Supreme Court No. 98694-1

SUPREME COURT
OF THE STATE OF WASHINGTON

No. 52915-7-II

Court of Appeals
COURT OF APPEALS, DIVISION TWO
OF THE STATE OF WASHINGTON

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

PETITIONERS,

v.

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

RESPONDENTS.

FLOYD F. RINEHOLD and CLARISSA E. RINEHOLD'S PETITION FOR DISCRETIONARY REVIEW TO WASHINGTON STATE SUPREME COURT

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AUTHORITIES AND STATUTES

I. IDENTITY OF PETITIONERS

The petitioners herein are Floyd F. Rinehold and Clarissa R. Rinehold, husband and wife.

II. CITATION TO COURT OF APPEALS DECISION

Petitioners seek discretionary review by the Washington State Supreme Court of a decision of the Washington State Court of Appeals, Division II, filed March 10, 2020. Rinehold v. Renee, 2020 WL 1158888, Motion for Reconsideration Denied, June 1, 2020, copies appended.

III. ISSUES PRESENTED FOR REVIEW

Did the Court of Appeals err in reversing a partial summary judgment of the Mason County Superior Court which held that:

> "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.

where the Rennes presented no expert testimony that the determination of the common line between the Rineholds and the Rennes was contrary to that line established by the Rinehold surveyor, Daniel Holman.

The Court of Appeals decision is in conflict with decisions of Washington State Supreme Court and published decisions of the Court of Appeals. RAP 13.4(b)(1&2).

IV. STATEMENT OF THE CASE

Floyd and Clarissa Rinehold, and Gary and Eleanor Renne, own adjoining parcels of real property south of the south shore of Hood Canal in Mason County, Washington. CP 1-7, 21-54.

Defendants Donald and Caron DeNotta and D.D. DeNotta LLC., were originally parties, but their issues with the Rineholds were settled prior to the proceedings which are the subject of this appeal.

The third party defendants represent security interests that are not actively participating in this matter and will abide the result. CP 404-408.

The Rineholds own an oddly shaped parcel of real property, which was originally two parcels, Lots 1 and 3 of Short Plat 2459. CP 27. They acquired Lot 1 in 2004 and Lot 3 in 2005. CP 51-54. The lots were combined in 2005. CP 27 (See note on upper right corner).

The Rennes acquired their property in 2006. CP 48-49.

The northerly portion of the Rinehold property is a long, narrow strip of land of varying width that connects the southerly portion of

their property, where their home exists, to SR 106, also known as the Old Navy Yard Highway. CP 27. This is the road that runs from Belfair, southwesterly, along the South Shore of Hood Canal, past Union. The properties abut this road to the south, about midway between Belfair and Twanoh State Park.

The parties' properties are a part of the unrecorded plat of Sunset Beach, created by W. O. Watson in 1952, an old time Mason County surveyor. CP 29-32. He surveyed and monumented the parcels he created but left a portion undivided. CP 29-32. A copy is appended for illustrative purposes. The Rinehold property is in yellow. The Renne property is the parcel abutting SR 106 immediately west of the Rinehold property.

In 1979, W.O. Watson's son, Glen Watson, had a retracement survey done by Roger Lovitt, a licensed surveyor who maintained his business in Mason County for many years. CP 22, 34. Lovitt's survey recovered monumentation set by W. O. Watson. CP 22, 34. Lovitt's 1979 survey is labeled "Watson's Sunset Beach Survey". CP 34.

At the time of the W. O. Watson work, plats were not required to be recorded (nor did copy machines exist), but he provided copies to

both Mason County Title and Land Title of Mason County to create a record of his work. CP 22-23, 206.

The Renne property is what is noted as Lot 5 on both surveys. The Rinehold property is east and south of the Renne property. CP 29-34.

The Watson plat/survey, in the area east of the Renne property, contains the notation "street." CP 29-32. This is in Watson's handwriting. CP 22, RP 58. This was never disputed. This area has been used for driveway purposes by the Rineholds, Rennes, and several other lots, including predecessors, although when that use began remains an open question. CP 85. The Rineholds have title to the area of "the street" identified on the Watson plat. CP 51-54. The other properties, including the Rennes, have easements for access. CP 85.

In 1994, Daniel F. Holman, a licensed surveyor of many years' experience in Mason County, who was, and is, intimately familiar with the work of Watson and Lovitt, surveyed what is now the Rinehold property. CP 36. The Holman survey was a retracement survey. The survey did not discover any encroachments at that time on the Rinehold property, which he would have been required by law to note

on the survey, had he observed any. Former WAC 332-130-060, amended 1-13-19. See also RCW 58.09.090 and 58.17.255.

After the Rennes acquired their property in April 2006 (CP 48), they eventually constructed a new home on their property. It should be noted that Eleanor Renne is an experienced, licensed, managing real estate broker in Kitsap County. CP 71, 85.

Several years later, the Rineholds were interested in building a shop on their property and they hired Holman to survey their property again in 2015. CP 22. They then discovered that the Rennes had constructed improvements which encroached onto their property. CP 27. While the new house was a few feet inside the line, the Rennes had constructed a rock wall and landscaping nine feet onto the Rinehold property, as well as creating a parking area 6.3 feet onto the Rinehold property. CP 27.

Communication was then had with the Rennes to see if some resolution would be possible. The Rennes refused and, in January 2016, this lawsuit was initiated to quiet title, among other relief, to the Rineholds' property.

The Rennes have asserted adverse possession, mutual recognition and acquiescence, and estoppel to the encroaching area. RP 8, 24, 74-75.

The parties participated in some discovery.

The Rennes were asked to produce any surveys, expert opinions, or other information they were required to produce consistent with CR 26(b)(5). RP 35, 104. This indicated two surveyors as potential witnesses but provided no facts, opinions, or conclusions. They did provide a "sketch" by one surveyor, but that was all. The "sketch" showed the common line where Holman placed it. CP 24, 131. The Rennes acknowledged it was not a survey. RP 64-65.

V. ARGUMENT

A. STANDARD OF REVIEW

Review of an order granting partial summary judgment is de novo. Moore v. Hagge, 158 Wash. App. 137, 241 P.3d 787 (2010). Summary Judgment is appropriate when the nonmoving party presents no competent evidence as to a genuine issue of material fact.

There must be no genuine issue of a material fact. Speculation or conjecture do not create a genuine issue of material fact. Moore. supra, which also held that a trial court has wide discretion in ruling on

the admissibility of expert testimony and a Court of Appeals will not disturb the trial court's ruling if the reasons therefore are fairly debatable

Conclusory or speculation in expert opinions lacking an adequate foundation are not to be considered. Moore, infra at 155.

> "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 they 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 purpose of a summary judgment is to avoid useless trials on issues that cannot be factually supported or could not, as a matter of law, lead to an outcome favorable to the non-moving party. Burris v. General Ins. Co of America, 16 Wash. App. 73, 75, 533 F.2d 125 (1976).

Speculation or argumentative assertions do not defeat a summary judgment motion. Ranger Insurance Company v. Pierce County, 164 Wash. 2d 545, 192 P. 3d 886 (2008). Supposition and unsupported opinion evidence will not suffice. Snohomish County v. Rugg, 115 Wash. App. 218 61 P. 2d 1184 (2002). Bare assertions, or unauthenticated or

hearsay evidence does not suffice. SentialeC3 v. Hunt, 181 Wash. 2d 127, 331 P. 3d 10 (2014). A scintilla of evidence, evidence that is "merely colorable" or evidence that is not "significantly probative" will not defeat a summary judgment motion. Seiber v. Poulsbo Marine Center, Inc., 136 Wash. App. 731, 150 P. 3d 633 (2007).

B. THE RENNES NEVER SUBMITTED ANY COMPETENT PROOF TO DISPUTE HOLMAN'S CONCLUSION AS TO THE LOCATION OF A COMMON LINE.

The basis for the Court of Appeals ruling is found on pages 17-18 of the unpublished slip opinion in Section 3, entitled Erroneous Basis for Summary Judgment Ruling which reads as follows:

> 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.

This holding is unsupported by any citation of authority. The Rineholds submitted briefing to the Court of Appeals which supported their position.

The Court of Appeals drew two improper conclusions in reaching this holding.

The first conclusion made by the 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). The 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 the Court of Appeals 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. Askins, 195 Wash.2d 365, 460 P.3d 157 (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 monument of Watson at the Renne southeast corner. He knew Watson's distance. He knew Watson's northerly bearing from that point. He knew where the Renne northwest corner was properly located, which no one has disputed, and knew the distance from that point to the Renne northeast corner. 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 the prior owner of the Rinehold property. He knew the location of the northwest corner of the Renne property, which no one has questioned is properly

located. He knew Watson's intent set that point 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 the Court of Appeals was that the unrebutted opinion testimony of an expert is not sufficient to support a motion for summary judgment.

By framing the issues the way the Court of Appeals did, the answer was 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 the court's attention, which the 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), 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), Smith v. Shannon, 100 Wash 2d. 26, 666 P. 2d 351 (1983) (informed consent). Wagner v. Flightcraft, Inc., 31 Wash App. 558, 643 P. 2d 906 (1982). (airplane crash) Randolph v. Collectromatic, Inc., 590 F. 2d 844 (10fw Cir. 1979) (product defects). Ambin v. Barton, 123 Wash. App. 592, 98 P. 3d 125 (2004) (legal malpractice). Raff v. County of King, 125 Wash. 2d 697, 887 P. 2d 886 (1995) (defective roadway). Farm Corp Energy, Inc. v. Old Nat. Bank of Washington, 109 Wash. 2d 923, 750 P. 2d 231 (1988) (lost profits). Mattson v. Carlisle Packing Co., 123 Wash. 243, 212 P. 2d 179 (1923) (safe use of a ladder). See also ER 701, 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 defending a summary judgment motion.

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. See also RCW 18.43.120. 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, James Dempsey (CP 306-307). That declaration stated that Holman's survey was inconsistent with prior surveys by a few inches, but he never said the line in question, as properly surveyed, was not where Holman located it. RP 35, 104. A critical look at the declaration of Mr. Dempsey shows that he,

in fact, disagrees with the main argument of the Rennes, that the westerly edge of the present physical roadway is the line. Not only does he not say anything in support of the Renne position, but since the roadway is over ten feet east of the Holman line (CP 131), his assertion that there is a discrepancy between Holman, Lovitt and the plat by a few inches actually repudiates the Renne position that the physical roadway was the line. Neither he, nor any of the surveyors identified by the Rennes, have attested that Holman's location of the Renne east line is incorrect. 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).

Such minor discrepancies are common with retracement surveys of old plats. Referring to a discrepancy of 2.64 feet, it is stated in *Robillard, Clark on Surveying and Boundaries 84.20 (8th Edition)*:

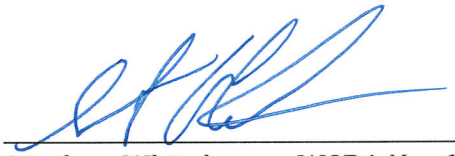
> "When discrepancies are small, this tends to support the theory there are no mistakes, that random errors are small and that the original survey was correct."

VI. CONCLUSION

The Rineholds seek discretionary review to the Washington State Supreme Court and ask that the unpublished decision in this case of the Court of Appeals be reversed, and the ruling of the trial court granting the Rineholds' Motion for Partial Summary Judgment be reinstated.

Respectfully submitted this 25th of June, 2020.

WHITEHOUSE & NICHOLS, LLP



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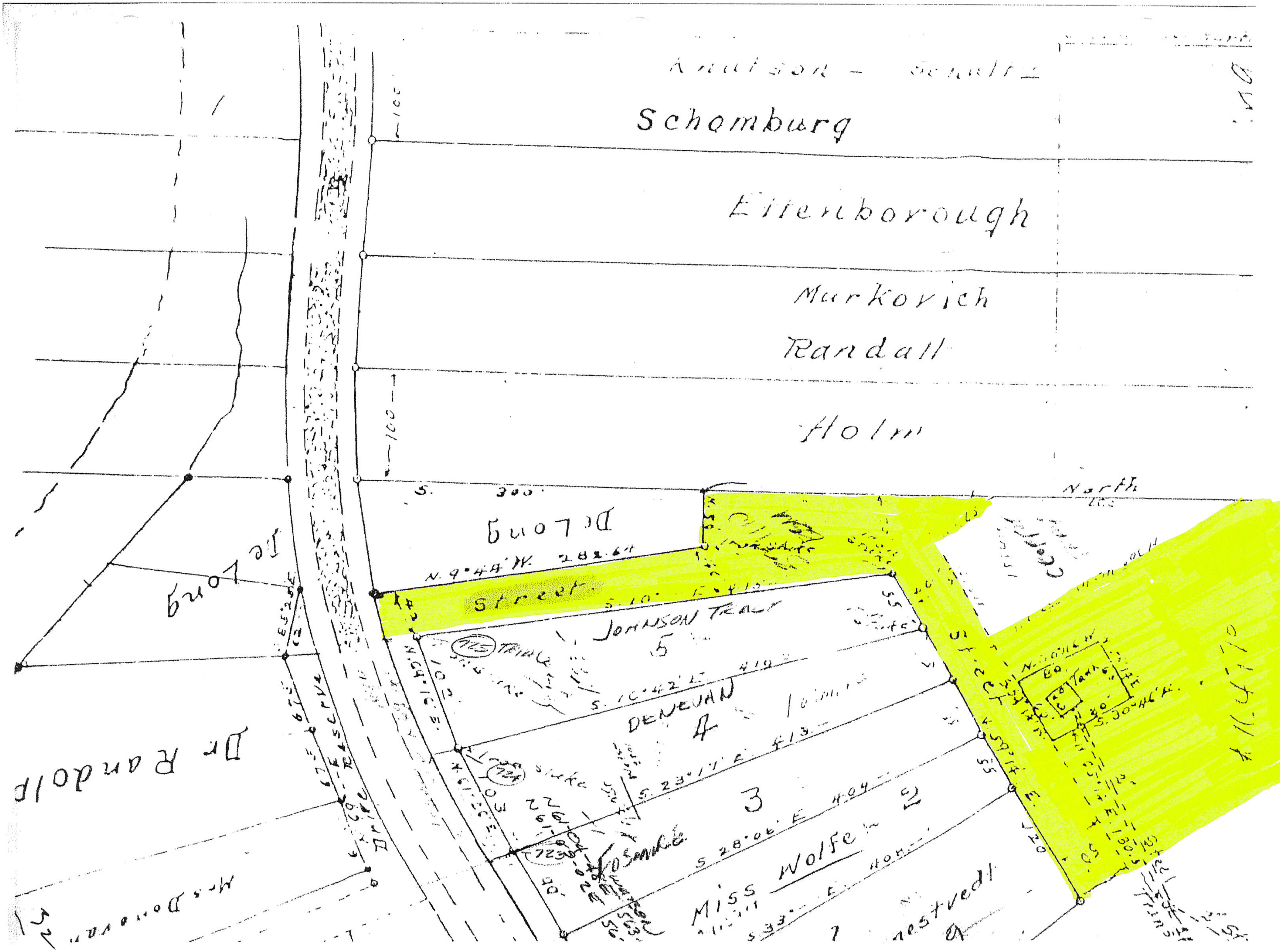
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Filed
Washington State
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Division Two

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.

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.

MAXA, J.

RCW 18.43.010

General provisions.

In order to safeguard life, health, and property, and to promote the public welfare, any person in either public or private capacity practicing or offering to practice engineering or land surveying, shall hereafter be required to submit evidence that he or she is qualified so to practice and shall be registered as hereinafter provided; and it shall be unlawful for any person to practice or to offer to practice in this state, engineering or land surveying, as defined in the provisions of this chapter, or to use in connection with his or her name or otherwise assume, use, or advertise any title or description tending to convey the impression that he or she is a professional engineer or a land surveyor, unless such a person has been duly registered under the provisions of this chapter.

[**2011 c 336 § 480**; **1947 c 283 § 1**; Rem. Supp. 1947 § 8306-21. Prior: **1935 c 167 § 2**; RRS § 8306-2.]

NOTES:

*False advertising: Chapter **9.04** RCW.*

RCW 18.43.020

Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the state board of registration for professional engineers and land surveyors, provided for by this chapter.

(2) "Director" means the executive director of the Washington state board of registration for professional engineers and land surveyors.

(3) "Engineer" means a professional engineer as defined in this section.

(4) "Engineer-in-training" means a candidate who: (a) Has satisfied the experience requirements in RCW **18.43.040** for registration; (b) has successfully passed the examination in the fundamental engineering subjects; and (c) is enrolled by the board as an engineer-in-training.

(5) "Engineering" means the "practice of engineering" as defined in this section.

(6) "Land surveyor" means a professional land surveyor.

(7) "Land-surveyor-in-training" means a candidate who: (a) Has satisfied the experience requirements in RCW **18.43.040** for registration; (b) successfully passes the examination in the fundamental land surveying subjects; and (c) is enrolled by the board as a land-surveyor-in-training.

(8)(a) "Practice of engineering" means any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical, and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, design, and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects.

(b) A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this chapter, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself or herself to be a professional engineer, or through the use of some other title implies that he or she is a professional engineer; or who holds himself or herself out as able to perform, or who does perform, any engineering service or work or any other professional service designated by the practitioner or recognized by educational authorities as engineering.

(c) The practice of engineering does not include the work ordinarily performed by persons who operate or maintain machinery or equipment.

(9) "Practice of land surveying" means assuming responsible charge of the surveying of land for the establishment of corners, lines, boundaries, and monuments, the laying out and subdivision of land, the defining and locating of corners, lines, boundaries, and monuments of land after they have been established, the survey of land areas for the purpose of determining the topography thereof, the making of topographical delineations and the preparing of maps and accurate records thereof, when the proper performance of such services requires technical knowledge and skill.

(10) "Professional engineer" means a person who, by reason of his or her special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience, is qualified to practice engineering as defined in this section, as attested by his or her legal registration as a professional engineer.

(11) "Professional land surveyor" means a person who, by reason of his or her special knowledge of the mathematical and physical sciences and principles and practices of land surveying, which is acquired by professional education and practical experience, is qualified to practice land surveying and as attested to by his or her legal registration as a professional land surveyor.

(12) "Significant structures" include:

(a) Hazardous facilities, defined as: Structures housing, supporting, or containing sufficient quantities of explosive substances to be of danger to the safety of the public if released;

(b) Essential facilities that have a ground area of more than five thousand square feet and are more than twenty feet in mean roof height above average ground level. Essential facilities are defined as:

(i) Hospitals and other medical facilities having surgery and emergency treatment areas;

(ii) Fire and police stations;

(iii) Tanks or other structures containing, housing, or supporting water or fire suppression material or equipment required for the protection of essential or hazardous facilities or special occupancy structures;

(iv) Emergency vehicle shelters and garages;

(v) Structures and equipment in emergency preparedness centers;

(vi) Standby power-generating equipment for essential facilities;

(vii) Structures and equipment in government communication centers and other facilities requiring emergency response;

(viii) Aviation control towers, air traffic control centers, and emergency aircraft hangars; and

(ix) Buildings and other structures having critical national defense functions;

(c) Structures exceeding one hundred feet in height above average ground level;

(d) Buildings that are customarily occupied by human beings and are five stories or more above average ground level;

(e) Bridges having a total span of more than two hundred feet and piers having a surface area greater than ten thousand square feet; and

(f) Buildings and other structures where more than three hundred people congregate in one area.

[**2019 c 442 § 8; 2007 c 193 § 2; 1995 c 356 § 1; 1991 c 19 § 1; 1947 c 283 § 2;** Rem. Supp. 1947 § 8306-22. Prior: **1935 c 167 § 1;** RRS § 8306-1.]

NOTES:

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW **1.08.015**(2)(k).

Effective date—2007 c 193: See note following RCW **18.43.040.**

Effective date—1995 c 356: "This act shall take effect July 1, 1996." [**1995 c 356 § 6.**]

RCW 18.43.120

Violations and penalties.

Any person who shall practice, or offer to practice, engineering or land surveying in this state without being registered in accordance with the provisions of the chapter, or any person presenting or attempting to use as his or her own the certificate of registration or the seal of another, or any person who shall give any false or forged evidence of any kind to the board or to any member thereof in obtaining a certificate of registration, or any person who shall falsely impersonate any other registrant, or any person who shall attempt to use the expired or revoked certificate of registration, or any person who shall violate any of the provisions of this chapter shall be guilty of a gross misdemeanor.

It shall be the duty of all officers of the state or any political subdivision thereof, to enforce the provisions of this chapter. The attorney general shall act as legal adviser of the board, and render such legal assistance as may be necessary in carrying out the provisions of this chapter.

[**2011 c 336 § 483; 1986 c 102 § 4; 1947 c 283 § 15**; Rem. Supp. 1947 § 8306-32. Prior: **1935 c 167 § 14**; RRS § 8306-14.]

NOTES:

Forgery: RCW 9A.60.020.

RCW 58.09.090

When record of survey not required.

(1) A record of survey is not required of any survey:

(a) When it has been made by a public officer in his or her official capacity and a reproducible copy thereof has been filed with the county engineer of the county in which the land is located. A map so filed shall be indexed and kept available for public inspection. A record of survey shall not be required of a survey made by the United States bureau of land management. A state agency conducting surveys to carry out the program of the agency shall not be required to use a land surveyor as defined by this chapter;

(b) When it is of a preliminary nature;

(c) When a map is in preparation for recording or shall have been recorded in the county under any local subdivision or platting law or ordinance;

(d) When it is a retracement or resurvey of boundaries of platted lots, tracts, or parcels shown on a filed or recorded and surveyed subdivision plat or filed or recorded and surveyed short subdivision plat in which monuments have been set to mark all corners of the block or street centerline intersections, provided that no discrepancy is found as compared to said recorded information or information revealed on other subsequent public survey map records, such as a record of survey or city or county engineer's map. If a discrepancy is found, that discrepancy must be clearly shown on the face of the required new record of survey. For purposes of this exemption, the term discrepancy shall include:

(i) A nonexisting or displaced original or replacement monument from which the parcel is defined and which nonexistence or displacement has not been previously revealed in the public record;

(ii) A departure from proportionate measure solutions which has not been revealed in the public record;

(iii) The presence of any physical evidence of encroachment or overlap by occupation or improvement; or

(iv) Differences in linear and/or angular measurement between all controlling monuments that would indicate differences in spatial relationship between said controlling monuments in excess of 0.50 feet when compared with all locations of public record: That is, if these measurements agree with any previously existing public record plat or map within the stated tolerance, a discrepancy will not be deemed to exist under this subsection.

(2) Surveys exempted by foregoing subsections of this section shall require filing of a record of corner information pursuant to RCW **58.09.040**(2).

[2010 c 8 § 18004; 1992 c 106 § 1; 1973 c 50 § 9.]

RCW 58.17.255

Survey discrepancy—Disclosure.

Whenever a survey of a proposed subdivision or short subdivision reveals a discrepancy, the discrepancy shall be noted on the face of the final plat or short plat. Any discrepancy shall be disclosed in a title report prepared by a title insurer and issued after the filing of the final plat or short plat. As used in this section, "discrepancy" means: (1) A boundary hiatus; (2) an overlapping boundary; or (3) a physical appurtenance, which indicates encroachment, lines of possession, or conflict of title.

[1987 c 354 § 6.]

WHITEHOUSE & NICHOLS, LLP

June 25, 2020 - 3:01 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	52915-7
Appellate Court Case Title:	Floyd Rinehold, et ux., Respondent v. Renee & Denotta and D.D. Denotta LLC, et al., Appellant
Superior Court Case Number:	16-2-00024-3

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