W.2d 419, 423 (S.D. 1980). The Court has also recognized “mowing the strip of land (in a residential area on the outskirts of town) and planting and maintaining trees on the strip constitutes cultivation” as a matter of law. *Schultz*, 1997 S.D. 72, 14, at ¶ 14; *see also id.*, at ¶ 15 (concluding installing a “gravel and later asphalt driveway, together with landscaping, constitute an improvement to the land” as a matter of law). In *Taylor*, the Court held a plaintiff who periodically used a disputed strip of land for gardening and apple picking during the statutory period satisfied the “usually cultivated or improved” requirement, notwithstanding the fact that her neighbors were also allowed to use the area. *Taylor*, 330 N.W.2d at 544; *see also Jutting v. Hendrix*, 2000 S.D. 25, ¶ 9, 606 N.W.2d 140, 142 (holding maintaining a lawn and planting two trees in a disputed strip of land was cultivation for adverse possession

purposes); *Lewis v. Aslesen*, 2001 S.D. 131, ¶ 8, 635 N.W.2d 744, 747 (holding activities such as “regular mowing of the property constitutes cultivation” for adverse possession purposes).

The *Cuka* opinion recognizes that using a disputed piece of land for grazing livestock can be sufficient, but these other cases demonstrate that a broad variety of agricultural practices are acceptable as well. And here, the Dohns used the Disputed Land for raising and grazing their livestock, such as quarter horses, bucket calves, and miniature donkeys, which were allowed to graze on the Dohn Land, including the Disputed Land. Dohn SUMF, ¶¶ 13-14. This practice began in 1976 and continued until approximately 2007. *Id.*, ¶ 15. This, too, is well beyond the 20-year statutory period (*i.e.*, June 1996) for establishing adverse possession.

The Court also held that erecting a garage located on a disputed piece of property that was maintained and improved during the 20-year statutory period was sufficient to constitute an improvement for adverse possession purposes. *Underhill v. Mattson*, 2016 S.D. 69, ¶ 13, 886 N.W.2d 348, 353. Here, the Dohns similarly built a barn that is partially located in the Disputed Land, which is primarily used for storage. Dohn SUMF, ¶ 20. This barn was built in approximately 1980, and the Dohns added to or otherwise built onto the barn at various points in the mid-to-late 1980s. *Id.*, ¶ 21. The barn remains standing to this day, and is thus considerably older than the twenty-year statutory period. *Id.*, ¶ 22. While this barn occupies only a portion of the Disputed Land, it is an improvement and its continuous existence is further evidence of the Dohns’ exclusive ownership of the Disputed Land.

Aside from rehashing its contentions regarding the condition of the Fence, Dumont Holdings does not genuinely dispute any of the foregoing. Rather, and without directly stating it, Dumont Holdings appears to allege the Dohns' occupation and use of the Disputed Land was permissive as opposed to adverse to its title holder. *See* Dumont Brief at 6-7. Dumont Holdings bears the burden of proof for establishing this defense. *Hofmeister v. Sparks*, 2003 S.D. 35, ¶ 17, 660 N.W.2d 637, 642.

For example, Dumont Holdings notes the Dohns were good friends with one of the prior owners of the Dumont Land, Alvin Hacecky. Mr. Dohn was asked whether he thought Mr. Hacecky would have been "okay" with the Dohns occupying the Disputed Land if Mr. Hacecky was aware of it, to which Mr. Dohn replied, "Absolutely positive, yeah." *See* Dumont Brief at 6. However, Dumont Holdings omitted the rest of Mr. Dohn's answer, which stated that Mr. Hacecky viewed the Fence as creating the boundary line between the two properties: "Absolutely positive, yeah. To him that fence was the border." Dohn Depo. 55:22-56:1.

Similarly, Mr. Dohn was asked, assuming if Mr. Hacecky knew the Fence was located in the wrong location, whether he would be "okay" with it, to which Mr. Dohn responded, "He'd be fine with it, yeah" because Mr. Dohn "saved [Mr. Hacecky's] cookies a few times" rounding up loose animals, and because Mr. Hacecky "knew [Mr. Dohn] was maintaining the fence." Dohn Depo. 56:7-18. This passage makes clear that the Fence created the border between the two properties, and this was simply not a point of contention between the neighbors. In addition, Dumont Holdings claims Mr. Dohn and Mr. Hacecky discussed the barn's location, but the cited testimony for this proposition (*i.e.*, Dohn Depo. 42:21-23) is related to a discussion between Mr. Dohn and another

gentleman named Ed English, not Mr. Hacecky. *See* Dohn Depo. 42:21-23 (“ . . . I said to Ed, you know, this is going to come close to that fence[.]”).

Regardless, none of Mr. Dohn’s testimony on these issues is admissible. “Evidence submitted in affidavits as part of a summary judgment proceeding must be legally admissible.” *Chem-Age Indus., Inc. v. Glover*, 2002 S.D. 122, ¶ 18, 652 N.W.2d 756, 765. Any conversations between Mr. Dohn and Mr. Hacecky—and specifically as Mr. Dohn is attempting to relay Mr. Hacecky’s words—are hearsay statements that do not fall into any hearsay exception. These are all out-of-court statements being offered for the truth of the matter asserted, *see* SDCL 19-19-801(c), and thus cannot be admitted into evidence. SDCL 19-19-802. “Parties cannot rely on recitations of hearsay in affidavit form, without also laying a foundation for an exception to the hearsay rule.” *Chem-Age Indus., Inc.*, 2002 S.D. 122 at ¶ 18. Dumont Holdings has not met this obligation, and thus these statements cannot be considered.

Additionally, it is clear from Mr. Dohn’s testimony that he is speculating about what he believes Mr. Hacecky might have said about certain topics. Critically, though, Mr. Dohn was never asked if any of these hypothetical conversations he was being asked about ever happened. For instance, Mr. Dohn was never asked if he knew whether Mr. Hacecky was even aware the Fence (or even the barn, which was built later) encroached onto the Dumont Land. Mr. Dohn has no personal knowledge of Mr. Hacecky’s (or his family’s) awareness of this fact. *See* Appellee Appx. 17-19 (Second Declaration of Phil Dohn, ¶ 2). Similarly, Mr. Dohn and Mr. Hacecky never actually discussed whether the Fence encroached on the Dumont Land or whether Mr. Hacecky was aware of that fact. *Id.*, at ¶ 3. And, Mr. Dohn and Mr. Hacecky never actually discussed the Dohns’

occupation and use of the Disputed Land, or even whether Mr. Hacecky was aware the Dohns were not title owners of the Disputed Land. *Id.* Consequently, there is simply no evidence the Dohns or their predecessors in interest ever sought or obtained permission from any of Dumont Holdings' predecessors in interest to use and occupy the Disputed Land.

While Mr. Dohn was being a cooperative and amicable witness regarding the questions posed to him, it is clear he was simply speculating about Mr. Hacecky's opinions and that the hypothetical conversations he was asked about were purely that—hypothetical. Speculative evidence of this nature is not admissible. *Lambertz v. Lambertz*, 375 N.W.2d 645, 646 (S.D. 1985); *see also* 32 C.J.S. Evidence § 683 (“Testimony which consists of no more than a guess, speculation, conjecture, or supposition of the witness is not admissible”). Thus, these statements cannot be considered.

However, even if these statements could be considered, it is also clear from the context provided, above, that the Dohn family and the Hacecky family understood and treated the Fence as establishing the boundary between their respective properties. This Court has “long recognized that a claim for adverse possession does not require a good faith belief or an intention to claim another’s land, but can be founded upon ignorance, inadvertence, or mistake as to the actual boundary between two parcels.” *Moorhead*, 522 N.W.2d at 5. “Thus, when adjoining land owners mistakenly assume that a fence line forms the boundary between their properties, and the legal titleholder acquiesces in his neighbor’s occupation of the land, the possession is presumed adverse.” *Id.* Accordingly—and while these statements are inadmissible—even if the Court were to consider Mr. Dohn’s testimony concerning his estimation of what he believed Mr. Hacecky would

have said about the Fence's encroachment onto the Dumont Land, it would not change the outcome here. Therefore, the Court should conclude Dumont Holdings failed to introduce any evidence suggesting the Dohns used and occupied the Disputed Land permissively. Accordingly, the Court should conclude there is no genuine issue of material fact, and that the Dohns are owners of the Disputed Land through adverse possession. Thus, the Circuit Court should be affirmed.

IV. Dumont Holdings' Remaining Arguments are Meritless

Dumont Holdings raises several other contentions, but none of them are properly before the Court or sufficient to defeat the Dohns' adverse possession claim. First, Dumont Holdings attempts to dispute whether the Dohns' occupation of the Disputed Land was open and notorious. Dumont Brief at 10. However, Dumont Holdings never raised this issue in its briefing in opposition to the Dohns' summary judgment motion with the Circuit Court, and so it is forfeited. *See* S.R. 47-52 (Dumont's Circuit Court brief); *Hauck v. Clay Cnty. Comm'n*, 2023 S.D. 43, ¶ 4, n.4, 994 N.W.2d 707, 709 (“Arguments not raised at the trial level are deemed waived on appeal.”).

However, even if the Court considers this issue, the only evidence Dumont Holdings offers in support of its contention are contemporary observations and photographs of the area depicting the condition of the Disputed Land today. But, again, the relevant time period is June 1976 – 1996, and Dumont Holdings has failed to introduce any evidence questioning the openness or notoriousness of the Fence and/or the Dohns' occupation of the Disputed Land during this statutory period. *Contra* Dohn SUMF, ¶¶ 5-7, 13-22. Thus, Dumont Holdings' evidence is irrelevant and has no bearing on the Dohns' ownership of the Disputed Land through adverse possession.

Second, and similarly, Dumont Holdings attempts to dispute whether the Dohns' possession of the Disputed Land was continuous and exclusive. Dumont Brief at 11. This argument was also not presented to the Circuit Court, and so it, too, is waived on appeal. *Hauck*, 2023 S.D. 43, at ¶ 4, n.4. Nonetheless, even if this Court considers the issue, Dumont Holdings has not identified any facts in the record that contradicts the Dohns' adverse possession claim.

For instance, the Dohns attested to their continuous and exclusive occupation and use of the Disputed Land for agricultural purposes beginning in 1976 and continuing until approximately 2007, which is when the Dohns discontinued having livestock on their land. Dohn SUMF, ¶¶ 13-15. The Dohns likewise attested that the Fence has existed since 1976 and continues to exist in the same location to this day, which provides a continuous and obvious border between the Dohn Land and the Dumont Land. *Id.*, at ¶¶ 6-8, 19. No one other than the Dohns has claimed to maintain the Fence over the years. *See id.*, at ¶¶ 16-18. The Dohns also attested to building a barn located in part on the Disputed Land in approximately 1980, which also still exists today. *Id.*, at ¶¶ 20-22.

In contrast, Dumont Holdings has not identified any person or party aside from the Dohns who claims to have occupied, used, or otherwise accessed the Disputed Land during the statutory period. Instead, Dumont Holdings once again points to its interpretation of the state of affairs of the Disputed Land today, which is long after title to the Disputed Land vested in the Dohns through adverse possession. *Johnson*, 409 N.W.2d at 382. "Mere speculation and general assertions, without some concrete evidence, are not enough to avoid summary judgment." *Godbe*, 2022 S.D. 1, at ¶ 21; *see also* SDCL 15-6-56(e).

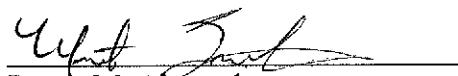
Finally, Dumont Holdings claims the Dohns did not pay real estate taxes on the Disputed Land, which it alleges is “an act typically associated with ownership and control.” Dumont Brief at 12. While this argument was also not raised below, it is not relevant, even if true, because the Dohns are not asserting an adverse possession claim based on SDCL 15-3-15. This statute enables a party to adversely possess land “under claim and color of title made in good faith” by possessing the land for a period of ten (10) years and by paying real estate taxes legally assessed thereon during that period. *Id.* In contrast, the Dohns’ adverse possession claim is based on satisfying SDCL 15-3-13, and the Court has never held that a party is required to pay real estate taxes under this statute, which conspicuously contains no reference to paying real estate taxes, either. *See Martinmaas v. Engelmann*, 2000 S.D. 85, ¶ 49, 612 N.W.2d 600, 611 (“The intent of a statute is determined from what the legislature said, rather than what the courts think it should have said, and the court must confine itself to the language used”). Accordingly, Dumont Holdings has failed to identify any relevant evidence that calls into question the Dohns’ adverse possession claim. The Court should, therefore, find there is no genuine issue of material fact, and the Court should conclude the Dohns are owners of the Disputed Land through adverse possession. Thus, the Circuit Court should be affirmed.

CONCLUSION

The Court should find there is no genuine issue of material fact, and the Court should conclude the Dohns are entitled to judgment as a matter of law confirming their ownership of the Disputed Land through adverse possession. Thus, the Circuit Court should be affirmed in all respects.

Dated at Sioux Falls, South Dakota, this 7th day of April, 2026.

DAVENPORT, EVANS, HURWITZ &
SMITH, L.L.P.

A handwritten signature in black ink, appearing to read "Reece M. Almond", is written over a horizontal line.

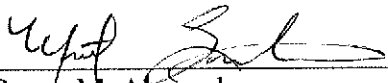
Reece M. Almond
Michael L. Snyder
206 West 14th Street
PO Box 1030
Sioux Falls, SD 57101-1030
Telephone: (605) 336-2880
Facsimile: (605) 335-3639
Attorneys for Appellees

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Brief of Appellees complies with the type volume limitations set forth in SDCL 15-26A-66. Based on the information provided by Microsoft Word 365, this Brief contains 6,136 words and 30,726 characters, excluding the table of contents, table of authorities, jurisdictional statement, statement of legal issues, any addendum materials, and any certificates of counsel. This Brief is typeset in Times New Roman (12 points) and was prepared using Microsoft Word 365.

Dated at Sioux Falls, South Dakota, this 7th day of April, 2026.

DAVENPORT, EVANS, HURWITZ &
SMITH, L.L.P.



Reece M. Almond
Michael L. Snyder
206 West 14th Street
PO Box 1030
Sioux Falls, SD 57101-1030
Telephone: (605) 336-2880
Facsimile: (605) 335-3639
Attorneys for Appellees

CERTIFICATE OF SERVICE

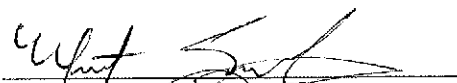
The undersigned hereby certifies that the foregoing "Brief of Appellees" was filed electronically with the South Dakota Supreme Court and that the original was filed by mailing the same to 500 East Capital Avenue, Pierre, South Dakota 57501-5070, on the 7th day of April, 2026.

The undersigned further certifies that an electronic copy of "Brief of Appellees" was served electronically to the attorneys set forth below, on the 7th day of April, 2026:

Robert W. Klimisch
Klimisch Law, P.C.
101 West 2nd Street
Yankton, SD 57078
Attorney for Appellant

Dated at Sioux Falls, South Dakota, this 7th day of April, 2026.

DAVENPORT, EVANS, HURWITZ &
SMITH, L.L.P.


Reece M. Almond
Michael L. Snyder
206 West 14th Street
PO Box 1030
Sioux Falls, SD 57101-1030
Telephone: (605) 336-2880
Facsimile: (605) 335-3639
Attorneys for Appellees

APPENDIX

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A

STATE OF SOUTH DAKOTA)
 : SS
COUNTY OF YANKTON)

IN CIRCUIT COURT

FIRST JUDICIAL CIRCUIT

PHIL DOHN and EVELYN DOHN,

Plaintiffs,

vs.

DUMONT HOLDINGS, LLC, and all
unknown persons who may claim any interest
in the subject matter of this action,

Defendants.

66CIV. 24-000159

**PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS**

Pursuant to SDCL § 15-6-56(c), Plaintiffs, Phil Dohn and Evelyn Dohn (the “Dohns”), by and through counsel of record, respectfully submit this Statement of Undisputed Material Facts in support of their Motion for Summary Judgment.

1. The Dohns are record title holders and owners in fee of certain real estate in Yankton County, South Dakota, described as:

Lot 3, Block 2, English Heights, in the Northeast Quarter, Section 13, Township 93 North, Range 57 West of the 5th P.M., containing 0.63 Acres, more or less;

Dohn’s Addition in the Northeast Quarter of the Northeast Quarter, Section 13, Township 93 North, Range 57 West of the 5th P.M., containing 3.45 Acres, more or less; and

The West 24 Feet of Dohn’s Addition extending from the north line of Dohn’s Addition to the south line of the Northeast Quarter of the Northeast Quarter (NE¼ NE¼), and that area designated as a “private road,” according to the duly recorded plat of Dohn’s 2nd Addition and Wright’s Addition located in the Northeast Quarter of the Northeast Quarter (NE¼ NE¼), Section Thirteen (13), Township 93 North, Range 57 West of the 5th P.M., Yankton County, South Dakota, recorded in Book S13, page 135.

(the “Dohn Land”). *See* Complaint, ¶ 1; Answer, ¶ 2; *see also* Declaration of Phil Dohn, Ex. 1 (hereinafter “Dohn Dec.”).

2. The Dohns obtained title to the Dohn Land in June 1976. Dohn Dec, ¶ 2, Ex. 1.

3. Defendant, Dumont Holdings, LLC, is the record title holder and owner in fee of certain real estate located in Yankton County, South Dakota, including the real estate immediately to the west of, and adjoining, the Dohn Land (the “Dumont Land”). *See* Complaint, ¶ 4; Answer, ¶ 2.

4. The Dohn Land and the Dumont Land share a common property line border extending from North-to-South between the neighboring parcels. *See* Complaint, ¶ 5; Answer ¶ 2; *see also* Dohn Dec. ¶ 3.

5. There is a barbed wire fence that also runs North-to-South that is situated between the Dohn Land and the Dumont Land (the “Fence”). Dohn Dec., ¶ 4.

6. While its exact age is unknown, the Fence was in existence when the Dohns purchased the Dohn Land in 1976. Dohn Dec. ¶ 5.

7. The Fence creates both a border and a clear demarcation line between the Dohn Land and the Dumont Land. Dohn Dec., ¶ 6.

8. However, the Fence also encroaches approximately twenty-four feet beyond the true boundary line of the Dohn Land and onto the Dumont Land. Dohn Dec., ¶ 6.

9. This boundary area is referred to as the “Disputed Land,” and its dimensions are described as follows:

. . . the East 24 Feet of the Northwest Quarter of the Northeast Quarter of Section 13, Township 93 North, Range 57 West of the 5th P.M., Yankton County, South Dakota, lying West of Dohn’s Addition, more fully described as follows:

Beginning at the NE 1/16 Corner of said Section 13, thence N00°18’45”W, along the N-S 1/16th line, a distance of 934.46 feet to the northwest corner of Dohn’s Addition; thence N89°45’51”W a distance of 23.94 feet; thence S00°18’28”E a distance of 934.68 feet to the E-W 1/16 line; thence N89°44’15”E a distance of 24.02 feet to the Point of Beginning containing ± 0.51 Acres.

Dohn Dec., ¶ 7, Ex. 2.

10. In an earlier effort to address the issue with the Fence's location, a quitclaim deed was drafted and dated December 30, 1992, purporting to convey from Jean Marie English to the Dohns certain real estate in Yankton County, South Dakota. Dohn Dec., ¶ 8, Ex. 3.

11. However, as reflected in the instrument itself, the quit claim deed simply "re-deeded" the Western 24 feet of the Dohn Land to the Dohns, which they already owned. Dohn Dec., ¶ 8, Ex. 3.

12. This putative conveyance did not add to or alter the dimensions of the Dohn Land, and it did not affect how the Dohns historically or continued to use their property, including using the property located in the Disputed Land and up to the Fence. Dohn Dec., ¶ 8.

13. Beginning in 1976, the Dohns utilized the Dohn Land, including the Disputed Land, for agricultural and pastoral purposes. Dohn Dec., ¶ 9.

14. The Dohns raised livestock over the years that were allowed to graze and exercise on the Dohn Land, including the Disputed Land, such as quarter horses, bucket calves, and even miniature donkeys. Dohn Dec., ¶ 9.

15. This practice continued until approximately 2007, which is a period of approximately 31 years. Dohn Dec., ¶ 9.

16. The Dohns have regularly maintained the Fence over the years and as the need arose. Dohn Dec., ¶ 10.

17. Periodic repairs were made over the years both to keep the Dohn livestock contained on their side of the Fence, but also because certain of the Defendant's predecessors in interest raised cattle on the Dumont Land that needed to be kept on the other side of the Fence. Dohn Dec., ¶ 10.

18. In addition, the area is heavily wooded, and occasionally a tree or branch would fall onto a portion of the Fence, which the Dohns would then repair. Dohn Dec., ¶ 10.

19. The Dohns never moved or caused the Fence to be moved from its original location, and it has remained at the same location since at least 1976. Dohn Dec., ¶ 10.

20. The Dohns also built a barn located in part on the Disputed Land, which is used for storage. Dohn Dec., ¶ 11.

21. This barn was built in approximately 1980, and the Dohns added to or otherwise built onto the barn at various points in the mid-to-late 1980s. Dohn Dec., ¶ 11.

22. The barn has been maintained over the years, and it still exists today. Dohn Dec., ¶ 11.

Dated at Sioux Falls, South Dakota, this 3rd day of June, 2025.

DAVENPORT, EVANS, HURWITZ &
SMITH, L.L.P.

/s/ Michael L. Snyder

Reece M. Almond
Michael L. Snyder
206 West 14th Street
PO Box 1030
Sioux Falls, SD 57101-1030
Telephone: (605) 336-2880
Facsimile: (605) 335-3639
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Plaintiffs, hereby certifies that the foregoing “Plaintiffs’ Statement of Undisputed Material Facts” was served electronically with the court and that any associated attorneys were either served automatically by the state’s electronic service system or were served via direct email or by United States Mail, on this 3rd day of June, 2025.

Robert W. Klimisch
Klimisch Law, P.C.
101 West 2nd Street
Yankton, SD 57078
klimischlaw@gmail.com
Attorneys for Defendant

/s/ Michael L. Snyder

Michael L. Snyder

B

STATE OF SOUTH DAKOTA)
 : SS
COUNTY OF YANKTON)

IN CIRCUIT COURT
FIRST JUDICIAL CIRCUIT

PHIL DOHN and EVELYN DOHN,

Plaintiffs,

vs.

DUMONT HOLDINGS, LLC, and all
unknown persons who may claim any interest
in the subject matter of this action,

Defendants.

66CIV. 24-000159

DECLARATION OF PHIL DOHN

Under SDCL chapter 18-7, Phil Dohn declares as follows:

1. I am a resident of Yankton County, South Dakota, over the age of eighteen (18) years, and, in all ways, I am competent to make this Declaration. I make the statements contained in this Declaration of my personal knowledge and information unless otherwise expressly stated.
2. Attached hereto as Exhibit 1 is a true and correct copy of a Warranty Deed dated June 29, 1976, conveying from Edward Jacob English and Jean Marie English to myself and my wife, Evelyn Dohn, certain real estate described therein located in Yankton, County, South Dakota. Evelyn and I remain record title holders and owners of this land to this day, which is described in the Complaint as the "Dohn Land."
3. Immediately to the West of our property is a piece of real estate that borders and adjoins the Dohn Land and which I understand is presently owned by the Defendant, Dumont Holdings, LLC. This neighboring land is referred to in the Complaint as the "Dumont Land."
4. There is a barbed wire fence that runs North-to-South and that is situated between the Dohn Land and the Dumont Land (the "Fence").

5. The Fence was in existence when my wife and I became owners of the Dohn Land in 1976, although its exact age is unknown.

6. The Fence creates both a border and a clear demarcation line between the Dohn Land and the Dumont Land. However, the Fence encroaches approximately twenty-four feet to the West beyond the true boundary line of the Dohn Land and onto the Dumont Land. This boundary area is referred to in the Complaint as the “Disputed Land.”

7. I commissioned a survey to depict the exact location of the Fence and legal description of the Disputed Land. Attached hereto as Exhibit 2 is a true and correct copy of a survey I obtained, which is dated May 1, 2024.

8. In an earlier effort to address the issue with the Fence’s location, a quitclaim deed was drafted and dated December 30, 1992, conveying from Jean Marie English to myself and my wife Evelyn certain real estate in Yankton County, South Dakota, described therein. A true and correct copy of this quitclaim deed is attached hereto as Exhibit 3. However, as reflected in the instrument, it simply re-deeded the Western 24 feet of the Dohn Land to myself and to my wife Evelyn, which we already owned. As a result, this quitclaim deed did not add to or otherwise alter the dimensions of the Dohn Land, and it did not affect how Evelyn and I historically or continued to use our property, including using the property located in the Disputed Land and up to the Fence.

9. Beginning in 1976, Evelyn and I utilized the Dohn Land, including the Disputed Land, for agricultural and pastoral purposes. We raised livestock over the years that were allowed to graze and exercise on the Dohn Land, including the Disputed Land, such as quarter horses, bucket calves, and even miniature donkeys. This continued until approximately 2007.

10. Evelyn and I also regularly maintained the Fence over the years and as the need arose. For instance, we made periodic repairs over the years both to keep our livestock contained on our side of the Fence, but also because some of the prior owners of the Dumont Land raised cattle that needed to be kept on the other side of the Fence. In addition, the area is heavily wooded, and occasionally a tree or branch would fall onto a portion of the Fence, which we would then repair. We never moved or caused the Fence to be moved from its original location, and it has remained in the same location since at least 1976.

11. Evelyn and I also built a barn that is located in part on the Disputed Land, which is used for storage. This barn was built in approximately 1980, and we added to or otherwise built onto the barn at various points in the mid-to-late 1980s. The barn has been maintained over the years, and it still exists to this day.

I declare under penalty of perjury under the law of the State of South Dakota that the foregoing is true and correct.

Signed on the 27th day of May, 2025., at Sioux Falls, South Dakota.

A handwritten signature in black ink, appearing to read 'Phil Dohn', is written over a horizontal line.

Phil Dohn

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Plaintiffs, hereby certifies that the foregoing "Declaration of Phil Dohn" was served electronically with the court and that any associated attorneys were either served automatically by the state's electronic service system or were served via direct email or by United States Mail, on this 31 day of ~~May~~ June, 2025.

Robert W. Klimisch
Klimisch Law, P.C.
101 West 2nd Street
Yankton, SD 57078
klimischlaw@gmail.com
Attorneys for Defendant



Michael L. Snyder

EXHIBIT 1

EDWARD JACOB ENGLISH and JEAN MARIE ENGLISH, husband and wife,

grantor S, of Yankton County,State of South Dakota, for and in consideration ofONE DOLLAR (\$1.00) and other valuable consideration, DOLLARSGRANT, CONVEY AND WARRANT, TO PHILIP J. DOHN and EVELYN A. DOHN,
husband and wife, as joint tenants with right of survivorship and not as
tenants in common,grantee S, of Yankton, S.Dak. 57078, P. O. the following described
real estate in the County of Yankton in the State of South Dakota:Lot 3, Block 2, English Heights, in the Northeast Quarter,
Section 13, Township 93 North, Range 57 West of the 5th P.M.,
containing 0.63 Acres, more or less; andDohn's Addition in the Northeast Quarter of the Northeast
Quarter, Section 13, Township 93 North, Range 57 West of the 5th
P.M., containing 3.45 Acres, more or less,according to the duly recorded plat thereof in Book S7,
pages 82A and B.TRANSFER FEE
PAID \$ 5.00
DATE 6-30-76Dated this 29th day of June, 1976Edward Jacob English
Edward Jacob EnglishJean Marie English
Jean Marie EnglishSTATE OF SOUTH DAKOTA,
County of YANKTON, ss.On this the 29th day of June, 1976, before me,Bertha E. Criegee,
the undersigned officer, personally appeared
EDWARD JACOB ENGLISH and JEAN MARIE ENGLISH, husband and wife,known to me or satisfactorily proven to be the person S whose name S are subscribed to the within
instrument and acknowledged that they executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

My commission expires March 30, 1980.Bertha E. Criegee
Bertha E. Criegee, Notary Public

No. _____

WARRANTY DEED



STATE OF SOUTH DAKOTA, } ss.
County of Yankton

Filed for record this 30 day of
June, 1976 at

10:40 clock A.M., and recorded in

Book 274, Page 11

Lynette K. Larson
Register of Deeds.

By _____ Deputy.

Fees, \$3.00 pd.

Philip Dahn

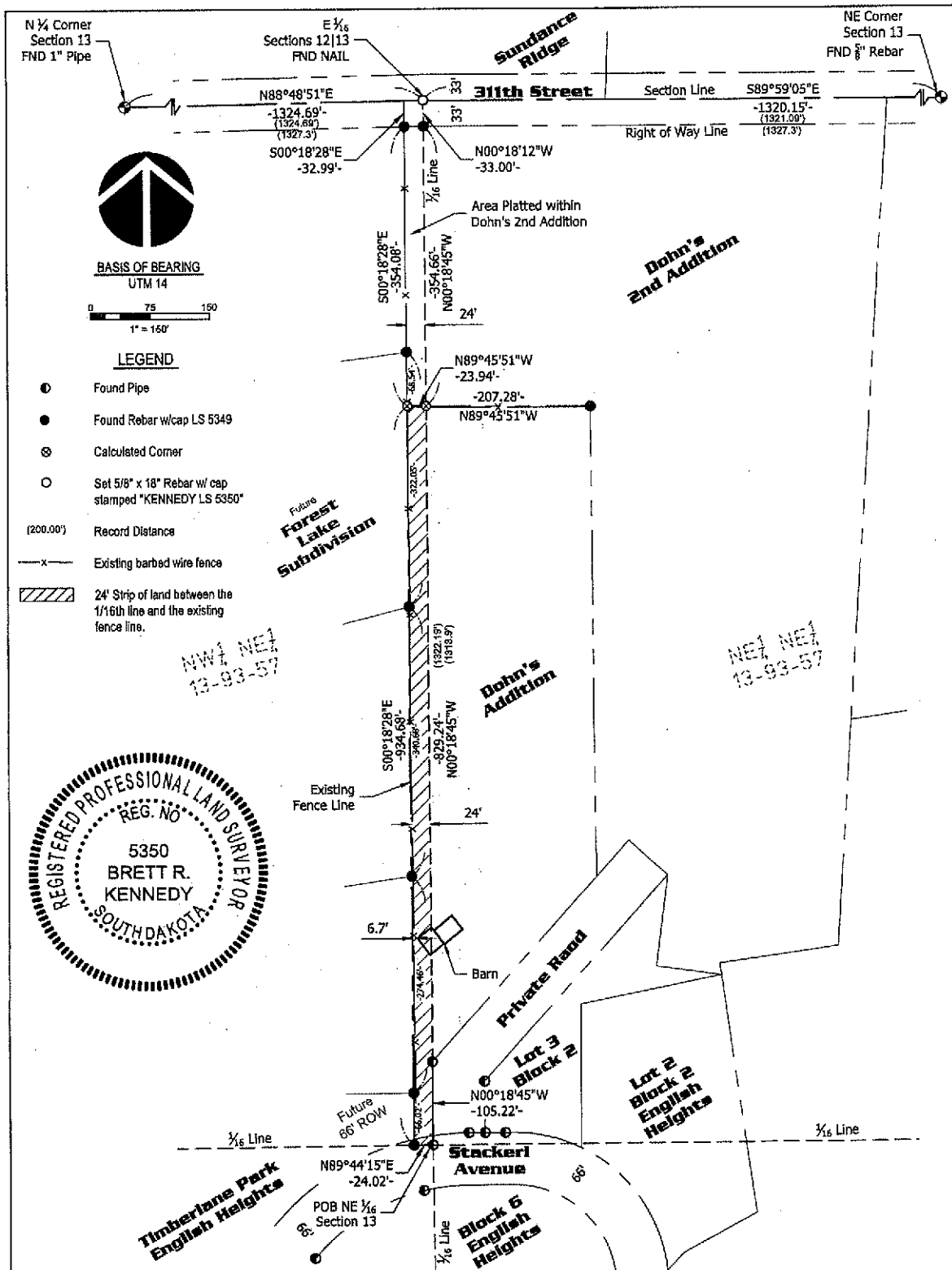
RTI, Yankton

Call Repall on it.

Filed _____ Sent _____
Rem ✓ Alpha ✓
Margin _____ Tran ✓
Paid ✓ Chrg _____

#228

EXHIBIT 2



I, Brett R. Kennedy, a Registered Land Surveyor in the State of South Dakota, dtd, on or prior to December 7, 2023, completed a survey of the East 24 Feet of the Northwest Quarter of the Northeast Quarter of Section 13, Township 93 North, Range 57 West of the 5th P.M., Yankton County, South Dakota, lying West of Dohn's Addition more fully described as follows:

Beginning at the NE $\frac{1}{4}$ Corner of said Section 13, thence N00°18'45"W, along the N-S $\frac{1}{16}$ line, a distance of 934.46 feet to the northwest corner of Dohn's Addition; thence N89°45'51"W a distance of 23.94 feet; thence S00°18'28"E a distance of 934.68 feet to the E-W $\frac{1}{16}$ line; thence N89°44'15"E a distance of 24.02 feet to the Point of Beginning containing ± 0.51 Acres.

This Certificate is to the best of my knowledge and belief a true description of said survey. I hereby certify that this survey was performed by me or under my direct supervision, and I have executed this document this 1st day of May, 2024.

Brett R. Kennedy
Brett R. Kennedy, LS 5350

23397 PAGE 1 OF 1

Prepared By:

STOCKWELL
STOCKWELL ENGINEERS, INC.
201 WALNUT STREET
YANKTON, SD 57078
PH: 405.465.8092
www.stockwellengineers.com

EXHIBIT 3

JEAN MARIE ENGLISH,
a widow,

grantor ..., of ... Yankton ... County,
State of ... South Dakota ... for and in consideration of ...
One Dollar (\$1.00) and other valuable consideration ... ~~XXXXXX~~
CONVEY ... AND QUIT CLAIM ... TO ...
PHIL DOHN and EVELYN DOHN, as joint tenants with right of survivorship
and not as tenants in common,

Box 197

grantee ..., of ... R.R. 1, English Heights, Yankton, SD. 57078, ... P.O. the following described
real estate in the County of ... Yankton ... in the State of South Dakota:

The West 24 Feet of Dohn's Addition extending from the north line
of Dohn's Addition to the south line of the Northeast Quarter of
the Northeast Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$), and that area designated as a
"private road", according to the duly recorded plat of Dohn's 2nd
Addition and Wright's Addition located in the Northeast Quarter
of the Northeast Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$), Section Thirteen (13),
Township 93 North, Range 57 West of the 5th P.M., Yankton County,
South Dakota, recorded in Book S13, page 135.

Box 312
Page 229
1-8-93

Dated this ... 30th ... day of ... December ... 1992.

JEAN MARIE ENGLISH

STATE OF SOUTH DAKOTA

County of ... Yankton ... } ss.
OFFICE of REGISTER of DEEDS

Filed for record the ... 8 ... day of

January ... 1993.

at ... 4:00 o'clock and 40 minutes

P.M., and recorded in Book 312

on page ...

Lynette R. Larsen
Register of deeds.

By ... Deputy.

Fees, \$5.00

STATE OF SOUTH DAKOTA

County of ... Yankton ... } ss.
On this the 30th day of ... December ... 1992,
before me, ... the undersigned
officer, personally appeared ...
Jean Marie English, a widow,

known to me
or satisfactorily proven to be the person whose name
is ... subscribed to the within instru-
ment and acknowledged that ... he ... executed the same for
the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Notary Public - South Dakota

Title of officer

My commission expires ... 1/24 ... 1993.

Boller Printing Co., Inc.

Shelley
Morgan
Fid. = Chg.
#78

C

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF YANKTON)

IN CIRCUIT COURT
FIRST JUDICIAL CIRCUIT

PHIL DOHN and EVELYN DOHN,

Plaintiffs,

vs.

DUMONT HOLDINGS, LLC, and all
unknown persons who may claim any interest
in the subject matter of this action,

Defendants.

66CIV. 24-000159

**SECOND DECLARATION OF PHIL
DOHN**

Under SDCL chapter 18-7, Phil Dohn declares as follows:

1. I am a resident of Yankton County, South Dakota, over the age of eighteen (18) years, and, in all ways, I am competent to make this Declaration. I make the statements contained in this Declaration of my personal knowledge and information unless otherwise expressly stated.
2. I have no personal knowledge of whether Alvin Hacecky, or any other members of his family, were aware the Fence encroached approximately twenty-four feet to the West beyond the true boundary line of the Dohn Land and onto the Dumont Land.
3. Mr. Hacecky and I never discussed whether the Fence encroached onto the Dumont Land, or whether Mr. Hacecky was aware of that fact. Similarly, Mr. Hacecky and I never discussed the Dohns' occupation and use of the Disputed Land, or whether Mr. Hacecky was aware the Dohns were not title owners of the Disputed Land.

I declare under penalty of perjury under the law of the State of South Dakota that the foregoing is true and correct.

Signed on the 25 day of July, 2025., at Sioux Falls, South Dakota.

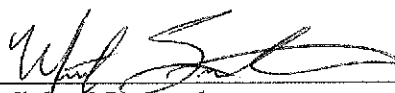


Phil Dohn

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Plaintiffs, hereby certifies that the foregoing "Second Declaration of Phil Dohn" was served electronically with the court and that any associated attorneys were either served automatically by the state's electronic service system or were served via direct email or by United States Mail, on this 29th day of July, 2025.

Robert W. Klimisch
Klimisch Law, P.C.
101 West 2nd Street
Yankton, SD 57078
klimischlaw@gmail.com
Attorneys for Defendant



Michael L. Snyder

D

1 Q Okay. And the only thing that would have been
2 there -- the fence at issue would be the only thing
3 that would have been located on that property, is
4 that fair?

5 A On the west edge of that property. On the north
6 edge there was fence. And on the east edge there
7 was fence. And then, you know, on the south coming
8 back to my -- to my residence. So this -- this was
9 all -- well, more than that. This went over here
10 and then later English sold this tract to Dick
11 Wright. And -- and that forced Wright's hand and he
12 had to -- and -- and he had put a up half of the new
13 eastern boundary, which he did, you know. And so --
14 but, you know, currently I was promised replacement
15 when a road went in. It hasn't happened yet, but
16 we're -- we -- we had -- we had full range of that
17 property.

18 Q Because there was no house and you would have built
19 the house at some time in the future, right, because
20 when you purchased it in 1972 --

21 A The house was there.

22 Q Okay. The house was there?

23 A Yeah.

24 Q Okay.

25 A Yeah.

1 Q Okay. And then do you know what year that would
2 have been, would that -- would be the year that he
3 purchased the property?

4 A Yeah. Because he needed that fence --

5 Q Okay.

6 A -- so he could have access for his construction.

7 Q And did anybody -- who put the fence up?

8 A I don't know who did Wright's, but we had survey
9 markers there and I did my half again.

10 Q You, Phil, physically did your half or --

11 A Yes; yes. Well, by that time my son was, you know,
12 pretty much a man and his -- so we -- yeah, we
13 didn't -- we weren't short on labor. We -- (stopped
14 talking)

15 Q And then on the south portion your property was
16 there a fence down there?

17 A There was. There was.

18 Q And where would that have been located?

19 A Well, it would have been -- it would have been
20 right in here because there was a home -- or there
21 is a home in there that people access whatever this
22 highway is here or street, you know, so, yeah, it --
23 it wasn't -- my -- my needs for a fence was the
24 north south run of the eastern border of the newly
25 acquired ground.

1 Q But, Phil, you would have a problem with your
2 livestock going south on your property if you didn't
3 have a fence or some other enclosure of some sort?

4 A There was some fence there. This whole thing had
5 been a sheep farm before English owned it. And
6 there was some woven wire fencing in there. Things
7 of that nature. So I pretty much think there -- I
8 -- I just left this part of this alone because it
9 was done and, you know, again, you know, keep the
10 timber off of it and that was -- that was the M.O.

11 Q And then -- so, Phil, when you -- when Wright came
12 in, what did the property look like regarding
13 fencing?

14 A When Wright --

15 MR. KLIMISCH: Can you mark this, Dean?

16 (Exhibit Number 5 Marked)

17 BY MR. KLIMISCH:

18 Q Phil, I'm showing you what's been marked as Exhibit
19 5. It's Exhibit 4, just a clean copy of the survey.

20 A Okay.

21 Q So when Wright purchased his property and you had
22 to add that fence to the east of your property, what
23 did the fence structures look like on your property?

24 A This fence structure here?

25 Q For your entire property you owned, all of the

1 What does the fencing look like?

2 A Terrible.

3 Q No; no; no. Sorry. You have a fence on the --

4 A On the eastside?

5 Q Yeah.

6 A That's still solid in most spots, yeah.

7 Q Okay. So you have a fence on the east side between

8 you and Wright?

9 A Yes.

10 Q Is that fair?

11 A Yeah; yeah.

12 Q And then you have a fence on the south side of your

13 property?

14 A Yes.

15 Q Okay.

16 A That's there. You can come up the driveway and see

17 that, yeah.

18 Q Okay. So is it fair to say then you could put

19 livestock in a fenced in area in you are backyard

20 today in an area?

21 A If I had this and I did a brush run along here and

22 pulled a wire or two, I'd be fine.

23 Q Okay. And you are referencing on the south -- or

24 the north side of your property --

25 A Yeah.

1 do that. Probably didn't include them, but I do
2 have -- I have pictures at home of it when we -- we
3 moved that on a stack mover from the high school and
4 went out and we laid a foundation and put it on
5 that. But it -- it -- I -- this is an honest guess,
6 maybe '76, '78. Somewhere in there.

7 Q Would be the barn?

8 A The barn, yeah.

9 Q Okay.

10 A Yeah.

11 Q And, Phil, have you added any other structures to
12 the Dohn land or your adjacent property that you've
13 owned except for the fencing we made reference to
14 and then the barn?

15 A Yeah. Here. Right here. I -- I moved in a
16 building I bought here in town and I used that for
17 my carriages. And -- and then after that I needed
18 something that I could access to put -- put my -- my
19 fishing boat in. And so we built that.

20 Q Okay.

21 A And -- and hang on. You know, I -- I said to Ed,
22 you know, this is going to come close to that fence
23 and he said, oh, I'll get that taken care of. That
24 was his words. That was over 30 years ago and
25 that's about when I built that.

1 A But I did not talk to Goetz. I did not commission
2 him. I did not pay one dollar.

3 Q Okay. Phil -- and then you said that Alvin
4 Hacecky, you two became fast friends?

5 A Yes; yeah. He would -- I respected what he did and
6 he saw the -- the timber lot that I had built on my
7 -- on my lot -- my house is here and so he would
8 come and ask me about different varieties of pines
9 and spruce and, you, know, this and that. He -- he
10 did build north of me about two miles there and he
11 -- yeah, you know, he was nice.

12 Q So it's fair to say you were -- well, you said fast
13 friends, so meaning close friends, too?

14 A He -- he knew -- he knew me and my wife because of
15 our commercial enterprises, but I don't remember
16 ever him coming to our residence for anything. He'd
17 -- he'd find his way up the driveway and we'd sit
18 and talk.

19 Q Okay. And then I think you said some of his kids
20 then baby sat your kids?

21 A Yeah; yeah.

22 Q Okay. So if Alvin knew that you had encroached
23 onto this property and it was Alvin's property, he
24 would be okay with you being in that disputed area?

25 A Absolutely positive, yeah. To him that fence was

1 the border.

2 Q Uh-huh.

3 A And we call it the 16th line or something, and

4 Baldy Deal didn't survey it that way, but -- what

5 was Peterson's name? He was the one that did the

6 second one.

7 Q Yeah. But, Phil, but if Alvin knew that that

8 property would be his property and you would be in

9 that property and the fence wasn't on the right

10 spot, Alvin would be okay with it?

11 A He'd been fine with it, yeah.

12 Q Okay.

13 A You know, I - I saved his cookies a few times

14 rounding up -- I'm not a roper but driving his

15 animals back and -- and he knew that I was

16 maintaining the fence. But he -- but he just, you

17 know, he was -- he -- we -- we had a nice

18 relationship.

19 Q And then regarding -- regarding when you were

20 putting up fence you would get that fence surveyed

21 prior to you putting that fence up?

22 A Absolutely, yeah, yeah.

23 Q So when you were putting up that fence you knew

24 that that fence that was on the west side wasn't in

25 the right location because you were surveying the

1 property?

2 A It was still listed agricultural ground. Ed
3 English did everything that way. He would say what
4 are you interested in and then he would -- he would
5 bring in a surveyor and then that would be the lot.
6 And you'd be bordered by either another surveyed lot
7 or agricultural ground and he got away with that
8 just fine.

9 Q And, Phil, regarding your -- your claim of material
10 facts on number 13, you said beginning in 1976, the
11 Dohns utilized Dohn land including the disputed land
12 for agricultural and pastoral purposes?

13 A True.

14 Q Okay. And you're referencing you had quarter
15 horses, bucket calves and even miniature donkeys.
16 When you are referencing agriculture on pastoral
17 purposes, is that what you're referencing?

18 A Yes.

19 Q Okay. Any other agricultural purposes beside the
20 livestock you're referencing?

21 A No.

22 Q Okay. And that's also anything in addition to the
23 pastoral purposes is again referencing livestock, is
24 that fair?

25 A That's fair.

1 Q Okay. Phil, you make comment -- again, this is
2 undisputed material fact number 16. It says the
3 Dohns have regularly maintained the fence over the
4 years and as the need arose. And we're going to
5 reference it as fence at issue.

6 A Okay.

7 Q So it's not another fence. So the fence at issue,
8 you state that over the years you've maintained --
9 regularly maintain the fence?

10 A When I had livestock.

11 Q Okay. And that was up until?

12 A About -- oh, jeez. You know, I had my -- you know,
13 probably 20 -- 2004, somewhere in there, that's when
14 -- that's when the last horses left. Yeah. And
15 then all I had was those little donkeys. When the
16 mountain lions were sighted in my orchard in front
17 my neighbor's house, that's when I brought the
18 donkeys in. Kept them in a smaller yard next to the
19 barn and put them inside every night, you know,
20 because the -- when the coyotes quit screaming at
21 night, you know there a more powerful predator. And
22 that's exactly what happened.

23 Q So, Phil, referencing the horses. What happened to
24 the horses or where did they go?

25 A Well, my -- my son and I were the -- were the

1 so that --

2 Q Okay. And then would they run most if not all of

3 the Dohn land --

4 A No.

5 Q -- that's marked in the --

6 A Before that they could. But after the lion issue,

7 we restricted their -- you know, I -- I could go out

8 with a bucket of grain and call them. Get them

9 caught up in the smaller one, open the barn door and

10 put them in.

11 Q Okay. So it's fair to say they would have stayed

12 in the little corral during the day, in a barn at

13 night?

14 A Yeah. This or this is where they were.

15 Q And this or this, you are referencing this as in

16 the Dohn land?

17 A Yeah, Dohn's first addition.

18 Q Uh-huh.

19 A Yeah.

20 Q Which if we look at it --

21 A Yeah.

22 Q -- on Exhibit 1, it's -- it's -- I marked it in

23 orange. So you are saying they would have been

24 roaming free on the Dohn land?

25 A They would have been, yes.

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31294

PHIL DOHN and EVELYN DOHN,

Plaintiffs and Appellees,

v.

DUMONT HOLDINGS, LLC, and all
Unknown persons who may claim any interest
in the subject matter of this action,

Defendants and Appellants.

APPEAL FROM THE CIRCUIT COURT
FIRST JUDICIAL CIRCUIT
YANKTON COUNTY, SOUTH DAKOTA

THE HONABLE DAVID D. KNOFF
Circuit Court Judge

APPELLANT, DUMONT HOLDINGS, LLC'S REPLY BRIEF

Robert W. Klimisch
KLIMISCH LAW. P.C
101 West 2nd Street
Yankton, SD 57078
Telephone: (605) 665-9495

Michael L. Snyder
Reece M. Almond
DAVENPORT, EVANS, HURWITZ &
SMITH, LLP
206 West 14th Street
Sioux Falls, SD 57101
Telephone: (605) 336-2880

ATTORNEY FOR APPELLANT,
Dumont Holdings, LLC

ATTORNEY FOR APPELLEES

Notice of Appeal filed on November 14th, 2025.

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ARGUMENT

I. Dohn's Assertion of Forfeiture Does Not Excuse Its Failure to Establish All Elements of Adverse Possession by Clear and Convincing Evidence.

Under SDCL 15-3-13, adverse possession without written title may be established only if the claimed land was either protected by a substantial enclosure or usually cultivated or improved. These statutory requirements are prerequisites to a valid adverse possession claim, but they do not replace the traditional common-law elements. A claimant must still prove actual, open, visible, notorious, continuous, and hostile possession for the statutory period. *Lewis v. Aslesen*, 2001 S.D. 131, ¶ 7, 635 N.W.2d 744, 746; *Ashby v. Oolman*, 2008 S.D. 26, ¶¶ 20–21, 748 N.W.2d 132, 137–38. The burden of proving adverse possession by clear and convincing evidence rests upon the party asserting the claim. *Titus v. Chapman*, 2004 S.D. 106, ¶ 28, 687 N.W.2d 918, 926. All reasonable inferences must be drawn in favor of the non-moving party. *Morgan v. Baldwin*, 450 N.W.2d 783, 785 (S.D. 1990).

Dohn contends that Dumont forfeited its arguments regarding the traditional elements of adverse possession by failing to raise them in opposition to Dohn's summary judgment motion. (Dohn's Appellee Br. at 20.) That argument is unpersuasive. As the party seeking summary judgment on its adverse possession claim, Dohn bore the burden to establish every required element of adverse possession by clear and convincing evidence in the first instance.

That burden applies to both the statutory prerequisites under SDCL 15-3-13 and the traditional common-law elements of adverse possession. Dohn's summary judgment motion, however, focused primarily on the statutory prerequisites and did not address the traditional elements, including open and notorious, continuous, and exclusive possession

for the statutory period. The statutory requirements of SDCL 15-3-13 are prerequisites to adverse possession, not substitutes for the remaining required elements under South Dakota law.

On appeal, Dohn continues to focus primarily on the statutory prerequisites while addressing the traditional elements only in response to the deficiencies identified by Dumont. That selective analysis does not establish entitlement to summary judgment as a matter of law where genuine issues of material fact remain regarding multiple required elements of adverse possession. Viewed in the light most favorable to Dumont, Dohn failed to establish each required element of adverse possession by clear and convincing evidence. Summary judgment was therefore improper and must be reversed.

II. Dohn Failed to Establish, by Clear and Convincing Evidence, That the Disputed Land Was Protected by a Substantial Enclosure Under SDCL 15-3-13.

Under SDCL 15-3-13, adverse possession without written title may be established only if the claimed land itself was either protected by a substantial enclosure or usually cultivated or improved. These statutory requirements are prerequisites to a valid adverse possession claim. *Lewis*, 2001 S.D. 131, ¶ 7, 635 N.W.2d at 746. Adverse possession must be established by clear and convincing evidence. *Id.*

A “substantial enclosure” requires a physical or natural barrier that meaningfully encloses the property and provides a visible basis for identifying the boundary; it must be more than an imaginary or illusory line. *Ashby v. Oolman*, 2008 S.D. 26, ¶¶ 20–21, 748 N.W.2d 132, 137–38. Natural barriers or partial fencing may qualify if they visibly and physically define the property. *Cuka v. Jamesville Hutterian Mut. Soc’y*, 294 N.W.2d

419, 422 (S.D. 1980); *Schultz v. Dew*, 1997 SD 72, ¶ 13, 564 N.W.2d 320, 323. However, minimal or scattered features—such as lot-corner markers, isolated trees, or other natural objects—are insufficient where they do not largely enclose the land. *Lewis v. Moorhead*, 522 N.W.2d 1, 3 n.4 (S.D. 1991); *Titus*, 2004 S.D. 106, ¶32, 687 N.W.2d at 926–27.

Dohn asserts that the alleged fence creates a clear demarcation line. The record, however, supports a contrary inference. The Disputed Land consists of a dense strip of trees, brush, and tall grass separating otherwise maintained property. (AEthan ¶ 5; ¶ 6; ¶ 9.) Photographic evidence shows that this vegetation obscures any alleged boundary and prevents a visible, continuous line from being identified across the property. (AEthan ¶ 6.) Portions of the Disputed Land lacked fencing altogether, leaving the property open, and the existing fence was deteriorated and partially composed of natural objects rather than functional fencing. (AEthan ¶5; ¶ 6.b; ¶ 6.c; ¶ 8.) By contrast, a well-maintained and distinguishable fence appears along the correct boundary line. (AEthan ¶ 6.e; ¶ 7.) In addition, a fenced corral enclosing Dohn Land was located along that same boundary line—not on the Disputed Land—indicating that livestock could be contained without reliance on the Disputed Land and undermining any inference that the alleged enclosure was necessary to support grazing on the Disputed Land. (AEthan ¶ 7.) In these circumstances, a reasonable factfinder could conclude that the alleged boundary is not visibly identifiable and does not provide a meaningful enclosure under SDCL 15-3-13.

Dohn argues that Dumont failed to adduce evidence disputing the Fence's location, obviousness, or existence during the statutory period of 1976–1996. Dumont's evidence, however, consists of objective photographic evidence reflecting the current condition and visibility of the alleged enclosure. By contrast, although Dohn bears the

burden of establishing each element of adverse possession by clear and convincing evidence, the only evidence offered regarding the alleged fence during the statutory period consists of Mr. Dohn's deposition testimony. Dohn produced no photographs, records, maintenance documentation, or other objective evidence demonstrating the Fence's historical location, continuity, or condition during the statutory period. Viewed in the light most favorable to Dumont, a reasonable factfinder could conclude that Dohn has not met his burden for summary judgment on the issue of substantial enclosure.

At minimum, this evidence raises genuine issues of material fact as to whether any alleged enclosure was continuous, functional, or sufficient to visibly and physically define the property boundary. These fact-intensive determinations cannot be resolved as a matter of law, particularly under the heightened clear-and-convincing standard applicable to adverse possession claims. Accordingly, because Dohn did not establish that the Disputed Land was protected by a substantial enclosure, summary judgment was improper and must be reversed.

III. Dohn Failed to Establish, by Clear and Convincing Evidence, That the Disputed Land Was "Usually Cultivated or Improved" Under SDCL 15-3-13.

Under SDCL 15-3-13, adverse possession without written title may be established only if the claimed land was either protected by a substantial enclosure or "usually cultivated or improved." These statutory requirements must be established by clear and convincing evidence. *Lewis*, 2001 S.D. 131, ¶ 7, 635 N.W.2d at 746.

Dohn claims that the Disputed Land was cultivated or improved through livestock grazing and fence maintenance. The record, however, supports a contrary inference. Evidence indicates that the Disputed Land itself was not enclosed for livestock and that the only effective livestock enclosure was located entirely on Dohn Land rather than on

the Disputed Land. (AETHAN ¶ 5; ¶ 6.a; ¶ 6.b; ¶ 6.e; ¶ 7.) Dohn asserts livestock were allowed to graze on the Disputed Land. (Dep Page 40 Line 14–25.) Dohn admitted that all livestock on the property required fencing and asserted that the fences used to contain livestock remained in place over time, stating that aside from minor adjustments, “the periphery . . . stayed the same.” (Dep Page 52 Line 17–21; Dep Page 53 Line 9–14.) Dohn also admitted that all fences used to enclose livestock still exist today, and that he had not removed any fences on either Dohn Land or the adjacent property. (Dep Page 52 Line 7–10; Dep Page 53 Line 13–14.) Yet evidence indicates that the alleged enclosure did not extend continuously along the southern portion of the Disputed Land. (AETHAN ¶ 6.a; ¶ 6.b; ¶ 8.) The photographs depict only a decorative wooden entrance railing at the southern portion of the property, with no gate or fencing extending eastward along Dohn Land or westward toward the Disputed Land from that point. (AETHAN ¶ 6.b.) This evidence supports a reasonable inference that the Disputed Land was not continuously enclosed in a manner capable of containing livestock and undermines Dohn’s claim that livestock grazed freely across the Disputed Land.

Dohn produced no objective evidence establishing the historical condition, location, or continuity of the alleged fencing, despite bearing the burden to prove the statutory requirements of SDCL 15-3-13 by clear and convincing evidence. Dohn states the livestock kept on the property for agricultural or pastoral purposes consisted of quarter horses, bucket calves, and miniature donkeys. (Dep Page 58 Line 9–21.) In addition, Dohn constructed a fenced corral on Dohn Land for raising livestock. (AETHAN ¶ 5; ¶ 6.b; ¶ 6.e; ¶ 7.) The existence of the Dohn Corral supports a reasonable inference that livestock could be contained without reliance on the Disputed Land for grazing or

enclosure and calls into question whether livestock use actually occurred on the Disputed Land.

Nor does the record establish improvement through fence maintenance. Dohn admitted that any repairs were made with leftover materials and ceased more than fifteen years ago. (Dep Page 69 Line 25– Page 72 Line 5.) He further acknowledged that fence repair was the only maintenance allegedly performed on the Disputed Land. (Dep Page 71 Line 25–Page 72 Line 2.) Yet evidence indicates that the Disputed Land has not been maintained in recent years. (AETHAN ¶ 5; ¶ 6.c–d; ¶9.) The current condition of the fence, as reflected in the photographic evidence, is the only objective evidence in the record regarding the fence’s condition and maintenance. In addition, the Dohn’s constructed a barn that partially extends into a small portion of the Disputed Land. (AETHAN ¶ A6.) However, the minimal encroachment of that structure onto the Disputed Land does not establish that the property as a whole was usually cultivated or improved under SDCL 15-3-13. “Where no written instrument forms the basis of the claim, only the portion of land actually and continuously occupied may be claimed.” *Cuka*, 294 N.W.2d at 422.

Viewed in the light most favorable to Dumont, this evidence creates a genuine issue of material fact regarding whether the Disputed Land was cultivated, improved, or enclosed in a manner sufficient to satisfy SDCL 15-3-13. Accordingly, summary judgment was improper and must be reversed.

IV. Dohn Failed to Establish Open and Notorious Possession by Clear and Convincing Evidence.

In South Dakota, possession is open and notorious only if it is visible and

apparent enough to provide the true owner notice of the adverse claim and an opportunity to protect their rights; sporadic or concealed uses do not satisfy the requirement. *Hamad Assam Corp. v. Novotny*, 2007. S.D. 84, ¶ 11, 737 N.W.2d 922, 925.

Viewed in the light most favorable to Dumont, the record demonstrates a genuine dispute regarding whether Dohn's alleged use of the Disputed Land was visible or apparent to the true owner. Unlike Dohn's maintained property, the Disputed Land itself received no comparable maintenance or improvement. (AEthan ¶ 5; ¶ 6; ¶ 9.) Photographic exhibits depict the Disputed Land as a dense strip of trees, brush, and tall grass separating otherwise maintained land and Dumont Land. (AEthan ¶ 6.) These conditions obscure activity within the strip and support a reasonable inference that any alleged use would not have been readily visible from surrounding properties.

Dohn's primary assertion of use was that livestock occasionally grazed on the Disputed Land. (Dep Page 58 Line 9–21.) Yet Dohn admitted that livestock required fencing and that the fencing used to contain livestock remained in place elsewhere on his property. (Dep. 50:25–52:21; 53:9–14.) Evidence further indicates that the Disputed Land itself was not continuously enclosed for livestock use and that the only effective livestock enclosure was located entirely on Dohn Land. (AEthan ¶ 5; ¶ 6.b; ¶ 6.e; ¶ 7.) Viewed in the light most favorable to Dumont, this evidence supports a reasonable inference that any livestock activity occurred within enclosed areas on Dohn Land rather than on the Disputed Land and therefore would not have been visible or apparent enough to provide notice of an adverse claim.

Dohn argues that Dumont's photographic evidence reflects the current condition of the property rather than the 1976–1996 statutory period. (Dohn's Appellee Br. at 20.)

That argument, however, does not eliminate the reasonable inferences arising from the current condition of the property. Dohn bears the burden to establish open and notorious possession by clear and convincing evidence yet produced no objective evidence demonstrating that the alleged use of the Disputed Land was visible or apparent during the statutory period. On this record, the absence of outward acts of dominion or visible use creates a genuine issue of material fact regarding whether the alleged possession was open and notorious, precluding summary judgment.

V. Dohn Failed to Establish Continuous and Exclusive Possession by Clear and Convincing Evidence.

Adverse possession requires proof that possession was continuous and exclusive for the statutory period. *Lewis*, 2001 S.D. 131, ¶ 7, 635 N.W.2d at 746. Exclusive possession requires acts demonstrating dominion over the property and the physical exclusion of others under a claim of right. *Moorhead*, 522 N.W.2d 1, 4 (S.D. 1994).

Viewed in the light most favorable to Dumont, the record demonstrates genuine issues of material fact regarding whether Dohn exercised continuous and exclusive dominion over the Disputed Land. Evidence indicates that Dohn did not exercise ongoing control or dominion over the Disputed Land comparable to that exercised over his own property. (AETHAN ¶ 6.) The absence of ongoing maintenance, improvements, or other outward acts demonstrating ownership supports a reasonable inference that Dohn did not possess the Disputed Land as an owner to the exclusion of the true titleholder.

The evidence regarding livestock use likewise undermines any claim of continuous possession. Although Dohn claims livestock grazed on the property beginning in 1976, the only effective livestock enclosure was located entirely on Dohn Land rather

than on the Disputed Land, and evidence indicates that the Disputed Land itself was not continuously enclosed for livestock use. (AETHAN ¶ 5; ¶ 6.b; ¶ 6.e; ¶ 7.) A reasonable factfinder could therefore conclude that any livestock activity occurred within enclosed areas on Dohn Land rather than on the Disputed Land itself.

Nor does the existence of a fence or partial barn encroachment establish exclusive possession as a matter of law. Dohn produced no objective evidence establishing the historical condition, continuity, or visibility of the alleged fence during the statutory period, despite bearing the burden to prove each element by clear and convincing evidence. Likewise, the barn extends only minimally into a small portion of the Disputed Land and does not establish continuous occupation of the property as a whole. *Cuka*, 294 N.W.2d at 422.

Dohn further argues that Dumont failed to identify another party who occupied or used the Disputed Land during the statutory period. (Dohn's Appellee Br. at 21.) However, the absence of evidence that others used the property does not, by itself, establish that Dohn exercised exclusive dominion over the Disputed Land by clear and convincing evidence, particularly where the only evidence offered by Dohn regarding possession consists of Mr. Dohn's deposition testimony.

Viewed in the light most favorable to Dumont, genuine issues of material fact remain regarding whether Dohn exercised continuous and exclusive possession of the Disputed Land for the statutory period. Accordingly, summary judgment was improper and must be reversed.

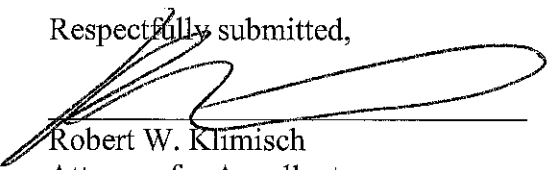
CONCLUSION

For the foregoing reasons, the circuit court erred in granting summary judgment. Genuine issues of material fact remain regarding whether the statutory requirements of SDCL 15-3-13 were satisfied and whether the alleged possession was open and notorious, continuous, and exclusive for the statutory period. Viewed in the light most favorable to Dumont, the record does not establish adverse possession by clear and convincing evidence as a matter of law.

Dumont respectfully requests that this Court reverse the judgment of the circuit court and remand for trial on the merits.

Dated this 7th day of May 2026.

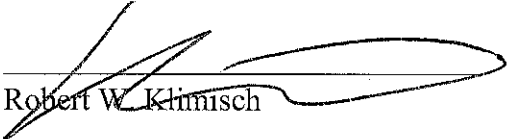
Respectfully submitted,



Robert W. Klimisch
Attorney for Appellant
101 West 2nd Street
Yankton, SD 57078
(605) 665-9495

CERTIFICATE OF COMPLIANCE

I, Robert W. Klimisch, hereby certify pursuant to SDCL 15-26A-66(b) (4), that the Appellant's brief was typed using Times New Roman – 12 point font; contains eleven (11) pages inclusive of this page, has 2,819 words and 15,401 characters, exclusive of the spaces and words contained in the table of contents, table of cases, jurisdictional statement, and statement of legal issues.



Robert W. Klimisch

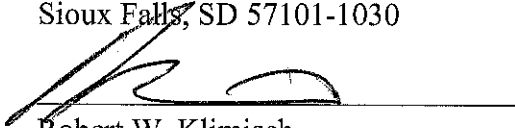
CERTIFICATE OF SERVICE

I, Robert W. Klimisch, hereby certify that the original and one copy were served upon the South Dakota Supreme Court and two (2) photocopies were served upon

counsel for the Appellee, Reece M. Almond and Michael L. Snyder, via first class mail, postage pre-paid, to the following addresses on the 7th day of May, 2026, at the following addresses:

Clerk
South Dakota Supreme Court
500 East Capital
Pierre, SD 57501

Reece M. Almond
Michael L. Snyder
206 West 14th Street
PO Box 1030
Sioux Falls, SD 57101-1030


Robert W. Klimisch