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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 291987

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

CHRISTOPHER G. BUTLER and KERRI S. BUTLER
husband and wife,

Respondents,

v.

SANDRA COYLE, a single person

Appellant.

REPLY BRIEF OF APPELLANT

Sandra Coyle
5571 Corkscrew Canyon Rd.
Tum Tum, WA 99034
(509) 258-4393
Appellant.

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I. INTRODUCTION

The whole panoply of contract law rests on the principle that one is bound by the contract which he voluntarily and knowingly signed.

The Butlers knew about the mathematically ascertainable bearing and distance boundary line called for in their deed. They took \$900.00 from their predecessor, to have a survey performed to their satisfaction, prior to closing. They failed to pursue inquiry. They were given a disclosure statement that clearly stated: "Are there any rights of way, easements, or access limitations that may affect Buyer's use of the property? Answer NO." CP182-185. Butlers also signed Closing Agreement and Escrow Instructions which stated: "**Property approved.** I have had adequate opportunity to review the seller's written disclosure statement, if any, and to inspect the property and determine the exact location of its boundaries. The location and physical condition of the property are my sole responsibility..." RP 257 (emphasis in original document).

Butler testified that he had measured the 941.25 foot distance which clearly shows the road to be on the property of Coyle and not on that of the Butler's RP 260-261. Yet four (4) years after purchasing their property, Butlers chose to sue Coyle who was an innocent third party and had nothing to do with the Butlers real estate transaction. The Butlers have pursued allegations of reformation of deeds, even though the parties have

not ever had any express agreement. The Butlers pursued reformation of a stand alone, easement document, that is expressly for the East half (E1/2) of section 5. The Butler and Coyle properties are entirely contained in the West half (W1/2) of section 5 and are unaffected by said document. In fact, well after the Trial Court alleged that it had reformed the aforementioned easement document, Coyle requested a certified copy of it from the Stevens County Auditor. The September 15, 2010 certified copy from Stevens County Auditor, Tim Gray, clearly shows that it has not been reformed as alleged by the Trial Court CP188-192. The recorded instruments Butlers sought to have reformed are well over 35 years old, and have been accepted by multiple parties, and have gone uncontested.

When Coyle purchased her vacant and unoccupied land, in March of 2007, all of the legal documentation contained in her real estate transaction conveyed this legal description:

That part of the N1/2 of Government Lot 4, In Section 5, Township 27N., Range 40E. W.M., In Stevens County Washington, Lying East of Lapray Bridge Rd. No. 590.

Coyle was unaware of the error CP 203-206.

Butlers misstate these facts BOR 6, 37.

The Washington State Department of Licensing Business & Professions Division has conducted a Formal Investigation of Coyle's real estate transaction and it is currently going forward with formal charging

procedures under legal file #2010-02-0015-01REA.

On May 26, 2010, Shannon Taylor, Investigator for the state, was on the property of Coyle and was conducting her investigation. Her observations were that someone had "recently used a drag to widen the roadway." "This action appears to have effectively moved the westerly edge of the roadway an additional 16 to 18 inches to the west." CP 167.

On May 23, 2010, Butler was photographed widening the dirt roadway in an apparent attempt to take even more of Coyle's land. The statement and photographs of the witness are contained in the record CP 157-163.

Coyle is a bona fide purchaser of land for value without notice of alleged mistake.

For the past three (3) years, Coyle has been estopped from fencing, using and selling, the land that was conveyed to her. The property is and was posted FSBO. As a direct result of being unable to fence and use the land for pasturage, Coyle's chestnut Tennessee Walking Horse, more affectionally known as "Red" ingested too much sand which resulted in his untimely death. Red was a cherished member of Coyle's family, and he is sorely missed. Coyle will have to live with this for the rest of her life. All of this just because the Butlers are unwilling to put a driveway on their own property.

"Silky" Coyle's other TWH is now on a costly, seven (7) day a month,

sand purge product in order to prevent the same results happening to her.

After the two (2) day non-jury trial, Coyle filed a motion for reconsideration which was denied. This appeal followed. On November 5, 2010, an order for contempt and a second judgment was issued against Coyle which was consolidated with this appeal. The Butler's attorney was Ordered by the Trial Court to "cause a copy of this order to be served personally on defendant." Mr. Montgomery failed to do so and failed to explain why. On November 19, 2010 unbeknownst to Coyle, an order for issuance of writ of restitution allowing the sheriff to break and enter to enforce the same was signed by Judge Allen C. Nielson. No bond was issued and no notice was given to Coyle. A writ of restitution was not the proper remedy. The Trial Court never authorized, in writing, that the writ of restitution, which had already been filed, shall be altered to a writ of execution. On December 7, 2010 the Stevens County Sheriff broke and entered and unlawfully levied on the vehicle belonging to Jeffrey Thoms, who is not a party to this suit, and Sandra Coyle. On December 8, 2010, under duress, Coyle paid Montgomery Law Firm \$5,316.83 to have the vehicle released back to Mr. Thoms and Ms. Coyle.

Butlers fail to explain why, twice now, they have collected money to have a survey done, but have failed to perform. This is a material fact.

Sometime, in 2010, the Butlers moved, to an undisclosed location.

II. LEGAL AUTHORITY AND ARGUMENT

A. The fact that the Butlers "disagree" with the Assignments of Error that are before this Court in BOA 1-13 is of no consequence. Butlers provide no authority upon which this Court should consider their BOR viii-xii.

B. There are a number of problems associated with Butler' claims that are worth considering:

First, as the moving party, in a case for reformation, the burden was on Butler to prove that there had been a valid, explicit agreement between Butler and Coyle BOR 24. There was not.

Second, the burden was on Butler to prove that the alleged present lane road qualifies and constitutes as a monument. Under the Washington Supreme Court Decision Kesinger v. Logan, 113 Wn.2d 320, 779 P.2d 263 (1989), this Court must hold, that as a matter of law, it does not.

A general reference to Easterly or Westerly of the centerline of a dirt road, that has no width granted in any document of record, does not mathematically ascertain where that location lies on the ground. The dirt road has no direct ties to bearing or azimuth and distance between other monuments of record to perpetuate any point or line of survey. BOA 47

Third, in the case of Stockwell v. Gibbons, 58 Wash.2d 391, 363 P.2d 111 (1961), which dealt with the issue of particular versus general legal descriptions. The Supreme Court of Washington ruled that the particular

description prevailed. Stockwell Court stated at p.397:

"Where a particular and general description in a deed conflict, and are repugnant to each other, the particular will prevail unless the intent of the parties is otherwise manifested on the face of the instrument." Cf. Booten v. Peterson, 34 Wash.2d 563, 209 P.2d 349 (1949).

Both deeds from Reforestation, Inc. to Parker and Woodbury contain a general description of a present lane road, but a particular surveyed legal description as a boundary line between the respective properties BOA 24. Butlers presented no legal authority that a general description, of easterly or westerly of a centerline of a dirt road, that cannot be mathematically ascertained from any document of record, should prevail. This Court must hold, as a matter of law, that the particular surveyed description prevails.

Fourth, this Court, as a matter of law, must hold that Coyle is entitled to rely upon her deed. "The Bona Fide Purchaser Doctrine provides that a good faith purchaser for value, who is without actual or constructive notice of another's interest in real property purchased has a superior interest in the property." Levien v. Fiala, 79 Wn. App. 294, 298, 902 P.2d 170 (1995) (citing Tomlinson v. Clarke, 118 Wn.2d 498, 500, 825 P.2d 706 (1992); Glaser v. Holdorf, 56 Wn.2d 204, 209, 352 P.2d 212 (1960)). BOA 16

"A bona fide purchaser of an interest in real property is entitled to rely on the record title; the protection afforded by the real property recording statute, RCW 65.08.070, is unaffected by the vendor's lack of good faith or by matters of which the vendor has notice." Levien, 79 Wn. App. at 299-300.

In the instant case, not only did Coyle's predecessors, the Fifields, fail to disclose the legal description to Coyle, but the realtors involved in the transaction and the title company failed to disclose it as well CP 203-206. The trial court had knowledge of the formal investigation being conducted, and now the State of Washington Department of Licensing Business & Professions Division is going forward with formal charging procedures.

Butler provided no factual information or legal authority to show why Coyle should not be entitled to rely on her Fee Simple Statutory Warranty Deed (Fulfillment) and the Bona Fide Purchaser Doctrine. Butlers misstate the facts in attempt to bolster their position BOR 6, 37-38.

Fifth, all lands are supposed to have been actually surveyed and the intention of the grant is to convey the land according to that survey.

In cases of conflicting calls, the priority of calls is:

(1) lines actually run in the field, (2) natural monuments, (3) artificial monuments, (4) courses, (5) distances, (6) quantity of area.
G. Thompson REAL PROPERTY 3044 (1962 Repl.)

A survey takes priority over an alleged artificial monument.

"Where a plat delineates an actual survey, the survey rather than the plat fixes the location and boundaries of the land. The plat is a picture, the survey the substance." Neeley v. Maurer, 31 Wn.2d 153, 195 P.2d 628 (1948).

The Butlers failed to present any independent verification that the Emerson survey, which retraced the original common grantor's survey, was

in error.

Emerson not only relied on the NW section corner, but he also relied on Mr. Thomas Todd's survey of the section breakdown. Todd's survey, was filed for record, March 2, 1990, in book 10 of surveys at page 34 volume 138 page 570.

Mr. Todd has opined at trial that there was an alternate location for the NW section corner of section 5, but has failed to file a ROS for the alternate location in his own survey as he is required to do. He has failed to correct land surveying documents or drawings that he alleges contain substantive errors. This is a violation of his profession under Washington law CP 061-065. This also weakens the credibility of Mr. Todd and his drawing that did not even depict the alleged present lane road. Mr. Todd's testimony was that moving the surveyed boundary line 32 feet to the west still does not line up with the alleged present lane road. Mr. Todd's testimony and drawing are unsupported, thoertical conjecture RP70.

It is well established that conclusory or speculative expert opinions lacking an adequate foundation will not be admitted. The court must look behind the expert's ultimate conclusion and analyze the adequacy of its foundation, especially when the opinion seems contrary to the other facts involved. The court will not allow unsupported assumption and theoretical speculations. The opinion of an expert must be based on the facts. Miller

v. Likins, Safeco Ins. Co. v. McGrath, Mid-State Fertilizer v. Exchange
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Sixth, Formal Investigations have been conducted by the State of Washington Board of Registration for Professional Engineers and Land Surveyors regarding the Land Corner Record of Scott Valentine, PLS and the Deed Boundary Survey of Todd Emerson, PLS. The investigations concluded that the work of Mr. Valentine was "consistent with sound and lawful practice" CP 178 and the work of "Mr. Emerson did not violate any rules of the profession in the course of his survey. The surveyor, in the state of Washington, is required to survey the "deed boundary" and not determine ownership by other evidence. The fact that a physical feature does not agree with measured distance is not unusual. It does not mean that the current survey is wrong if such a conflict occurs." CP 169.

Seventh, Stevens County Auditors file #419539, Reforestation, Inc's easement document, for the East Half (E1/2) of Section 5, has not been reformed as alleged by the trial court. Coyle obtained a certified copy from Stevens County Auditor, Tim Gray, on September 15, 2010 which clearly shows that the document has not been reformed CP189-192. The Butlers failed to respond to this material fact.

Eighth, the Butlers allege that they have an express easement on the

Coyle property, however, they are mistaken. An express easement is clearly stated in a contract, deed, or will and is subject to the Statute of Frauds. Once again, the burden of proof was on Butler to establish that a valid contract was in existence. This Court should hold, that as a matter of law, it was not.

RCW 19.36.010 Any agreement, contract or promise shall be void, unless such agreement contract or promise, be in writing, and signed by the party to be charged therewith.

"The extent of an easement, like any other conveyance of rights in real property is fixed by the language of the instrument granting the right." Sanders v. City of Seattle, 160 Wn.2d 198, 214, 156 P.3d 874 (2007).

Zunino v. Rajewski, 140 Wn. App. 215, 165 P.3d 57 (2007), addresses the fundamental issue of what is necessary to create an easement. The Zunino court stated at page 217-218:

The statute of frauds requirements are set forth in RCW 64.04.010. An express conveyance of an easement by grant or reservation must be made by written deed. RCW 64.04.010 The deed must be in writing and signed by the party bound by the deed, and the deed must be acknowledged. RCW 64.04.020 Accordingly, a deed of easement is required to convey an easement that encumbrances a specific servient estate. The agreement to the easement by the owner of the servient estate is a vital element in the creation of an easement.

Beebe v. Swerda, 58 Wn. App. 375, 382, 793 P.2d (1990) BOA 35-36.

"The majority rule and the rule in Washington is that a reservation or exception in a deed cannot create rights in a stranger to the instrument Pitman v. Sweeney, 34 Wn. App. 321, 661 P.2d 153 (1983).

Thus, a deed that purportedly reserves an easement in favor of a third party actually reserves no estate or interest at all, and instead passes the entire fee simple estate to the grantee.

In looking at all of the documents with equal and unbiased observations, there is only one "true and correct" boundary line and no conflicting evidence.

The only reference to the correct meaning of the phrase "true and correct line," recovered in research was in a 1916 Virginia decision.

The court stated that:

"the court is restricted... to ascertain and designate the true boundary line or lines. 'What is the true boundary line?' The word true is defined to mean real, exact, accurate, correct, right... The jurisdiction of the court is to find the real line, the exact line, the accurate line."

Hence [any court] should not consider any question of estoppel,... limitations, or any other matter, which was not his real, correct, or accurate boundary.

It wrote in determining the real or correct line, neither party could avail themselves to such theories claim of title, adverse possession or any other defenses, no matter how defective his real accurate, true title was. (citing Christian v. Bulbeck, 90 S.E. 661 (Va. 1916)). BOA 32.

Ninth, an error of law constitutes an abuse of discretion
King v. Olympic Pipeline Co., 104 Wn. App.338, 355 (2000).

C. SUBSTANTIAL EVIDENCE

- 1) Recorded Statutory Warranty Deeds EX 201-204.
- 2) Notarized statement from Reforestation, Inc's. representative verifying that the legal description in the original conveyances were correct as stated.
- 3) Notarized statement from Reforestation, Inc's. representative verifying that the legal description in the easement document, recorded as Stevens County Auditors File #419539, is correct as stated and intended for the

East Half (E1/2) of Section 5, Twp 27 N, Rge 40E WM in Stevens County, Washington.

- 4) Certified copy of Auditors File #419539 dated September 15, 2010 verifying that it has not been reformed as alleged by the Trial Court.
- 5) Recorded surveys: Scott Valentine's Land Corner Record, Todd Emerson's Deed Boundary Survey, and Thomas Todd's Section Breakdown and Survey.
- 6) Two (2), formal investigations conducted by the State of Washington Board of Registration for Professional Engineers and Land Surveyors, concluding that the surveys performed by Mr. Valentine and Mr. Emerson were conducted with sound and lawful practice.
- 7) Re-recorded deed and real estate contract verifying that Coyle is a Bona Fide Purchaser. Together with the State of Washington Department of Licensing Business & Professions Division's Formal Investigation and subsequent formal charging procedures that are underway against the real estate agents and broker involved in Coyle's real estate transaction.

Butler's allegations of unproven, "unrecorded real estate contracts," an unsubstantiated drawing, that fails to even depict the alleged present lane road, countless irrelevant photos, and multiple misstatements of the facts do not meet the requirement that "substantial evidence must be beyond a scintilla." Butlers claims that they have presented "substantial evidence"

are unfounded. The fact is that there was never any agreement between Butler and Coyle. Reformation was never the proper remedy.

The matter before the Court is a legal issue that requires proof of valid, verifiable, recorded instruments and must not be decided on unsupported theoretical speculations and conjecture.

D. BUTLERS MISPLACED RELIANCE ON CASE LAW

Butlers rely on multiple cases regarding railroad track right of ways. That reliance is misplaced.

In the case of Bullock v. Yakima Valley Transportation Company et al., 108 Wash. 413, 184 P.641 (1991), this 1919 personal injury case involved the then "Naches Highway" that is now called Highway 12 and runs across Washington State. It was a gravel road (as roads were in 1919). The road was well traveled. It was widened at some point. This is presumably why the bearings and distances no longer coincided with the road. Apparently, the bearings and distances in the legal description were not changed when the road was widened. Controversy arose over who was liable for the personal injury. This case is not "on point" and is readily distinguishable from the instant case of reformation of deeds. BOR16, RP329.

The Butlers further reliance on DD&L, Inc. v. Burgess, 51 Wn. App. 329, 336, 753 P.2d 561 (1988) is also misplaced.

The DD&L case is easily distinguished from the instant case. In DD&L, the description of the railroad right-of-way as a monument was mathematically ascertainable, as it described the right-of-way, including the width. However, the right-of-way as described actually ran through the railroad depot and another building. Thus, the court used the established tracks as a monument to avoid the removal and replacement of the tracks.

In DD&L, they define the word monument: "'monument' means a permanent natural or artificial object..." See BOR 20. There is nothing "permanent" about the alleged present lane road. The Butlers themselves have proven this when they were witnessed and photographed moving the westerly edge an additional "16 to 18 inches to the west" CP 158-163,167 That action has subsequently moved the "centerline" as well. It is movable not "permanent" therefore under the law it cannot be considered a monument.

The surveyed legal description is permanent, as it is well defined in the deeds. It is mathematically ascertainable. Mr. Emerson had no trouble locating it. And, it fixes the boundary with certainty. This Court should hold, as a matter of law, that the surveyed boundary line is a monument.

Butlers misuse the Matthews and Fairwood Green Homeowners cases and this Court should take notice BOR 16-17.

In the case of Matthews v. Parker, 163 Wash. 10, 299 P.354 (1931),

the north quarter corner of section 34 was called for as the beginning point of the legal description. The description then runs south "to the center of section 34," another monument, erroneously stating the distance between those two monuments. It is true that the center of the section is not a physical government monument, as is the north quarter corner, as we must presume, thus it is a point capable of being mathematically ascertained from the documents of record, thus constituting it, in a legal sense, a monument call of the description.

This is readily distinguishable from the instant case, as no instrument exists that establishes the alleged present lane road, including the width. The dirt road has no direct ties to bearing or azimuth and distance between other monuments of record, to perpetuate any point or line of survey. It is not mathematically ascertainable, but the surveyed boundary line is.

Additionally the Butlers misconstrued the case of Fairwood Green Homeowners v. Young, 26 Wn. App. 758, 614 P.2d 219 (1980).

The Court of Appeals of Washington, Division I held that:

"purported reformation was not binding on property owners who had purchased their property prior to such action."

This Court should hold, as a matter of law, that purported reformation is not binding on property owners who purchased prior to such action.

The Butlers misstate "once sufficient evidence to prove the monument

was introduced, the burden of proof shifted to Coyle to disprove the monument" BOR 17. The Butlers are mistaken. The burden of proof was on Butler and cannot be shifted to the adversary.

RCW 5.40.010 Pleadings do not constitute proof. Pleadings sworn to by either party in any case shall not, on the trial be deemed proof of the facts alleged therein, nor require other or greater proof on the part of the adverse party.

Additionally since the Kesinger case, wherein the Washington State Supreme Court defined the requirements of what constitutes as a monument, this Court must hold that the courses and distances in the legal description must control and the road is not a monument.

No instrument exists that establishes the road, including the width. The dirt road has no direct ties to bearing or azimuth and distance between other monuments of record, to perpetuate any point or line of survey. It is not mathematically ascertainable from any document of record, but the surveyed legal description is.

Butlers additionally rely on Wilhelm BOR 23-24. This reliance is misplaced. In Wilhelm, the parcel was "landlocked" and in 1970 Wilhelm negotiated access to their property by way of an easement. In relevant part, the easement states as follows: The easement and right of way covers a strip of land 40 feet in **width** across the above described land, or 20 feet on each side of a centerline,... The Wilhelm case is readily distinguishable from the instant case. The Butler's property is not "landlocked" and, as

Butler testified to, they have sufficient amount of room to install a driveway on their own property RP 260. In addition to not being "landlocked," the alleged present lane road and alleged easement have no **width** granted in any document of record. The Butlers failed to address this material fact.

In Kesinger v. Logan, 113 Wn.2d 320, 779 P.2d 263 (1989), the Washington Supreme Court held that the survey of record controlled over a reference to a right of way line. In Kesinger, the Selah Moxee Irrigation District argued that the phrase "West right of way line" was a monument referenced in its deed.

The Kesinger, Court stated at page 329-330:

This legal description states in pertinent part:
thence south 80 degrees East 894 feet, more or less, to the West right of way line of Selah-Moxee Canal; thence following said right of way line...

According to the only survey contained in the record, the point that is 894 feet from the last point in the legal description is 30 feet from the center of the canal. This places the west right of way line 30, not 50 feet from the center of the canal. Thus, the legal description to Mrs. Kesinger's property includes the disputed 20-foot-wide strip running along the edge of her property.

[5] The District's further contention that the reference to the "West right of way line" in the portion of the legal description just quoted is a reference to a monument which controls over the courses and distances, and that this monument is 50 feet from the center of the canal, is without merit. While it is true that a reference to a monument in a legal description controls over courses and distances, (Matthews v. Parker, 163 Wash. 10, 15, 299 P.354 (1931); DD&L, Inc. v. Burgess, 51 Wn. App. 329 336, 753 P.2d 561 (1988)) the district's labeling of the "West right of way line" as a monument

50 feet from the center of the canal is untenable. In Matthews v. Parker, 163 Wash. 10, 15, 299 P.354 (1931), this court stated that a monument is "a point capable of being mathematically ascertained." Since there is no deed from the original landowners that would establish the true **width** of the right of way, we conclude that the "West right of way line" is not a point capable of being mathematically ascertained. It follows that the "West right of way line is not a monument 50 feet from the center of the canal and that the courses and distances, which place the disputed strip within the boundaries of Mrs. Kesinger's property, are controlling in this instance. (*Emphasis added*).

The Kesinger, case is exactly on point to the instant case. The original conveyances only refer to the present lane road. No instrument exists that establishes the road including the true **width**.

As in Kesinger, this Court must hold that the courses and distances control.

Butlers rely on Edwards BOR 25. That reliance is misplaced. In Edwards, the Supreme Court of Washington found that Mr. Ritchie was not considered to be a third party to the instrument and was therefore entitled to correct his own mistakes prior to recording.

In Edwards, Wm. B. Ritchie, the attorney who completed the real estate transaction, in accordance with the terms of the offer and its acceptance, discovered that he had inadvertently omitted lots 10 and 11 in block 38 from the description of the property contained in the mortgage. The mortgage, when filed and recorded, conformed in all respects to the agreement of the parties relating to the transfers of their property.

[2] ...In legal contemplation, an alteration of a written instrument consists

in the erasure, interlineation, addition, or substitution of material matter affecting the identity of such instrument or the rights or obligations of the parties arising therefrom, made by a party and after the instrument has been fully executed. **Any change made by a stranger to the instrument, without the connivance or consent of the parties, is, strictly speaking a spoilation.** 2 Corpus Juris, pp. 1172-1231; 2 Am. & Eng. Ency. Law (2nd Ed.) p. 184; 1 Greenleaf, Ev. Sections 565, 566. (*Citations ommited*), (*Emphasis added*).

In accordance with the Washington Supreme Court decision in Edwards, this Court must hold, as a matter of law, that third parties are not entitled to reform Coyle's deed, which has been fully executed, and that **any change** of Coyle's deed is, strictly speaking, a spoilation.

The Butlers contend that RCW 65.12.720 is not applicable BOR 23. They provide no legal authority or argument. RCW 65.12.720 has been well briefed in BOA. The Butlers simply want this Court to rubber stamp the Trial Courts unauthorized decisions that are contrary to the law.

E. DEEDS OF RECORD

The Butlers have artificially refined the deeds in their BOR 1-9. They provide no legal authority upon which this Court should consider their artificial refinements. This Court must consider the language in the deeds themselves and not the gross misinterpretation of that of the Butlers.

EX 201-204.

F. SURVEY OF RECORD

The Butlers misstate that there were "discrepancies" in Mr. Emerson's Record of Survey BOR 9-13. Their misstatement is not substantiated by

any factual information. The Butlers failed to provide any Record of Survey or actual, verifiable recorded instruments that show that Mr. Emerson's survey was in error. They took \$900.00 from their predecessor, and \$5,316.83 from Coyle, but have failed to perform a Record of Survey. The Butlers failed to address this material fact.

The State of Washington Board of Registration for Professional Engineers and Land Surveyors have conducted a Formal Investigation of Mr. Emerson's Record of Survey of Coyle's real property. They have concluded that:

- 1) Emerson performed a deed boundary survey, as the surveyor in the State of Washington is required to do.
- 2) The fact that a physical feature (the alleged present lane road) does not agree with the measured distance is not unusual and, does not mean that the current survey is wrong if such a conflict occurs.
- 3) The Case Manager felt that no evidence exists to assert that Mr. Emerson's survey is incorrect CP 169.

All lands are supposed to have been actually surveyed and the intention of the grant is to convey the land according to that survey.

The original conveyances from Reforestation, Inc., to Parker and Woodbury contain the particular language of their survey:

Commencing at a point on the North line of said Lot 4, which is South 89

degrees 29' East, 941.25 feet from the Northwest corner of said Lot 4; thence South 26 degrees 11' 54" West 410.93 feet; thence South 52 degrees 28' 59" West, 340.6 feet to the center of LaPray Bridge Rd. No. 590.

The particular survey language exists in the conveyances to that of Butler and Coyle. No discrepancy exists as alleged by Butler BOR 9-13.

Since Stockwell, the Washington State Supreme Court requires that where a particular and general description in a deed conflict, and are repugnant to each other, the particular will prevail. Reforestation, Inc. actually surveyed the land and their intention was to convey the land according to that survey. Whether or not the present lane road has been in place for a number of years is not pertinent to the particular, surveyed legal description which defines, with certainty, the boundaries between the Butler and Coyle properties. As in Stockwell, this Court must hold that the particular surveyed legal description prevails.

The Butlers provide no authority upon which this Court should consider that a general description should prevail over a particular description.

The Butlers misstate that "the Trial Court's Conclusion that the description of the centerline of the present lane road was the intended boundary is consistent with Washington Law" BOR 19.

It is not consistent with Washington law. The Butlers are in error.

G. THE FACTS THAT COYLE PRESENTED ARE VERIFIABLE AND SUPPORTED BY RECORDED DOCUMENTS

Although the Butlers are entitled to their opinion that Coyle "makes many unsubstantiated and/or frivolous claims" BOR 13-14 their opinion is incorrect.

Coyle and her real property are protected by the United States Constitution, the Washington State Constitution, and the laws of this state which are not repugnant to these Constitutions. Coyle has a Fee Simple, Statutory Warranty Deed (Fulfillment). The deed has been fully executed, and Coyle is entitled to rely on, and defend it.

Coyle has exhaustively presented verifiable, factual information that is supported by documents of record.

Butlers have made multiple erroneous claims that have prompted Coyle to request Formal Investigations into the Butler's allegations. The conclusion of the investigations have not supported the Butler's allegations.

The Butlers interfered with the Washington State Bar Association's Formal Investigation by having it squelched before it could come to fruition. If they actually did nothing wrong, as they allege, then they have nothing to fear of a Formal Investigation being completed.

H. CHAPTER RCW 58.04

Contrary to Butlers brief BOR 38-39, it was the unsubstantiated allegations that were presented on Butler's behalf that led to the Trial Court's oral findings:

"...because of the **lost** northwest property corner..." RP 330.

And the Trial Court's order denying defendant's motion for reconsideration wherein the court stated:

"...based on a different and **unknown** location of the Northwest Corner of Section 5 that has since been **lost**..." CP117.

Responsibility of these allegations cannot be shifted to the adversary, Coyle, who has exhaustively defended her surveyed, deed boundary line. RAP 2.5(a) ("The appellate court may refuse to review any claim of error which was not raised in the trial court." (*Emphasis added*)).

In this light,

RAP 1.2(a) directs, "These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or non compliance with these rules except in compelling circumstances where justice demands[.]"

Should this Court decide not to address chapter RCW 58.04 as to the ultimate issue, Coyle asks this Court to keep the oral findings of the Trial Court, and order denying defendant's motion for reconsideration, in mind when assessing their prejudicial effect.

I. CONTEMPT OF COURT AND JUDGMENT

Butlers assert that "the Trial Court properly found Coyle in contempt" BOR 40-43. This assertion fails.

The restriction of sign placement was never addressed at trial. Coyle was excluded from legal argument which is a violation of the open

administration of justice mandate and is relevant to the fairness and integrity of the judicial process as a whole. An incomplete record of how a court exercised its discretion does not satisfy the constitutional requirement for "justice in all cases [to be] administered openly[.] Wash. Const. Art. I, Sec. 10. Additionally this violated the U.S. Const., Amend. V Due Process Clause, and the U.S. Const., Amend. I which protects the right to post private property. The Trial Court's violations of Coyle's rights were not lawful therefore there was no "disobedience of a **lawful** judgment or order of the court" in accordance to RCW 7.21.010(1)(b).

The judgment to pay for a survey that has not ever been performed was an abuse of discretion. No legal authority was presented. No survey error was ever proven. This was completely without basis in law or logic.

Butlers failed to address why Coyle was not personally served the court order and judgment, this is a material fact BOA 12-13.

For four times now, the Butlers have used "Exparte" Actions with Orders against Coyle. One of the evils inherent to secret chambers hearings is the lack of record as to who attended as well as what was said. Such is the case here. Open administration of justice is a constitutional mandate which directly scourges such evils. The Trial Court violated that mandate when it conducted its hearings outside of public scrutiny. Wash. Const. Art. I, Sec.10.

III. CONCLUSION

There was no agreement between Butlers and Coyle. Third parties are not entitled to reform the easement that is expressly for the East Half (E1/2) of Section 5. The Butlers are not entitled to reform Coyle's deed which has been fully executed. This is completely without basis in law or logic, and cannot be justified under the clear language of the deeds themselves. The Trial Court abused its authority when requiring fencing restrictions be imposed where no restrictions currently exist in the record. The Trial Court had no authority to reform fully executed deeds and easements. The Butlers are not entitled to attorney fees and costs as they are bound by their deed and real estate contract which they knowingly and voluntarily signed. This suit was malicious and reprehensible.

For the reasons stated above, and in the opening brief, this Court should reverse and award Coyle her six (6) attorney's fees, all costs and damages in addition to the remedies sought in the opening brief.

DATED this 11th day of July, 2011

Respectfully submitted,

Sandra Coyle
SANDRA COYLE/Appellant.

DECLARATION OF SERVICE

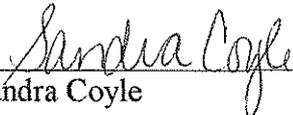
The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on July 11, 2011, I arranged for service of the foregoing Reply Brief of Appellant, to the court and to the parties to this action as follows:

Hand delivered to:
Office of Clerk
Court of Appeals - Division III
500 N. Cedar
Spokane, WA 99201

Depositing it in the U.S. Mail, first class, postage prepaid to:
Chris A. Montgomery
Montgomery Law Firm
P.O. Box 269
Colville, WA 99114-0269

DATED at Tum Tum, Washington this 11th day of July, 2011.



Sandra Coyle