No. 98694-1

Court of Appeals No. 52915-7-II

SUPREME COURT
OF THE STATE OF WASHINGTON

FLOYD F. RINEHOLD and CLARISSA E. RINEHOLD,

Plaintiffs/Petitioners,

v.

GARY T. RENNE and ELEANOR F. RENNE,

Defendants/Respondents.

RENNES' ANSWER TO RINEHOLDS' PETITION FOR DISCRETIONARY REVIEW TO SUPREME COURT

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I. INTRODUCTION

The Rineholds' petition for review does not meet the RAP 13.4 standards for review and should be denied accordingly. The Rineholds only acknowledge RAP 13.4(b) once, in their Issues Presented section. They never attempt to apply the standards for review, much less show how they could possibly be met here. Instead, their petition is substantively identical to their motion for reconsideration and rehashes their merits briefing—both of which the Court of Appeals properly rejected given the issues of fact that preclude summary judgment.[1]

The Court of Appeals' analysis is a straightforward application of the CR 56 summary judgment standard. As Chief Judge Maxa, writing for the unanimous panel, held: "genuine issues of material fact exist regarding the location of the east boundary line between the Rennes' property and the Rineholds' property."[2] This holding was preceded by a detailed analysis of the lay and expert evidence offered by the parties on the issue. A reversal of summary judgment due to issues of fact does not conflict with any case from this Court or the Court of Appeals.[3] The petition should be denied.

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[1] *Compare* Petition for Review ("Petition") *with* Motion for Reconsideration and Publication, at Appendix B-1.

[2] *Rinehold, et ux. v. Renne et al.*, No. 52915-7, slip op. at 20 (Wash. Ct. App. March 10, 2020) (unpublished), http://www.courts.wa.gov/opinions/pdf/D2%2052915-7-II%20Unpublished%20Opinion.pdf. ("Slip Op.").

[3] *Cf.* RAP 13.4(b)(1), (2).

II. IDENTITY OF THE ANSWERING PARTY

Eleanor and Gary Renne submit this answer.

III. CITATION TO THE COURT OF APPEALS DECISIONS

The Court of Appeals issued a unanimous unpublished decision holding summary judgment was improper because "genuine issues of material fact exist." The opinion is found at Appendix A to this answer.

The Rineholds moved for reconsideration and for publication. The Court of Appeals denied both motions. The order denying the Rineholds' motions is found at Appendix B to this answer, and includes the motions and answers to the same at Appendix B-1 and B-2, respectively.

IV. STATEMENT OF THE CASE

The Rennes disagree with much of what the Rineholds represent as "fact" in their Statement of the Case. The Rennes adopt the Court of Appeals' statement of facts for this answer.[4] The Court of Appeals' recitation of the facts, as supported by the appellate record, more accurately reflects the facts, evidence, and procedure in this case. The parties' divergent views as to what is "fact" highlights the very reason the Court of Appeals' decision was correct: "genuine issues of material fact exist."[5]

[4] *See* Slip Op. at 2-10.

[5] Slip Op. at 2.

V. ANSWER TO ARGUMENT

A. The Petition Does Not Argue, Let Alone Meet, the Requisite RAP 13.4(b)(1), (2) Standards.

The Rineholds cite RAP 13.4(b)(1) and (2) in their "issue presented" section as their bases for review.[6] The rule provides in relevant part:

> (b) Considerations Governing Acceptance of Review. A petition for review will be accepted by the Supreme Court only:
>
> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
>
> (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals[.]

In other words, RAP 13.4(b)(1) and (2) require a petitioner to establish that another appellate decision is in conflict with the Court of Appeals' opinion in order to warrant this Court's review. The Rineholds fail to meet this requirement. They do not discuss any case alleged to be "in conflict" with the Court of Appeals' opinion. The Court should deny their petition for review on this basis alone.

Rather than argue the applicable standard, the Rineholds identify two parts of the Court of Appeals' opinion they disagree with—a four paragraph summary found in Section 3 (pages 17-18) of the slip opinion

[6] Petition at 2.

and conclusions reached by the Rennes' experts.[7] The Rineholds' petition then engages in a fact-intensive discussion in an effort to claim no issue of fact exists. Their analysis is flawed for the same reasons the Court of Appeals pointed out in its decision: material issues of fact exist.

B. The Court of Appeals Did Not Make Improper Assumptions, Did Not Fail to Cite Authority, Did Not Contravene *Staaf v. Bilder*, and Properly Applied the Priority of Calls.

The Rineholds make several claims of error in their disagreement with Section 3 of the slip opinion. All have been raised and rejected before, and none satisfy the RAP 13.4(b)(1), (2) standards.

The Rineholds assert the Court of Appeals "made the assumption" that a retracement survey requires "all four corners of the original surveyor's monuments" and did so without citation to authority.[8] They then summarily assert that doing so "is contrary to *Staaf v. Bilder*."[9] The flaws in these assertions here are the same as they were below, and there are two of them. *First*, in asserting that the Court of Appeals made improper assumptions without citation, the Rineholds forget the Court of Appeals'

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[7] Petition at 8-9, 11-14. The Rineholds raised both of these disagreements, and others, in their Motion for Reconsideration. *Compare* Petition at 8-9, *with* Motion for Reconsideration, App. B-1 at 3-4; *compare* Petition at 11-14, *with* Motion for Reconsideration, App. B-1 at 4-6.

[8] Petition at 9.

[9] Petition at 10; *Staaf v. Bilder*, 68 Wn.2d 800, 801-03, 415 P.2d 650 (1966) (applying a substantial evidence standard after discussing competing evidence considered).

four-and-a-half page discussion of evidence from the record (not assumptions) and law (with citations) that preceded the conclusion with which the Rineholds disagree.[10] *Second*, in citing *Staaf*, the Rineholds fail to recognize that the survey in *Staaf* was accepted following a bench trial on the merits reviewed on appeal pursuant to the substantial evidence standard afforded to trial court findings of fact.[11] Obviously, the summary judgment standard is different, and the summary judgment standard was what appropriately formed the basis of the Court of Appeals' decision here.

The Rineholds also assert, as they did in their motion for reconsideration, that "Holman did recover the southeast monument of Watson. He knew Watson's distance."[12] But telling is the way the Rineholds reached this conclusion—they misapplied the priority of calls by relying on distances over monuments. The Court of Appeals called out that very mistake it its opinion:

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[10] *Compare* Slip Op. at 12-16 *with* Petition at 8-11. *See also* Slip Op. at 18-20 (listing five existing factual disputes that the Rineholds do not address in their Petition).

[11] *Staaf*, 68 Wn.2d at 801-03 ("[The] learned trial judge made his findings not only from ***substantial evidence*** but from evidence entitled to great weight, presented by both plaintiffs and defendants based on disputed facts and the conflicting conclusions of professional experts.") (emphasis added). *See also* Appellants' Opening Br. at 40, n. 198 (collecting cases with parenthetical explanations).

[12] *Compare* Petition at 10 *with* Motion for Reconsideration, App B-1. at 4. To the extent the Rineholds rely on Lovitt's survey, the Rennes' expert Mr. Dempsey pointed out that Mr. Lovitt's survey was "unusable" because of the bearing errors and incorrect "U line." CP 306-07.

> while placing the eastern boundary line based on something other than Watson's monuments, Holman ignored a significant monument – the roadway – that Watson did identify. Under the priority of calls, the roadway monument should control over the distance call Holman used. *DD & L*, 51 Wn. App. at 335-36. Applying this priority does not necessarily determine where the roadway was located, but the location of the roadway remains a question of fact when the distance call is disregarded.[13]

The Rineholds' petition fails to address Holman's misapplication of the priority of calls, just as their motion for reconsideration so failed. The Rineholds fail to show how this Court's review could be warranted here.

C. No Case Holds a Competing Survey Is the Only Way to Contest the Accuracy or Validity of Another Survey.

The Rineholds assert as a basis for review that they presented "unrebutted opinion testimony."[14] But the Court of Appeals' opinion and the appellate record reveal otherwise. What the Rineholds likely mean is that the Rennes did not commission their own new survey to point out the failures of the survey commissioned by the Rineholds. Rather, the Rennes hired a surveyor to point out the failures of the Rinehold-commissioned survey.

As the Court of Appeals stated, the "Rineholds cite to no authority requiring the nonmoving party to submit a contrary survey in order to

[13] Slip Op. at 18-19.

[14] Petition at 11.

challenge the validity of a survey for summary judgment purposes."[15] The Rineholds still do not come forward with supporting authority in their petition.[16]

The practical failings of only accepting a survey to refute one surveyor's conclusions were extensively briefed to the Court of Appeals.[17] Based on that briefing, the Court of Appeals concluded, "There is no reason that the Rennes could not create questions of fact regarding the validity of Holman's opinion regarding the placement of the eastern boundary through means other than a full survey."[18]

In addition to the practical failings, as the Court of Appeals noted, no caselaw supports the Rineholds' position—especially on review of summary judgment as here. The cases the Rineholds cite as supporting their "a-survey-is-absolutely-required" theory are unavailing now, just as they were in the merits appeal.[19] The Rineholds again cite *Young v. Key Pharmaceuticals* and others for the proposition that an expert is required where an essential element is beyond the expertise of a layperson, and that

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[15] Slip Op. at 18.

[16] *Cf*, RAP 13.4(b)(1) and (2) (requiring the petitioner to identify published opinions "in conflict" in order to achieve review).

[17] *E.g.*, Appellants' Reply Br. at 20.

[18] Slip Op. at 18.

[19] *Compare* Respondents' Response Br. at 28-31 *with* Appellants' Reply Br. at 7, n. 21, and 20-21.

the absence of an expert to oppose another expert's conclusion is fatal.[20] But even under the Rineholds' broad interpretation of *Young*, they again forget that the Rennes offered expert evidence—the declarations Dempsey and Kauhanen, both of whom refute the accuracy of Holman's survey. As the Court of Appeals explained, "Because the trial court in the exercise of its discretion decided to consider these declarations, on appeal we will consider them in determining whether a genuine issue of fact exists."[21]

The Rineholds next cite *Rue v. Oregon and Washington Railroad Company* and *Batchelor v. Madison Park Corporation*, and claim those courts "held that testimony of non-surveyors is not competent to impeach the testimony of surveyor."[22] That is not what either case held. Both *Rue* and *Batchelor* were appeals from trials, and the Supreme Court affirmed the trial court's "rejection" of evidence in dispute. In both cases, this Court either concluded that the trial court did not abuse its discretion on an

[20] Petition at 11-12 (citing *Young v. Key Pharm. Inc*., 112 Wn.2d 216, 228, 770 P.2d 182 (1989) and others).

[21] Slip Op. at 11.

[22] Petition at 13 (citing *Rue v. Oregon W.R. Co.*, 109 Wash. 436, 186 P. 1074 (1920) and *Batchelor v. Madison Park Corp.*, 25 Wn.2d 907, 172 P.2d 268 (1946)). The Rineholds made this argument in their merits briefing, and in their motion for reconsideration, and the Court of Appeals rejected it both times. Respondents' Response Br. at 30-31; Motion for Reconsideration, App. B-1 at 6.

evidentiary ruling or rejected a sufficiency-of-the-evidence challenge.[23] In neither case did this Court hold as the Rineholds claim.[24]

D. The Court of Appeals' Application of the Basic Summary Judgment Standard Does Not Justify Supreme Court Review.

It is unremarkable that on a summary judgment motion a court should assess all of the evidence submitted and determine whether the moving party has met their burden of proof as a matter of law. There is nothing novel about the application of that standard here, and it is the standard the Court of Appeals properly applied.

Notably absent from the Rineholds' petition is any discussion, let alone refutation, of the five different "Questions of Fact Regarding Eastern Boundary" that the Court of Appeals identified in its decision.[25] Rather, the Rineholds continue to make unsupported claims such as the Rennes hired "three surveyors."[26] The Rineholds made this assertion in their merits brief at pages 2, 13-14, and 31, and in their motion for reconsideration at page 6, each time citing the same record cite as they cite here: "CP 24, RP 35,

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[23] *Rue*, 109 Wash. at 440; *Batchelor* 25 Wn.2d at 914.

[24] Moreover, and as the Rennes pointed out below, after both *Rue* and *Batchelor*, this Court affirmed a trial court's reliance on surveys and testimony from college students who were not professional surveyors, and had only, potentially, taken "a basic course" in surveying as part of their forestry majors. *Mullally v. Parks*, 29 Wn.2d 899, 901, 190 P.2d 107 (1948). *See* Appellants' Reply Br. at 7, n. 21.

[25] Slip Op. at 18-20.

[26] Petition at 13.

104."[27] As the Rennes have now pointed out repeatedly, the Rineholds' "citations do not support their assertion. Their citations are to Holman's own declaration saying he believed the Rennes 'contacted at least one surveyor,' and the Rineholds' counsel's own statements to the superior court."[28] This is speculative, inadmissible hearsay from Holman, and mere argument from counsel, neither of which would be admissible on summary judgment. The point the Rineholds are attempting to convey is irrelevant in any event: whether the Rennes hired one, two, or ten surveyors—or none—does not matter. What matters is the evidence the Rennes did amass and whether ***that*** evidence creates an issue of fact. The Court of Appeals was unpersuaded by the Rineholds' identical argument below, and there is no basis for a different result here—under RAP 13.4(b) or otherwise.

It bears noting that the Rineholds' contention on appeal, and here, that the Rennes had to submit a conflicting ***survey*** is different than their position articulated to the superior court. Below, the Rineholds acknowledged that evidence of a roadway existing between 1952 and 1955

[27] Respondents' Response Br. at 2, 13-14, 31; Motion for Reconsideration, App. B-1 at 6.

[28] Appellants' Reply Br. at 20, n. 78.

would alone defeat their summary judgment motion.[29] The Rennes submitted such evidence.[30]

Finally, belying the Rineholds' contention that ***only*** a survey could defeat their motion is their reliance on *Staaf* itself. In *Staaf*, this Court acknowledged the conclusions derived by professional surveyors were only a ***part*** of the information properly considered by the superior court to determine the legal boundary between tracts of land—the other information being: "evidence from both parties describing old fences and fence lines, abandoned fences and fence lines, remnants of old and dilapidated fences, and remnants of chicken wire and barbed wire left from fallen and dilapidated fences, and heard testimony describing the history and ownership of the two adjacent tracts."[31]

As the Court of Appeals reasoned below, on summary judgment the issue is not whether the Rineholds' evidence (Holman's survey) is

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[29] 2VRP 37 ("what is totally fatal to the defense is there's no proof in this record whatsoever of what existed on that ground in the 1952 to 1955 timeframe. There's no proof that there was even a road in existence at that time. There's no proof where that road was. And so it was the clear intention that the roadway was to be the platted roadway."); CP 165 ("The position of Rennes[ ] fails because: 1. They provide no expert opinion contradicting the current and historical surveys. 2. They provide no evidence which examines the totality of the circumstances in 1952-55. 3. They do not contradict Holman's conclusion as to W.O. Watson's original monumentation.…"); *see also* Appellants' Opening Br. at 18, 42; Appellants' Reply Br. at 18-20.

[30] *See, e.g.*, CP at 289-304 (Kauhanen declaration).

[31] *Staaf*, 68 Wn.2d at 802.

ultimately persuasive or whether the contrary evidence offered by the Rennes is ultimately persuasive. The issue is simply whether there are issues of disputed fact regarding the validity of Holman's opinions and, ultimately, the location of the eastern boundary line between the parties' properties. There clearly are such issues present in this case. The Rineholds' petition fails to demonstrate the need for this Court's review.

VI. CONCLUSION

The Court of Appeals concluded that summary judgment is improper because "genuine issues of material fact exist regarding the location of the east boundary line between the Rennes' property and the Rineholds' property." The Court of Appeals' application of the summary judgment standard does not conflict with a decision of this Court or the Court of Appeals. There is no basis for review under RAP 13.4(b)(1) or (2). The petition for review should be denied.

Respectfully submitted this 20th day of July, 2020.

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CERTIFICATE OF SERVICE

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APPENDIX A

Filed
Washington State
Court of Appeals
Division Two

March 10, 2020

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FLOYD F. RINEHOLD and CLARISSA E. RINEHOLD, husband and wife,

Respondents,

v.

GARY T. RENNE and ELEANOR F. RENNE, husband and wife,

Appellants,

DONALD DUANE DeNOTTA and CARON DeNOTTA, husband and wife, and D.D. DeNOTTA, LLC,

Defendants,

SCHOOL EMPLOYEES CREDIT UNION OF WASHINGTON, a Washington Credit Union; PINNACLE CAPITAL MORTGAGE CORP D/B/A CASCADE MORTGAGE, a Washington Corporation; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware corporation, as Nominee for Pinnacle Capital Mortgage Corp D/B/A Cascade Mortgage; CAVALRY SPV I LIMITED LIABILITY COMPANY, a Washington limited liability company, as Assignee of HSBC Bank Nevada,

Third Party Defendants.

No. 52915-7-II

UNPUBLISHED OPINION

MAXA, C.J. – Gary and Eleanor Renne appeal the trial court's order on partial summary judgment in a quiet title action brought by their neighbors to the east, Floyd and Clarissa

Rinehold, regarding a strip of land adjacent to the western edge of a private gravel road on the Rineholds' property. The strip of land is located on the Rennes' front yard, and they believe that the western edge of the existing road marks the boundary between the two properties. The trial court ruled as a matter of law that a 2015 survey conducted for the Rineholds correctly determined that the western edge of the road did not mark the property boundary and that the strip of land was located on the Reinholds' property.

The original grantor of both the Renne and Reinhold properties was W.O. Watson, a surveyor who in 1952 prepared two unrecorded plats of the surrounding property. The plats showed that the eastern boundary of what became the Rennes' property was the western edge of a roadway. The deed for the Rennes' property described the eastern boundary as the westerly boundary of the roadway. However, the 2015 survey concluded that the actual property line as measured on the plats was further west than the existing roadway.

We hold that the trial court erred in granting partial summary judgment to the Rineholds and denying the Rennes' motion for reconsideration because genuine issues of material fact exist regarding Watson's intended location of the boundary line between the Rennes' property and the Rineholds' property. Accordingly, we reverse the trial court's orders granting partial summary judgment and denying reconsideration and remand for further proceedings.

FACTS

Background

The Rennes and the Rineholds own adjacent properties in Mason County just south of Hood Canal's south shore in an area known as Sunset Beach. Both properties are accessed by a private gravel road that intersects with State Road 106 at the road's northern end. The Rennes'

property is west and north of the road, which bends to the west on the south side of the Rennes' property. The Rineholds own the property on which the roadway is located and property that is primarily to the south of the roadway. An easement allows the Rennes and other property owners to use the roadway to access their properties from SR 106.

Watson originally owned both the Renne and Rinehold properties. He subsequently conveyed the properties in separate transactions to the predecessors of the Rennes and the Rineholds.

The Rennes bought their property in 2006 from Carroll and Sharon Moore. The Rennes' statutory warranty deed described the property as

> BEGINNING at a point 855 feet North of the Southwest quarter of said Section 12; thence North 74°13' East 255.5 feet; thence North 58°40' East 403.7 feet; thence North 61°26' East 103 feet to the POINT OF BEGINNING of the tract of land hereby described; thence North 69°16' East *102 feet* to the Westerly boundary of roadway; thence South 10° East *along the Westerly boundary of said roadway* 415 feet; thence South 59°14' West, along the Northerly boundary of said roadway, 55 feet; thence North 16°42' West 418.2 feet to the TRUE POINT OF BEGINNING.

Clerk's Papers (CP) at 93 (emphasis added).

The Rennes' deed was consistent with the 1955 deed conveying the property that the Rennes now own from Watson to Albert Johnson. The deed to Johnson included calls describing the eastern border of the property as extending along the westerly side of the roadway. The deed in which Johnson transferred the property to the Moores also contained similar language.

Plats of Sunset Beach Area

Watson was a licensed surveyor in the area for many years. He surveyed the Sunset Beach area in 1952 and created at least two unrecorded plats. The plats show the property the Rennes now own. Watson's plats show the location of monuments in the ground to mark the lots

he platted, including iron stakes in the northwest, northeast, and southeast corners of the lot that the Rennes now own.

One of the plats shows a street immediately adjacent – to the east – of the property that the Rennes now own. The other plat shows the same area but does not label the area as a street. The western edge of the street is the same as the eastern edge of the lot the Rennes now own. The plats mark the street as 42 feet wide at the intersection with SR 106. The plats mark the northern border of the lot the Rennes now own as extending along SR 106 for 102 feet.

Roger Lovitt, a licensed surveyor, conducted a survey of the area in 1979. Lovitt's survey was based on Watson's plat and survey. The Lovitt survey also shows a street bordering the lot that the Rennes now own. Lovitt notated where he discovered iron pipes, apparently from Watson's original survey. He apparently did not locate the iron stake that Watson placed in the northeast corner of the lot that the Rennes now own. Lovitt marked the northern border of the Rennes' lot along SR 106 at 102 feet. Lovitt did not identify any encroachments.

In 1994, Daniel Holman, a licensed surveyor, conducted a survey of the area and recorded a short plat at the request of Joan Addington, then-owner of the Rineholds' property. Holman notated that he found a 3/4 inch lead pipe in the southeast corner of the lot that the Rennes now own. He apparently did not locate the iron stake that Watson placed in the northeast corner of that lot. The survey marked the width of the road at the intersection with SR 106 at almost 52 feet. The northern border of the lot along SR 106 was marked at 102 feet. The short plat did not identify any encroachments.

In 2015, the Rineholds retained Holman to again survey their property. Holman referenced Watson's survey, Lovitt's survey, and his own 1994 survey. He also researched the chain of title to the Rineholds' property, the Rennes' property, and other properties neighboring

the Rineholds. He considered the original deed from Watson conveying the property that the Rennes now own, the deed from the Moores to the Rennes, and deeds to the Rineholds' property.

Holman found iron pipes on the northwest and southeast corners of the Rennes' property. Again, he did not find the iron stake Watson placed on the northeast corner. As in his 1994 survey, Holman's 2015 survey marked the width of the road at the intersection with SR 106 at almost 52 feet and the northern border of the lot along SR 106 at 102 feet. Holman's survey showed that the Rennes' property did not extend to the edge of the existing roadway, but only to a survey line west of the actual roadway. Based on the survey, the Rennes' lawn, rock wall, and concrete parking area encroached on the Rineholds' property. Their house was barely on their property.

Rineholds' Lawsuit and Summary Judgment Motion

In January 2016, the Rineholds filed a lawsuit against the Rennes to quiet title to the strip of land between Holman's 2015 survey line and the existing roadway. The Rennes apparently asserted a number of defenses, including that they had acquired title to the strip of land through adverse possession.

The Rineholds filed a motion for partial summary judgment regarding a single issue, asking the trial court to find that Holman's 2015 survey "is a true, correct, and accurate survey and representation of the record title to [the Rineholds'] property . . . [and] correctly represents the record title for the easterly line of the Renne property." CP at 9. The motion was supported by a declaration from Holman, which attached the two Watson plats as well as the historical deeds for the two properties.

Holman stated that his 2015 survey was a retracement survey, "a common type of survey designed to locate property lines as established by the original common grantor." CP at 23. He

stated that he "looked for, and found, significant monumentation by W.O. Watson, who originally owned all the property in this area." CP at 22. The survey indicated that Holman found a 3/4 inch iron pipe in the southeast corner of the Rennes' property and a 1 1/2 inch iron pipe in the northwest corner of the Rennes' property. Holman noted that this monumentation "was consistent with [Watson's] plat map and consistent with the bearings and distances on his deeds." CP at 22-23. Holman considered this consistency "clear evidence of [Watson's] intention." CP at 23. He also stated that his 2015 survey was consistent with Lovitt's survey.

Holman stated that "if one were to interpret the references to the roadway in the Renne chain of title as being the present, physical roadway, the description would not close by twelve feet more or less. Being familiar with Watson's work, he would not have made that significant a mistake." CP at 23-24. Holman did not comment on the fact that his survey showed that the roadway was 52 feet wide at SR 106, which was inconsistent with the 42 foot width on Watson's survey.

Holman noted that a surveyor the Rennes contacted located a buried 1/2 inch pipe in the vicinity of the northeast corner of the Rennes' property that was 17 feet to the east of his surveyed boundary line. Holman discounted this pipe as marking the northeast corner because a 1/2 inch pipe was not typical of Watson, was not consistent with other found monuments, and was not consistent with anything. He stated that it was not uncommon for surveyors to find random pipes in the ground. He also pointed out that no prior survey had ever discovered this pipe. As a result, Holman concluded that Watson had not set the pipe and that it had no relation to the property boundary.

The Rennes opposed the summary judgment motion, arguing that (1) the term "roadway" in their deed was intended to mean the physical roadway as it was currently situated, and (2) the Rennes had acquired title to the strip of land through adverse possession.

The Rennes submitted a declaration from Eleanor Renne. She stated that when she and her husband purchased the property, the Moores identified the edge of the private roadway as their property line. The Rennes had always treated the land up to the western edge of the roadway as their front yard, installing a drainage ditch and a rock wall and landscaping and mowing to the edge of the road. In addition, Renne stated that in 2007, during excavation of their property for purposes of the drainage ditch, the excavators discovered an iron pipe in the northeast corner of their property. But at the time, no one thought the pipe might have anything to do with a prior survey.

The Rennes also submitted declarations from Carroll Moore, the previous owner of the Rennes' property, and from Jack Addington, the previous owner of the Rineholds' property. Moore stated that when he and his wife bought the property, the previous owners (the Andersons) identified the private roadway as the property line. The Andersons had landscaped the land up to the roadway, which the Moores maintained after purchasing the property. Addington stated that during the time he and his wife owned the property that the Rineholds now own, they did not maintain or improve the land to the west of the roadway and did not consider that land to belong to them.

Finally, the Rennes submitted the 1955 deed conveying the property that the Rennes now own from Watson to Albert Johnson. The deed included calls describing the eastern border of the property as extending along the west side of the roadway.

The Rineholds moved to strike the declarations of Eleanor Renne, Moore, and Addington, arguing that they were not relevant to the narrow issue on summary judgment, the intent of the original grantor Watson, and that lay witnesses were not qualified to testify regarding land surveys. The trial court granted the motion to strike.

The trial court also granted the motion for partial summary judgment. The trial court determined that Holman's 2015 survey more closely followed Watson's intent than the Rennes' interpretation of the language in their deed because Holman's survey retraced the lines in the field established by Watson. The trial court found that "the survey of Daniel Holman correctly locates the property lines . . . based upon deeds of record and the unrecorded plat of Sunset Beach." CP at 194.

Rennes' Motion for Reconsideration

The Rennes moved for reconsideration of the order granting partial summary judgment. They contended that they had found additional evidence since the entry of the order showing that Watson intended the roadway be 42 feet wide on the eastern side of their property, which was inconsistent with Holman's 2015 survey indicating the roadway was 52 feet wide.

The Rennes submitted a supplemental declaration of Eleanor Renne, attaching a United States Geographical Survey aerial photograph from 1951 that purported to show a clearing for the roadway. The Rineholds moved to strike the declaration, but the court allowed the Rennes a continuance for the purpose of authenticating the aerial photo and addressing other foundational issues.

The Rennes then submitted declarations from Pete Kauhanen, a graphic information systems (GIS) specialist, and James Dempsey, a licensed professional surveyor.

Kauhanen stated that his work often required him to interpret historical aerial images as well as use georeferencing to associate objects or structures, including historical objects or structures, with a current physical location. He stated that he routinely relied on USGS data, including aerial photographs. After viewing aerial images from 1951 up to the present, Kauhanen concluded that there had been a roadway in the same location as the present roadway since at least 1951 and the traveled width of the road had always been roughly 20 feet.

Dempsey reviewed Watson's survey, Lovitt's survey, the Rennes' deed, Holman's 1994 short plat, and Holman's 2015 retracement survey with the purpose of determining whether there were inconsistencies between Watson's original property lines and Holman's 2015 survey. Dempsey noted a number of inconsistencies with Holman's survey.

The Rineholds filed a motion to strike the Kauhanen and Dempsey declarations as lacking foundation, and argued that Kauhanen was not competent to authenticate the USGS aerial photo. The trial court stated that there was a question of fact regarding whether Kauhanen had the expertise to render an opinion regarding the aerial photographs. And the court ruled that Kauhanen's declaration was sufficient to authenticate the USGS photograph.

The trial court considered the declarations of Kauhanen and Dempsey even though they were submitted for the first time on reconsideration. However, the trial court denied the motion for reconsideration. The court did not reach the issues of striking Kauhanen and Dempsey's declarations or regarding their foundation because the priority of calls made ruling on those motions irrelevant.

The Rennes appeal the trial court's order granting partial summary judgment and order denying reconsideration.[1]

ANALYSIS

A. SUMMARY JUDGMENT

1. Standard of Review

This court's review of an order granting summary judgment is de novo. *Frausto v. Yakima HMA, LLC*, 188 Wn.2d 227, 231, 393 P.3d 776 (2017). We review all evidence and reasonable inferences in the light most favorable to the nonmoving party. *Keck v. Collins*, 184 Wn.2d 358, 368, 357 P.3d 1080 (2015). We may affirm an order granting summary judgment if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); *Keck*, 184 Wn.2d at 370. A genuine issue of material fact is one where reasonable minds could differ on the facts controlling the litigation's outcome. *Sutton v. Tacoma Sch. Dist. No. 10*, 180 Wn. App. 859, 864-65, 324 P.3d 763 (2014).

The party moving for summary judgment has the initial burden to show there is no genuine issue of material fact. *Zonnebloem, LLC v. Blue Bay Holdings, LLC*, 200 Wn. App. 178, 183, 401 P.3d 468 (2017). The nonmoving party avoids summary judgment by establishing specific facts sufficient to rebut the moving party's contentions and create a genuine issue as to a material fact. *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008). No genuine issue of material fact exists where the nonmoving party relies on speculation or argumentative assertions that unresolved factual issues remain. *Id.*

[1] Even though the trial court's order was only a grant of partial summary judgment, the trial court made an express direction under CR 54(b) and RAP 2.2(d), supported by findings, that there was no just reason for delay regarding an immediate appeal.

2. Record on Review

Both parties challenge the trial court's ruling regarding the consideration of certain evidence on summary judgment. We review de novo the trial court's evidentiary rulings regarding admissibility of evidence in the context of a summary judgment motion. *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).

Initially, the trial court decided to consider the declarations of Dempsey and Kauhanen even though they were submitted for the first time during the trial court's consideration of the motion for reconsideration. The trial court has wide discretion to consider new or additional evidence presented with a motion for reconsideration. *Martini v. Post*, 178 Wn. App. 153, 162, 313 P.3d 473 (2013). Because the trial court in the exercise of its discretion decided to consider these declarations, on appeal we will consider them in determining whether a genuine issue of fact exists.

The Rennes argue that the trial court erred in striking the declarations of Eleanor Renne, Carroll Moore, and Jack Addington, which stated that the disputed strip of property had been treated as belonging to the Rennes over the years. These declarations related to the Rennes' adverse possession claim. We conclude that the trial court did not err in striking these declarations.

Although the Rennes may have a claim to the disputed strip of land through adverse possession, that issue was not before the trial court on partial summary judgment. Instead, the partial summary judgment motion was restricted to the narrow issue of whether Holman's 2015 survey correctly located the "*record title* to [the Rineholds'] property . . . [and] correctly represents the *record title* for the easterly line of the Renne property." CP at 9 (emphasis added).

Whether the Rennes can claim title to the strip of land under an adverse possession theory does not involve the *record* title of the property.[2]

However, we conclude that the trial court erred in striking the portion of Eleanor Renne's declaration that discussed a contractor finding an iron pipe near the northeast corner of their property in 2007. This portion of the declaration was based on Renne's personal knowledge and was relevant to the validity of Holman's survey.

The Rineholds suggest that the trial court should not have considered Kauhanen's declaration because he was not qualified to render an opinion regarding aerial photographs. But Kauhanen's declaration explains in detail why his experience allowed him the make determinations by reviewing the photographs. We agree with the trial court that viewed in the light most favorable to the Rennes, Kauhanen had sufficient expertise to evaluate the aerial photographs.

B. LOCATION OF BOUNDARY LINE

The Rennes argue that the trial court erred in determining as a matter of law that Holman's 2015 survey retraced Watson's original survey lines in the field and therefore established Watson's intent. We agree.

1. Legal Principles

a. Deed Interpretation

" '[D]eeds are construed to give effect to the intentions of the parties, and particular attention is given to the intent of the grantor when discerning the meaning of the entire document.' " *Newport Yacht Basin Ass'n of Condo. Owners v. Supreme Nw., Inc.*, 168 Wn. App. 56, 64, 277 P.3d 18 (2012) (quoting *Zunino v. Rajewski*, 140 Wn. App. 215, 222, 165 P.3d 57

[2] The Rennes are still free to argue their adverse possession theory at trial.

(2007)). If possible, we determine the parties' intent based on the language of the deed as a whole. *Newport Yacht Basin*, 168 Wn. App. at 64. "[T]he language of the written instrument is the best evidence of the intent of the original parties to a deed." *Id.* at 65.

However, where the language of the deed is ambiguous, we may consider extrinsic evidence to ascertain the parties' intent. *Id.* Such evidence includes "the circumstances of the transaction and the subsequent conduct of the parties." *Id.*

The same general rules apply in determining the location of a boundary established in a deed. *See Thompson v. Schlittenhart*, 47 Wn. App. 209, 212, 734 P.2d 48 (1987). The primary issue is the grantor's intent. *Id.* The focus is on the language of the deed, but when necessary we may look to the circumstances surrounding the entire transaction. *Id.* And we can determine an uncertain boundary "by the best evidence available." *Id.*

What the parties intended generally is a question of fact. *Newport Yacht Basin*, 168 Wn. App. at 64. Specifically, where the property boundaries are actually located is a question of fact. *DD & L, Inc. v. Burgess*, 51 Wn. App. 329, 335, 753 P.2d 561 (1988).

b. Boundary Descriptions

Deeds identify "boundary lines" between two properties. *DD & L*, 51 Wn. App. at 331 n.3. A "call" is a descriptive element in a deed used to identify boundary lines, including monuments, courses, distances, and area. *Id.* A "monument" is a permanent natural or artificial object that is actually on the ground and helps establish a boundary line. *Id.*; *see also Ray v. King County*, 120 Wn. App. 564, 590-91, 86 P.3d 183 (2004). "Natural monuments include such objects as mountains, streams, or trees. Artificial monuments consist of marked lines, stakes, roads, fences, or other objects placed on the ground" by people. *DD & L*, 51 Wn. App. at 331

n.3. A "course" is a direction of a line. *Id.* A "distance" is a horizontal measurement of a line in feet. *Id.*

When a deed references an artificial monument but that monument is constructed after a deed is signed, the monument under certain circumstances can mark a property boundary. *Ray*, 120 Wn. App. at 592. However, the monument must be constructed with the intention that it will conform to the deed. *Id.*

"In cases of conflicting calls [in a deed], the priority of calls is: (1) lines actually run in the field, (2) natural monuments, (3) artificial monuments, (4) courses, (5) distances, (6) quantity or area." *DD & L*, 51 Wn. App. at 335-36.

Property boundaries may be based on original surveys and plats of the property. The court must ascertain the intention of the original platter. *Staaf v. Bilder*, 68 Wn.2d 800, 803, 415 P.2d 650 (1966). "The intention of one who has platted land into lots and blocks is indicated by the monuments which he has caused to be placed, marking the boundaries of the same." *Olson v. City of Seattle*, 30 Wash. 687, 691, 71 P. 201 (1903). "[T]he known monuments and boundaries of the original plat take precedence over other evidence and are of greater weight than other evidence of the boundaries not based on the original monuments and boundaries." *Staaf*, 68 Wn.2d at 803. And the lines actually marked or surveyed on the ground prevail over an inconsistent plat. *Id.*

> "Where a plat delineates an actual survey, the survey rather than the plat fixes the location and the boundaries of the land. The plat is a picture, the survey the substance. In a conveyance referring to such plat, the lot bounded by the lines actually run upon the ground is the lot intended to be conveyed. The plat may be all wrong, but that does not matter if the actual survey can be shown. Thus, where there is a dispute as to the boundary line between a street and the abutting lots, the original survey will control the recorded plat. Where a surveyor of the land marks the division lines on the ground by monuments, such lines control calls and distances indicated on his map."

Neely v. Maurer, 31 Wn.2d 153, 155-56, 195 P.2d 628 (1948) (quoting 6 Thompson on Real Property, Perm. Ed., 584, sec. 3378).

If subsequent surveys are used to determine property boundaries, "the question to be answered is not where new and modern survey methods will place the boundaries, but where did the original plat locate them." *Staaf*, 68 Wn.2d at 803. "The main purpose of a resurvey is to rediscover the boundaries according to the plat upon the best evidence obtainable and to retrace the boundary lines laid down in the plat. Effort should be made to locate the original corners." *Id.*; *see also DD & L.*, 51 Wn. App. at 336.

2. Accuracy of Holman 2015 Survey

The trial court ruled that there was no genuine issue of material fact regarding Watson's intended boundary line between what are now the Renne and Rinehold properties and that as a matter of law the intended boundary line is the one shown on Holman's 2015 survey.

Here, the Rennes' deed (and Watson's original deed) identified the boundary line between the Rennes' property and the Rineholds' property by reference to an artificial monument – the western edge of the roadway. However, the deeds did not delineate the exact location of the road edge. Therefore, the deed language is ambiguous and we must consider extrinsic evidence to determine Watson's intent. *Newport Yacht Basin*, 168 Wn. App. at 64-65.

Watson's deed identified the western edge of the roadway as the eastern boundary of the Rennes' property. But the only evidence of Watson's intent regarding the *location* of the roadway are the two plats he prepared that reflected his survey of the area. We must determine whether these plats establish the location of the roadway as a matter of law or whether genuine issues of fact remain regarding the location of the roadway.

In support of their summary judgment motion, the Rineholds relied primarily on Holman's 2015 survey. Holman characterized that survey as a retracement survey, which is "designed to locate property lines as established by the original common grantor." CP at 23. He located certain monuments placed by Watson, which were consistent with Watson's plat map and with the bearings and distances on his deeds. Holman believed that this consistency was clear evidence of Watson's intention.

Holman's survey placed the western edge of the roadway several feet west of the existing gravel road. Holman stated that this survey was consistent with Lovitt's 1979 survey, which was recorded. Holman's survey also appears to be consistent with his 1994 survey and short plat.

Holman further stated that if the term "roadway" in the Rennes' deed and Watson deeds was interpreted as being the present road, the description in the deeds would not "close" by approximately 12 feet. Holman stated that he was familiar with Watson's work and that Watson never would have made such a significant mistake. Conversely, Holman stated that using his survey, all the other deeds from Watson closed and harmonized.

Lines actually run in the field prevail over artificial monuments; here, the roadway. *DD & L*, 51 Wn. App. at 335-36. However, *Holman's placement of the eastern boundary of the Rennes' property was not based on the lines on the ground that Watson ran*. Holman was able to locate only two of the pipes that Watson placed to make the lot that the Rennes now own – on the southeast corner and on the northwest corner. Therefore, Holman had to calculate the location of the northeast corner based on other factors.

Holman did not explain how he calculated the location of northeast corner. However, it appears that he relied on the notation on both of Watson's plats showing the distance of the

northern boundary between the northwest corner and northeast corner – the frontage along SR 106 – at 102 feet. The deeds also called a distance of 102 feet along the north border of the property – "North 69°16' East *102 feet* to the Westerly boundary of roadway." CP at 93 (emphasis added). It appears that Holman measured 102 feet from the pipe found at the northwest corner to establish the northeast corner. Apparently, Holman determined that the western edge of the present roadway was 114 feet from the northwest corner. As noted above, Holman did not believe that Watson would have made a 12 foot mistake in his plat measurements.

The Rennes did not submit their own retracement survey or any other type of survey to support their position that the location of the roadway referenced in the deeds is the location of the presently existing gravel roadway. Instead, they attacked the accuracy of Holman's survey through other evidence and argument.

3. Erroneous Basis for Summary Judgment Ruling

The trial court's summary judgment ruling was based on a belief that (1) Holman's 2015 survey reflected the lines that Watson actually ran in the field when preparing his survey and plats, and (2) the Rennes were required to produce their own survey in order to challenge the validity of Holman's survey. We conclude that the trial court erred in both respects.

First, as discussed above, Holman could not retrace the lines Watson actually ran in the field because nobody was able to find the iron stake that Watson placed in the northeast corner of the property the Rennes now own. Instead, Holman had to rely on other factors to determine the east boundary line. Holman's determination of the northeast corner necessarily was based on the 102 foot distance call in Watson's original deed and the 102 foot distance marked on Watson's deed for the property's northern boundary along SR 106.

Holman stated that his determination of the northeast corner and the east boundary line based on that corner reflected Watson's intent. But that statement was merely Holman's *opinion* based on a variety of factors, and Holman was not able to confirm where Watson *actually* placed the northeast corner or the east boundary line in the field.

Second, because Holman's survey represented an opinion regarding the east boundary line and not a simple tracing of the line between two monuments that Watson placed, we conclude that the Rennes were not required to submit their own survey. The Rineholds cite to no authority requiring the nonmoving party to submit a contrary survey in order to challenge the validity of a survey for summary judgment purposes. There is no reason that the Rennes could not create questions of fact regarding the validity of Holman's opinion regarding the placement of the eastern boundary line through means other than a full survey.

4. Questions of Fact Regarding Eastern Boundary

The evidence the Rennes presented in opposition to summary judgment and in support of reconsideration established genuine issues of fact regarding the location of the eastern boundary of their property.

First, Holman's location of the northeast corner of the Rennes' property was based on the 102 foot distance for the northern boundary line, not on a monument on that corner. Therefore, the the eastern boundary of the Rennes' property did not represent a line Watson ran in the field. As a result, Holman's survey was not necessarily determinative of Watson's intent.

Second, while placing the eastern boundary line based on something other than Watson's monuments, Holman ignored a significant monument – the roadway – that Watson did identify. Under the priority of calls, the roadway monument should control over the distance call Holman used. *DD & L*, 51 Wn. App. at 335-36. Applying this priority does not necessarily determine

where the roadway was located, but the location of the roadway remains a question of fact when the distance call is disregarded.

Third, Holman's 2015 survey was inconsistent with both of Watson's plats regarding the width of the road. Both plats show the road width as 42 feet, while Holman's survey shows the width at 52 feet. Dempsey also noted this inconsistency. Holman chose to conclude that the 102 foot distance of the northern boundary shown on the plats was accurate, which resulted in the road width shown on the plats being wrong. But he just as easily could have concluded that the 42 foot road width shown on the plats was accurate, which would have resulted in the northern boundary distance shown on the plats being wrong.

In other words, Holman's survey showed that either the 102 foot distance or the 42 foot distance was wrong. All reasonable inferences must be resolved in favor of the Rennes, and an equally reasonable inference is that the road width on Watson's deeds was correct and the northern boundary distance was wrong. Applying that inference, the eastern boundary line would have been 10 feet further east than shown on Holman's survey.

Fourth, the Rennes presented evidence that a 1/2 inch pipe was found further to the east of Holman's boundary line near what they believed to be the northeast corner of their property. Holman discounted that pipe because Watson's pipe was larger and because no survey had discovered it before. But on summary judgment Holman's opinion regarding the pipe does not control; the evidence must be viewed in the light most favorable to the Rennes.

Fifth, the Rennes submitted evidence from Kauhanen that the present road existed in the same location in 1952 when Watson prepared his plats. Kauhanen stated, "[T]he indicated roadway is in the exact location as East Sunset View Lane is in all other subsequent imagery for this area that I have reviewed. This includes imagery from 1951, 1968, and recent imagery." CP

at 294. This evidence creates a question of fact as to whether Watson's use of the word "roadway" in his deed referred to the existing roadway. The Rineholds may have a valid argument that the opinions expressed in Kauhanen's declaration are questionable. But on summary judgment, we must assume that the opinions are true.

We conclude that genuine issues of material fact exist regarding the location of the east boundary line between the Rennes' property and the Rineholds' property. Therefore, we hold that the trial court erred in granting the Rineholds' motion for partial summary judgment and in denying the Rennes' motion for reconsideration.

CONCLUSION

We reverse the trial court's orders granting the Rineholds' motion for partial summary judgment and denying the Rennes' motion for reconsideration, and we remand for further proceedings.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Maxa, C.J.
MAXA, C.J.

We concur:

Melnick, J.
MELNICK, J.

Sutton, J.
SUTTON, J.

APPENDIX B

Filed
Washington State
Court of Appeals
Division Two

June 1, 2020

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FLOYD F. RINEHOLD and CLARISSA E. RINEHOLD, husband and wife,

Respondents,

v.

GARY T. RENNE and ELEANOR F. RENNE, husband and wife,

Appellants,

DONALD DUANE DeNOTTA and CARON DeNOTTA, husband and wife, and D.D. DeNOTTA, LLC,

Defendants,

SCHOOL EMPLOYEES CREDIT UNION OF WASHINGTON, a Washington Credit Union; PINNACLE CAPITAL MORTGAGE CORP D/B/A CASCADE MORTGAGE, a Washington Corporation; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware corporation, as Nominee for Pinnacle Capital Mortgage Corp D/B/A Cascade Mortgage; CAVALRY SPV I LIMITED LIABILITY COMPANY, a Washington limited liability company, as Assignee of HSBC Bank Nevada,

Third Party Defendants.

No. 52915-7-II

ORDER DENYING MOTION FOR RECONSIDERATION AND MOTION TO PUBLISH

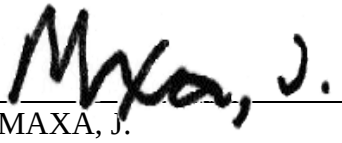
Respondents Rinehold moves this court pursuant to RAP 17.3 for reconsideration of its unpublished opinion filed March 10, 2020 opinion in this case, or in the alternative, to publish

the opinion pursuant to RAP 12.3(e). Upon consideration, the court denies the motion for reconsideration and the motion to publish. Accordingly, it is

SO ORDERED.

PANEL: Maxa, Melnick, Sutton

FOR THE COURT:



MAXA, J.

APPENDIX B-1

No. 52915-7-II

Court of Appeals
DIVISION II
STATE OF WASHINGTON

GARY T. RENNE and ELEANOR F. RENNE, husband and wife,

APPELLANTS,

v.

FLOYD F. RINEHOLD and CLARISSA E. RINEHOLD, husband and wife,

RESPONDENTS.

MOTION FOR RECONSIDERATION AND MOTION TO PUBLISH

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MOTION FOR RECONSIDERATION

Pursuant to RAP 17.3, Reconsideration is requested of the unpublished opinion of this court filed March 10, 2020, as follows.

I. INTRODUCTION

Reconsideration is requested by Floyd F. Rinehold and Clarissa E. Rinehold, respondents herein.

II. RELIEF REQUESTED

Respondents request that this court withdraw its opinion of March 10, 2020, and, by subsequent opinion, affirm the decision of the trial court granting partial summary judgment to the Rineholds.

III. EVIDENCE RELIED UPON

For reference to the record, see below. References to the opinion are to the pages as initially transmitted to counsel since there is no other reference available.

IV. GROUNDS FOR RELIEF AND ARGUMENT

The Rineholds moved for partial summary judgment before the trial court, asking for very specific relief which was narrowly tailored in the motion:

> "The survey of Daniel F. Holman attached hereto as Exhibit A is a true, correct, and accurate survey and representation of the record title to Plaintiffs' property set forth in paragraph 2.1 of the Second Amended Complaint, and which survey correctly represents the

record title for the easterly line of the Renne property which is identified in Exhibit B attached hereto." CP 8-14.

The trial court granted the Rineholds' motion as to this very specific issue. CP at 194. This court reversed. Rinehold v. Renne, et al. 2020 WL 1158088. In reversing, this court went to great lengths to evaluate assertions made by the Rennes. These assertions have no direct bearing on the narrow determination requested in the original motion. While those issues evaluated by this court could have a bearing on a conclusion to be drawn by a surveyor, a difference of opinion of experts (surveyors) does not exist in the record and therefore there is nothing for this court to evaluate. While any of these factors could be a genuine issue of a material fact to be considered, no surveyor has said that under the facts and circumstances of this case, any of these issues raised by the Rennes are genuinely material to a proper survey under the facts of this case.

In other words, the Rennes asked the trial court to speculate that the issues they raised might be material to a survey. The trial court properly refused to do so. Mere allegation, speculation, and supposition cannot defeat a summary judgment motion. Ranger Insurance Company v. Pierce County, 164 Wash.2d 545, 192 P.3d 886 (2008). Snohomish County v. Rugg, 115 Wash.App. 218, 61 P.2d 1184 (2003). Greenhalgh v. Department of Corrections, 160 Wash.App. 706, 248 P.2d 150 (2011). West v. City of Tacoma, ____ Wash. App. 2d _____, 456 P.3d 894 (2020).

> "The very object of a motion for summary judgment is to separate what is formal or pretended in denial or averment from what is genuine and substantial, so that only the latter may subject to suit or the burden of trial."

Hill v. Cox, 110 Wash. App. 394, 41 P.3d 495 (2002), citing Preston v. Duncan, 55 Wash.2d 678, 349 P.2d 605 (1960), quoting Judge (later Justice) Cardoza in Richard v. Credit Suisse, 242 N.Y. 346, 152 N.E. 110, 45 A.L.R. 1041 (1926).

The crux of this court's decision is found at Section 3, entitled "Erroneous Basis for Summary Judgment Ruling," which arrives at two conclusions. (pp. 17-18).

The first conclusion made by this court is that Holman could not retrace the lines run in the field because he could not find Watson's northeast corner. (pp. 17-18). This court made the assumption that, in order to do a retracement survey, all four corners of the original surveyor's monuments must be present. (p. 17). There is no citation to any authority for this conclusion. (p. 17). There is nothing in the record anywhere that even suggests that any such assumption is proper. More importantly, the Rennes never made this assertion before the trial court or this court that all four corners must be present to do a retracement survey. An issue not raised in a summary judgment proceeding before the trial court cannot be raised on appeal and is not properly considered on appeal. Ashcraft v. Wallingford, 17 Wash.App. 853, 565 P.2d 1224 (1977). Fireside Bank v. Cavalry Investments, LLC., No. 96853-5, Washington Supreme Court, filed March 26, 2020.

This holding is contrary to Staaf v. Bilder, 68 Wash.2d 800, 415 P.2d 650 (1966), wherein the court held to a retracement survey where only one original monument was found. See also State v. Shepardson, 30 Wash.2d 165, 191 P.2d 286 (1948).

In point of fact, Holman did recover the southeast monument of Watson. He knew Watson's distance. He knew Watson's northerly bearing from that point. Ergo, he knew where Watson placed the northeast corner. Consistent with that, he knew where Lovitt placed that corner in 1979 for Watson's son. Holman knew that as far back as 1994 when he surveyed for Addington. He knew the location of the northwest corner of the Renne property, which no one has questioned in any shape or form is properly located. He knew Watson's intent that that point was 102 feet upon a certain westerly bearing from the northeast corner. So coming from both the south and from the west, Holman knew exactly where Watson placed the northeast corner of the Renne property. This is not an opinion but an undisputed fact. CP 21-54.

There is not one case, fact, or expert opinion in the record to indicate this is not sufficient for a retracement survey.

The second conclusion reached by this court was that what Holman concluded was an opinion, and therefore, the Rennes were not obliged to submit their own survey. (p.18). There is no citation to any authority for this conclusion. (p.18). This court added that Rineholds cited to no authority that a nonmoving party must submit a contrary survey in order to challenge the validity of a survey for summary judgment purposes. This is not true.

By framing the issues the way the court has, the answer is pre-determined. As to the specific issue, there is no case in Washington specifically in a survey case that holds whether an opposing expert is needed to defeat a motion for summary judgment. However, there is well-established law, which is clearly applicable, and

that was brought to this court's attention, which this court did not discuss. This issue was addressed at pages 29-31 of the Rinehold brief.

The court's attention was particularly drawn to Young v. Key Pharmaceuticals, Inc., 112 Wash.2d 216, 770 P.2d 182 (1989), wherein it was stated that an expert was required to defeat a motion for summary judgement

> "...when an essential element of a case is best established by an opinion which is beyond the expertise of a layperson."
>
> id. at p. 228.

See also Christian v. Tohmeh 191 Wash.App. 709, 386 P.3d 16 (2015), and Colwell v. Holy Family Hosp., 104 Wash.App. 606, 15 P.2d 210 (2001), abrogated on other grounds by Fransto v. Yakima HMA, LLC, 188 Wash.2d 227, 393 P3d 776 (2017), which are all summary judgment cases.

In each of these summary judgment cases, a conclusion was reached by the moving party's expert. The opposing side did not present an expert to oppose that conclusion and each court held that as being fatal in the summary judgment context.

Therefore, in the context of the present case, the only question is, is the location of a surveyed line "best established by an opinion which is beyond the expertise of a layperson"?

Establishment of lines is the practice of land surveying. RCW 18.43.020(9). Only a person qualified and licensed can practice land surveying. RCW 18.43.010. Therefore, under Washington law, it is required that the location of a line by a surveyor is not only best established by a surveyor, it is required by law.

Consistent with this, Rue v. Oregon W.O. Co., 109 Wash. 436, 186 P. 1074 (1920), and Bachelor v. Madison Park Corporation, 25 Wash. 2d 907, 172 P. 268 (1946), both held that testimony of non-surveyors is not competent to impeach the testimony of a surveyor.

The Rennes consulted with three surveyors, (CP 24), and submitted a declaration from one of them. RP 35, 104. None of these has attested that Holman's location of the Renne east line is incorrect nor have they said Holman's line is in a location different than that located by Lovitt. It is therefore presumed that the opinions of those surveyors would not support the Renne position. Wright v. Safeway Stores, Inc., 7 Wash.2d 341, 109 P.2d 542 (1941). State v. Baker, 56 Wash. 2d 846, 355 P.2d 806 (1960).

MOTION TO PUBLISH

Pursuant to RAP 12.3(e), Floyd Rinehold and Clarissa Rinehold move to publish the opinion of this court in the event their Motion for Reconsideration is denied.

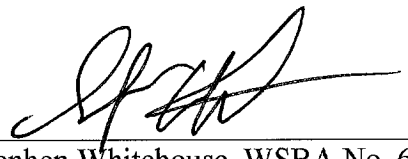
As to the very specific issue of the need for a surveyor to rebut a summary judgment motion, the decision of this court is settling a new question of law. As to the general issue of the need for an expert opinion to rebut a summary judgment motion where expert testimony is needed because the issue is outside the scope of a layperson, this court has reversed a well-established principle of law.

CONCLUSION

Respondents ask this court to reconsider its unpublished opinion, withdraw that opinion, and affirm the trial court. In the event this court declines to reconsider, the Respondents would ask the court to publish its opinion.

Respectfully submitted this 26th day of March 2020.

WHITEHOUSE & NICHOLS, LLP



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APPENDIX B-2

No. 52915-7-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

FLOYD F. RINEHOLD and CLARISSA E. RINEHOLD,

Plaintiffs/Respondents,

v.

GARY T. RENNE and ELEANOR F. RENNE,

Defendants/Appellants.

APPELLANTS' ANSWER TO RESPONDENTS' MOTION FOR RECONSIDERATION AND MOTION TO PUBLISH

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I. INTRODUCTION

The Court's decision was correct: summary judgment was improper because "genuine issues of material fact exist regarding the location of the east boundary line between the Rennes' property and the Rineholds' property."[1] The Rineholds' motion for reconsideration should be denied accordingly.

The Rineholds' arguments either misstate the law or the Court's rationale, or they misstate the appellate record. ***First***, contrary to the Rineholds' assertion, this Court accepted the Rineholds' "narrow issue" and only considered arguments bearing on the issue as so phrased. In fact, the Court was explicit on this point—it served as the basis to uphold the trial court decision to strike three declarations related to the Rennes' adverse possession claim. ***Second***, contrary to the Rineholds' assertion that there was no dispute between surveyors "in the record," the record contains the declaration from the Rennes' licensed professional surveyor James Dempsey who noted a number of material inconsistencies with the survey offered by the Rineholds (the Holman survey). And, as the Court detailed in its opinion, the Rennes' contrary survey evidence was not the only

[1] *Rinehold, et ux. v. Renne et al.*, No. 52915-7, slip op. at 20 (Wash. Ct. App. March 10, 2020) (unpublished), http://www.courts.wa.gov/opinions/pdf/D2%2052915-7-II%20Unpublished%20Opinion.pdf.

evidence creating a disputed factual issue on the location of the east boundary line between the parties' property. ***Third***, the Rineholds continue to rely on a misapplication of the priority of calls and a misreading of case law to argue Holman's survey is unassailable. ***Finally***, the Rineholds repeat their prior argument that a competing survey is the only way to combat their summary judgment motion. Yet they fail to address the Court's reasoning, previously cited law, and the impracticalities to the contrary.

With respect to the motion to publish, the Rennes believe the Court was well within the bounds of reason to conclude its decision did not require publication. Resolution of this appeal required a straightforward application of the summary judgment standard—is there a genuine issue of material of fact in dispute. A case that turns on application of this standard does not appear to the Rennes to meet the RAP 12.3(d) test for publication. However, the Rennes have no objection to publication if this Court so decides.

II. DESIGNATION OF ANSWERING PARTY

The Rennes are the answering party. The Rennes were the defendants below and the appellants before this Court.

III. STATEMENT OF RELIEF SOUGHT

The Rennes submit this Answer, explaining why the Rineholds' motions should be denied, pursuant to the May 4, 2020 call for an Answer.

IV. RESPONSE TO ARGUMENT

A. The Motion for Reconsideration Should Be Denied.

The Rineholds take exception to this Court's opinion on four points. They argue: (1) that the Court misunderstood that the summary judgment motion before the superior court only raised a "narrowly tailored" issue; (2) that "a difference of opinion of experts (surveyors) does not exist in the record and therefore there is nothing to evaluate"; (3) that the Court erred in concluding Holman's 2015 survey did not necessarily reflect the lines Watson actually ran in the field as a matter of law; and (4) that the Court erred in concluding the Rennes were not required to submit their own survey. This Court addressed, and properly rejected, each of these arguments in its opinion. There is no basis for reconsideration.

1. The Court limited its opinion to the "narrow determination requested in the [Rineholds'] original motion."

The Rineholds' motion for reconsideration first faults this Court for not understanding the issue. The Rineholds describe the issue as "the narrow determination requested in the[ir] original motion" before the trial court, which they characterize as whether Holman's "survey correctly represents the record title."[2] Contrary to the Rineholds' assertion, this Court

[2] Motion for Recons. and Publication ("Mot.") at 1-2.

expressly limited its opinion to exactly that "narrow issue." In fact, this Court declined to consider several of the Rennes' arguments and several witness declarations precisely because the Court determined they fell outside the "narrow issue" "of whether Holman's 2015 survey correctly located the '*record title* to [the Rineholds'] property."[3] The Court explained:

> The Rennes argue that the trial court erred in striking the declarations of Eleanor Renne, Carroll Moore, and Jack Addington, which stated that the disputed strip of property had been treated as belonging to the Rennes over the years. These declarations related to the Rennes' adverse possession claim. We conclude that the trial court did not err in striking these declarations.
>
> Although the Rennes may have a claim to the disputed strip of land through adverse possession, that issue was not before the trial court on partial summary judgment. Instead, the partial summary judgment motion was restricted to the narrow issue of whether Holman's 2015 survey correctly located the "*record title* to [the Rineholds'] property . . . [and] correctly represents the *record title* for the easterly line of the Renne property."[4]

Thus, this Court accepted the issue as the Rineholds phrased it and only considered those arguments bearing on the issue as the Rineholds phrased it. The Rineholds' assertion that the Court failed to appreciate the "narrow issue" before it is incorrect and cannot serve as a basis for reconsideration.

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[3] Slip Op. at 11 (emphasis and brackets in opinion) (quoting Pl.'s 2nd Am. Compl.).

[4] *Id.* (emphasis and brackets in opinion) (quoting Pl.'s 2nd Am. Compl.).

2. The record shows a genuine, material factual dispute between surveyors (and other expert and lay witnesses).

The Rineholds next claim "a difference of opinion of experts (surveyors) does not exist in the record."[5] The record belies this claim, as this Court recognized.[6] The Rineholds' statement that there was no disagreement between surveyors in the record forgets the declaration, which is in the record, of licensed professional land surveyor James Dempsey. As this Court discussed, Mr. Dempsey "noted a number of inconsistencies with Holman's survey."[7] Mr. Dempsey's declaration identified the "material inconsistencies" in Holman's survey that created a "genuine issue of material fact" regarding whether Holman's "survey correctly represents the record title."[8] That is precisely what this Court held, relying in part on Mr. Dempsey's declaration under the basic summary judgment rule that "[a]ll reasonable inferences must be resolved in favor of the Rennes."[9]

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[5] Mot. at 2.

[6] Slip Op. at 9 ("Dempsey noted a number of inconsistencies with Holman's survey."); Clerk's Papers ("CP") at 305-07 (Declaration of James Dempsey, PLS) (concluding, "Based on my experience and training as a licensed professional surveyor in the State of Washington, I find the above-listed inconsistencies to be material.").

[7] *Id.*; *see also id.* at 19 (again noting Dempsey's declaration and how it reveals inconsistencies in Holman's survey).

[8] CP at 305-07. Mr. Dempsey also pointed out the failures of the Lovitt plat, which Holman relied upon, and concluded Lovitt's survey, "has several bearing problems that rendered it unusable for me as a licensed professional surveyor." CP 307.

[9] Slip Op. at 19.

Moreover, as the Court detailed, the Rennes also offered non-surveyor expert evidence (declaration of GIS specialist Pete Kauhanen on the historical location of the roadway), and lay witness evidence (declaration of Eleanor Renne regarding locating an iron pipe in the northeast corner of the Renne property in 2007).[10] The Rennes (and the Court) also pointed out internal inconsistencies and inaccuracies with the Holman survey itself.[11] All of these pieces of evidence, lay and expert, properly formed the basis of the Court's determination that summary judgment is not appropriate given the disputed factual issue regarding the location of the east boundary line between the parties' property.[12]

3. This Court correctly concluded Holman's survey did not necessarily retrace the actual lines run in the field by Watson.

To begin, the Rineholds mistakenly assert this Court "made the assumption that" a retracement survey requires "all four corners of the original surveyor's monuments."[13] The Court did not so assume, nor did it need to.

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[10] Slip Op. at 19-20; *see also* CP at 289-304 (Kauhanen declaration); CP at 87, and at 201-217 (Renne declaration).

[11] Slip Op. at 16, 18-20; Appellants' Opening Br. at 28-32; Appellants' Reply Br. at 6-13.

[12] Slip Op. at 20.

[13] Mot. at 3.

The Rineholds take exception to the following conclusion from the Court:

> First, as discussed above, Holman could not retrace the lines Watson actually ran in the field because nobody was able to find the iron stake that Watson placed in the northeast corner of the property the Rennes now own. Instead, Holman had to rely on other factors to determine the east boundary line. Holman's determination of the northeast corner necessarily was based on the 102 foot distance call in Watson's original deed and the 102 foot distance marked on Watson's deed for the property's northern boundary along SR 106.[14]

The Rineholds summarily claim this conclusion is "contrary to *Staaf v. Bilder*."[15]

The Rineholds' claim ignores the Court's four-and-a-half page discussion of the law and facts that preceded its conclusion.[16] The Rineholds also neglect to recognize that the survey in *Staaf* was accepted following a bench trial on the merits and was on review pursuant to the substantial evidence standard afforded to trial court findings of fact.[17]

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[14] Slip Op. at 17.

[15] Mot. at 3.

[16] *Compare* Mot. at 3 *with* Slip Op. at 12-16. *See also* Slip Op. at 18-20 (listing five existing factual disputes that the Rineholds do not address in their motion for reconsideration).

[17] *Staaf v. Bilder*, 68 Wn.2d 800, 801-03, 415 P.2d 650 (1966) (discussing competing evidence considered and stating the "learned trial judge made his findings not only from substantial evidence but from evidence entitled to great weight, presented by both plaintiffs and defendants based on disputed facts and the conflicting conclusions of professional experts."). *See also* Appellants' Opening Br. at 40, n. 198 (collecting cases with parenthetical explanations).

Obviously, the standard on summary judgment at issue here is different, and is the standard that appropriately formed the basis of this Court's decision.

The Rineholds also assert in their present motion that "Holman did recover the southeast monument of Watson. He knew Watson's distance."[18] Telling is the way the Rineholds reach this conclusion—they misapply the priority of calls by relying on distances over monuments.[19] This Court called out that very mistake it its decision:

> while placing the eastern boundary line based on something other than Watson's monuments, Holman ignored a significant monument – the roadway – that Watson did identify. Under the priority of calls, the roadway monument should control over the distance call Holman used. *DD & L*, 51 Wn. App. at 335-36. Applying this priority does not necessarily determine where the roadway was located, but the location of the roadway remains a question of fact when the distance call is disregarded.[20]

The Rineholds' motion for reconsideration fails to address Holman's misapplication of the priority of calls and, indeed, advances its own misapplication of the priority of calls. This is not grounds for reconsideration.

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[18] Mot. at 4. To the extent the Rineholds rely on Lovitt's survey in their motion for reconsideration, Mr. Dempsey pointed out that survey was "unusable" because of the bearing errors and incorrect "U line." CP 306-07.

[19] *Id.*

[20] Slip Op. at 18-19.

4. A competing survey is not the only way to contest the accuracy of another survey.

As this Court noted, the "Rineholds cite to no authority requiring the nonmoving party to submit a contrary survey in order to challenge the validity of a survey for summary judgment purposes."[21] The Rineholds still do not come forward with supporting authority in their motion for reconsideration. Instead, the Rineholds—the party originally moving for summary judgment—fault this Court for ***not*** finding a case that ***disproves*** their theory that the Rennes were "obliged to submit their own survey."[22] In other words, the Rineholds fault this Court for failing to prove a negative.

The practical failings of only accepting a survey to refute Holman's conclusions were previously briefed to this Court.[23] Based on that briefing, the Court concluded, "There is no reason that the Rennes could not create questions of fact regarding the validity of Holman's opinion regarding the placement of the eastern boundary through means other than a full survey."[24]

Nor does the law support the Rineholds' position—especially on review of summary judgment as here. The cases the Rineholds discuss as

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[21] *Id.* at 18.

[22] Mot. at 4 ("There is no citation to any authority for this conclusion.").

[23] *E.g.*, Appellants' Reply Br. at 20.

[24] Slip Op. at 18.

allegedly supporting their "a-survey-is-absolutely-required" theory are unavailing now, just as they were in the merits appeal.[25] The Rineholds again cite *Young v. Key Pharmaceuticals* for the proposition that an expert is required where an essential element is beyond the expertise of a layperson, and that the absence of an expert to oppose another expert's conclusion is fatal.[26] But even under the Rineholds' broad interpretation of the *Young* holding, they again forget that the declarations of experts Dempsey and Kauhanen refute the accuracy of Holman's survey. As the Court explained, "Because the trial court in the exercise of its discretion decided to consider these declarations, on appeal we will consider them in determining whether a genuine issue of fact exists."[27]

The Rineholds next cite *Rue v. Oregon and Washington Railroad Company* and *Batchelor v. Madison Park Corporation* and claim those courts "held that testimony of non-surveyors is not competent to impeach the testimony of surveyor."[28] First, the Rineholds made this argument in their merits briefing and this Court rejected it.[29] Second, that is not what

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[25] *Compare* Respondents' Response Br. at 28-31 *with* Appellants' Reply Br. at 7, n. 21, and 20-21.

[26] Mot. at 5 (citing *Young v. Key Pharm. Inc*., 112 Wn.2d 216, 228, 770 P.2d 182 (1989)).

[27] Slip Op. at 11.

[28] Mot. at 6 (citing *Rue v. Oregon W.R. Co.*, 109 Wash. 436, 186 P. 1074 (1920) and *Batchelor v. Madison Park Corp.*, 25 Wn.2d 907, 172 P.2d 268 (1946)).

[29] Respondents' Response Br. at 30-31.

either case held. Both *Rue* and *Batchelor* were appeals from ***trials***, and the Supreme Court affirmed the trial court's "rejection" of evidence in dispute. The Supreme Court either concluded that the trial court did not abuse its discretion on an evidentiary ruling or rejected a sufficiency-of-the-evidence challenge.[30] In either case, the Supreme Court did not hold as the Rineholds claim. Third, and as the Rennes pointed out in their merits briefing, after both *Rue* and *Batchelor*, the Supreme Court affirmed a trial court's reliance on surveys and testimony from college students who were not professional surveyors, and had only, potentially, taken "a basic course" in surveying as part of their forestry majors.[31]

Moreover, consider the absurd results if the Court were to agree with the Rineholds' theory that a competing survey, and only a competing survey, can successfully create an issue of fact on a summary judgment motion based on a survey. If a surveyor submitted a survey, but then submitted a "mea culpa" declaration saying his calculations were inaccurate or assumptions were invalid, the declaration would be insufficient to prevent entry of summary judgment (according to the Rineholds' theory). If a party submitted a declaration evidencing fraud or collusion on the part

[30] *Rue*, 109 Wash. at 440; *Batchelor* 25 Wn.2d at 914.

[31] *Mullally v. Parks*, 29 Wn.2d 899, 901, 190 P.2d 107 (1948). *See* Appellants' Reply Br. at 7, n. 21.

of a surveyor, a court would be required to accept a fraudulent survey as dispositive as a matter of law (according to the Rineholds' theory). It comes as no surprise that the Rineholds cannot cite any law for their theory.

The point is, it is unremarkable that on a summary judgment motion a court should assess all of the evidence submitted and determine whether the moving party has met their burden of proof as a matter of law. There is nothing novel about the application of that standard here and it is the standard this Court properly applied. Indeed, notably absent from the Rineholds' motion is any discussion, let alone refutation, of the five different "Questions of Fact Regarding [the] Eastern Boundary" this Court identified in its decision.[32]

Rather, the Rineholds continue to make unsupported claims such as the Rennes hired "three surveyors."[33] The Rineholds made this assertion in their merits brief at pages 2, 13-14, and 31, each time citing the same record cite as they cite here: "CP 24, RP 35, 104."[34] As the Rennes pointed out in reply, the Rineholds' "citations do not support their assertion. Their citations are to Holman's own declaration saying he believed the Rennes '<u>contacted</u> at least <u>one</u> surveyor,' and the Rineholds' counsel's own

[32] Slip Op. at 18-20.

[33] Mot. at 6.

[34] Respondents' Response Br. at 2, 13-14, 31.

statements to the superior court."[35] This is speculative, inadmissible hearsay from Holman, and mere argument from counsel, neither of which would be admissible on summary judgment. The point the Rineholds are attempting to convey is irrelevant in any event. Whether the Rennes hired one, two, or ten surveyors—or none—does not matter. What matters is the evidence the Rennes did amass and whether ***that*** evidence creates an issue of fact. This Court was unpersuaded by the Rineholds' identical argument on the merits, and there is no basis for a different result on reconsideration.

It bears noting that the Rineholds' present contention that the Rennes had to submit a conflicting ***survey*** is different than their position articulated to the superior court. Below, the Rineholds acknowledged that evidence of a roadway existing between 1952 and 1955 would alone defeat their summary judgment motion.[36] The Rennes submitted such evidence.[37]

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[35] Reply Brief at 20, n. 78 (underlining added).

[36] 2VRP 37 ("what is totally fatal to the defense is there's no proof in this record whatsoever of what existed on that ground in the 1952 to 1955 timeframe. There's no proof that there was even a road in existence at that time. There's no proof where that road was. And so it was the clear intention that the roadway was to be the platted roadway."); CP 165 ("The position of Rennes[ ] fails because: 1. They provide no expert opinion contradicting the current and historical surveys. 2. They provide no evidence which examines the totality of the circumstances in 1952-55. 3. They do not contradict Holman's conclusion as to W.O. Watson's original monumentation.…"); *see also* Appellants' Opening Br. at 18, 42; Appellants' Reply Br. at 18-20.

[37] *See, e.g.*, CP at 289-304 (Kauhanen declaration).

Finally, belying the Rineholds' contention that ***only*** a survey could defeat their motion is their reliance on *Staaf* itself. In *Staaf*, the Supreme Court acknowledged the conclusions derived by professional surveyors were only a ***part*** of the information properly considered by the superior court to determine the legal boundary between tracts of land—the other information being: "evidence from both parties describing old fences and fence lines, abandoned fences and fence lines, remnants of old and dilapidated fences, and remnants of chicken wire and barbed wire left from fallen and dilapidated fences, and heard testimony describing the history and ownership of the two adjacent tracts."[38]

As this Court properly reasoned, on summary judgment, the issue is not whether the Rineholds' evidence (Holman's survey) is ultimately persuasive or whether the contrary evidence offered by the Rennes is ultimately persuasive. The issue is simply whether there are issues of disputed fact regarding the validity of Holman's opinions and, ultimately, the location of the eastern boundary line between the parties' properties. There clearly are such issues present in this case. The Rineholds' motion fails to demonstrate the need for this Court's reconsideration.

[38] *Staaf*, 68 Wn.2d at 802.

B. The Court Need Not Publish Its Decision.

Per RAP 12.3(d), the Court will publish an opinion that "determines an unsettled or new question of law or constitutional principle"; "modifies, clarifies or reverses an established principle of law"; "is of general public interest or importance"; or "is in conflict with a prior opinion of the court of appeals." This case turns on the application of the CR 56 summary judgment standard—namely, that summary judgment was improper because genuine issues of material fact exist. This is a well-accepted principle that the Rennes do not believe requires reiteration in a published opinion. Having said that, the Rennes believe the Court is in the best position to make the determination on whether its decisions should be published. If the Court were to decide to publish its opinion, the Rennes would have no objection thereto.

V. CONCLUSION

This Court's conclusion that summary judgment was improper because "genuine issues of material fact exist regarding the location of the east boundary line between the Rennes' property and the Rineholds' property" requires neither reconsideration nor publication. The Rineholds' motion should be denied.

Respectfully submitted this 18th day of May, 2020.

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