

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.

APPEAL FROM THE SUPERIOR COURT
FOR STEVENS COUNTY
THE HONORABLE REBECCA BAKER

BRIEF OF APPELLANT

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

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TABLE OF CONTENTS

I. ASSIGNMENTS OF ERROR..... 1

II. STATEMENT OF THE CASE..... 14

III. ARGUMENT..... 16

No. 1 COYLE is a bona fide purchaser of land for value without notice of the alleged mistake..... 16

No. 2 Reformation of deeds was not the proper remedy, the parties have not reached a definite explicit agreement and it is subject to the statutes of frauds..... 20

No. 3 BUTLERS should have exercised reasonable diligence (getting a survey done to their satisfaction) they would have learned the facts which give rise to the cause of action..... 27

No. 4 The trial court, apparently conceding that the argument before it was lost and uncertain boundaries, failed to follow the Statutory Procedure and Basic Common Law Doctrines recognized in the state of Washington..... 29

No. 5 The trial court disregarded recorded documents and facts. It is well established that conclusory or speculative expert opinions lacking an adequate foundation will not be admitted..... 30

No. 6 In the priority of calls, a survey takes priority over an alleged artificial monument. This is not a pick or choose listing..... 34

No. 7 Reformation of an easement that was never granted nor conveyed is subject to the statutes of frauds..... 35

No. 8 A Motion to Amend the Pleadings to include Reformation of Easement was neither filed nor granted..... 39

No.9 Because an injunction is an extraordinary equitable remedy, mere inconvenience or speculative injury is not enough to justify issuing the order. BUTLERS never presented any proof of a recorded easement encumbrancing COYLES parcel for BUTLERS use..... 39

No. 10 The TRO should not have been granted without proof of a recorded easement encumbering COYLES parcel for BUTLERS use.....	39
No. 11 Making a finding that Mr. Lang and Mr. Montgomery didn't forge the date on the aerial photo was a procedural error as it was not for the pending action only.....	40
No. 12 The trial courts allowance of unauthenticated documents perpetuated acts of fraud, perjury, forgery and conspiracy.....	40
No. 13 The trial court impeded the WSBA investigation by recusing Mr. Lang and Mr. Montgomery.....	42
No. 14 The prevailing attorney shall prepare a proposed form of order or judgment not later than 15 days... Mr. Montgomery took more than 5 1/2 months. This tactical delay was an act of bad faith.....	43
No. 15 Entering artificial refinements as fact that was contrary to the evidence.....	43
No. 16 Oral findings of nominal damages escalating to common law trespass.....	45
No. 17 A Motion to Amend the Pleadings to include fencing restrictions was neither filed nor granted.....	45
No. 18 The required information was omitted on the Judgment Summary.....	46
No. 19 The Supreme Court of Washington put forth the requirements of what constitutes as a monument which were ignored by the trial court.....	46
No. 20 Alleging that the Emerson survey is wrong was mere supposition that was contrary to the facts and the deeds of record.....	47

No. 21 Entering an Order and Judgment that:
involves an easement document that was never stipulated to
and involving sign postage that was not addressed at trial nor
stipulated to.....48

No. 22 Judgment No. 2010-9-00764-8 was acted on by entering an
**ORDER FOR ISSUANCE OF WRIT OF RESTITUTION ALLOWING
THE SHERIFF TO BREAK AND ENTER TO ENFORCE THE SAME**
on November 19, 2010. However, the Statute requires a bond (with two
or more surties) and a summons before issuance of writ. The order was
issued with absolutely no consideration for the bond and without summons
therefore there can be no action because of inherent nullities.

Irregularity and fraud were used in obtaining the Order and
subsequently altering the filed document(s) without leave of the court.

COYLE was never notified of the writ nor the action of the court,
which would have provided her with the opportunity of protection under
The Fifth Amendment Due Process Clause, before the court and the sheriff
unlawfully detained her and Mr. Thoms vehicle used for personal
transportation.

In accordance with bedrock Washington law, written signed documents
supersede all oral discussions and promises, making the ORDER null and
void.....49

IV. CONCLUSION.....49

TABLE OF AUTHORITIES

FEDERAL CASES

Merit Motors, Inc. v. Chrysler Corp., 569 F.2d 666
(D.C. Cir. 1977).....12, 21

Mid-State Fertilizer v. Exchange Nat. Bank, 877
F.2d 1333 (7th Cir. 1989).....12, 21

STATE CASES

Beebe v. Swerda, 58 Wash. App. 375, 382, 793
P.2d (1990).....5, 36

Booten v. Peterson, 34 Wash.2d 563, 209
P.2d 349 (1949).....2, 4, 25, 30

Chaplin v. Sanders, 100 Wn.2d 853, 861 n.2
676 P.2d 431 (1984).....4, 30

Desimone v. Spence, 51 Wn.2d 412, 415, 318
P.2d 959 (1957).....2, 24

Fairwood Green Homeowners v. Young, 26 Wn. App.
758, 614, P.2d 219 (1980).....2, 23-24, 49

Glasser v. Holdorf, 56 Wn.2d 204, 209, 352
P.2d 212 (1960).....2, 16

Kesinger v. Logan, 113 Wn.2d 320, 779
P.2d 263 (1989).....2, 11, 15, 24, 47

Kundahl v. Barnett, 5 Wn. App. 227, 228, 486
P.2d 1164, *review denied*, 80 Wn.2d 1001 (1971).....3, 27

Levien v. Fiala, 79 Wn. App. 294, 298, 902
P.2d 170 (1995).....1, 16

Matthews v. Parker, 163 Wash. 10, 299
P.354 (1931).....2, 11, 23, 24



<u>Miller v. Likins</u> , 109 Wn. App. 140, 147, 34 P.3d 835 (2001).....	12, 21
<u>Neeley v. Maurer</u> , 31 Wn.2d 153, 195 P.2d 628 (1948).....	5, 34
<u>Peoples Nat'l. Bank v. Birney's Enters., Inc.</u> , 54 Wn. App. 668, 674, 775 P.2d 466 (1989).....	2
<u>Pitman v. Sweeney</u> , 34 Wn. App. 321, 661 P.2d 153 (1983).....	5, 36
<u>Reitz v. Knight</u> , 62 Wn. App. 575, 581 n.4 814 P.2d 1212 (1991).....	1, 4, 30
<u>Rushton v. Borden</u> , 29 Wn.2d 831, 842, 190 P.2d 101 (1948).....	4, 29
<u>Sanders v. City of Seattle</u> , 160 Wn.2d 198, 214, 156 P.3d 874 (2007).....	5, 35
<u>Safeco Ins. Co. v. McGrath</u> , 63 Wn. App. 170, 177, 817 P.2d 861 (1992).....	12, 21
<u>Staff v. Bilder</u> , 68 Wn.2d 800, 415 P.2d 650 (1966).....	5, 34
<u>Stewart v. Hoffman</u> , 64 Wash.2d 37, 42-43, 390 P.2d 553 (1964).....	4, 5, 29
<u>Stockwell v. Gibbons</u> , 58 Wash.2d 391, 363 P.2d 111 (1961).....	2, 15, 24-25
<u>Theonnes v. Hazen</u> , Wn. App. 644, 648, 681 P.2d 1284 (1984).....	12, 21
<u>Thompson v. Bain</u> , 28 Wn.2d 590, 183 P.2d 785 (1947).....	2, 25
<u>Tomlinson v. Clarke</u> , 118 Wn.2d 498, 500, 825 P.2d 706 (1992).....	1, 16

<u>Windsor v. Bourcier</u> , 21 Wn.2d 313, 150 P.2d 717 (1944).....	2, 25
<u>Zunino v. Rajewski</u> , 140 Wn. App. 215, 165 P.3d 57 (2007).....	5, 35

STATE STATUTES AND CODES

RCW 4.16.080.....	3, 27, 28-29
RCW 4.64.030.....	10, 11, 46
RCW 5.40.010.....	2, 4-5, 9, 12, 18, 22, 42, 47
RCW 7.21.010.....	13, 49
RCW 7.21.030.....	13
RCW 7.28.080.....	2, 19
RCW 7.40.020.....	10, 46
RCW 9A.60.020.....	7, 41
RCW 9A.72.020.....	2, 7, 12, 22, 41
RCW 9A.72.150.....	2, 7, 22, 41
RCW 9.38.020.....	2-3, 12, 22
RCW 19.36.010.....	3, 5, 10, 12, 26, 35, 45
RCW 58.04.020.....	4, 29
RCW 58.04.030.....	4, 29
RCW 58.04.040.....	4, 29
RCW Ch. 58.09.....	12
RCW 64.04.010	3, 5, 10, 12, 26, 35-36, 45

RCW 64.04.020.....	3, 5, 26, 36
RCW 64.04.030.....	3, 26-27
RCW 65.08.070.....	2, 3, 19-20, 27
RCW 65.12.720.....	3, 10, 12, 13, 15, 27, 46
RRS 10717.....	3, 10, 12, 13, 15, 27, 46
WAC 196-27A.....	12

UNITED STATES CONSTITUTION

First Amendment.....	13, 45
Fifth Amendment, Due Process Clause.....	13
Title 18, Section 241.....	1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 37-38
Title 18, Section 242.....	1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 38-39

RULES AND REGULATIONS

CP 13.2.....	6, 39
CR 15.....	6, 10, 13, 39, 46
CR 36.....	7, 8, 40, 42
CR 54.....	8, 43
CR 65.....	7, 39-40
ER 401.....	7, 8, 40
RPC 3.4.....	7, 42
RPC 8.4.....	8, 13, 42-43

I. ASSIGNMENTS OF ERROR

COYLE is a BONA FIDE PURCHASER

(of land for value without notice of the alleged mistake)

No. 1 The trial court erred by denying Reconsideration and entering Order Denying Defendant's Motion For Reconsideration on June 1, 2010. CP 115-118. The court failed to consider the fact that all of the recorded deeds and survey show that the boundary line is several feet East of the dirt road. And accordingly COYLE'S first conveyance had an incorrect legal description that did not include the surveyed bearings and distances. COYLE is a Bona Fide Purchaser. 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. RP 244-248, CP 065-066.

"In a Motion for Reconsideration following a non jury trial, new issues or theories may be raised and preserved for appeal if they are based on the evidence." See, e.g., Reitz v. Knight, 62 Wn. App. 575, 581 n.4 814 P.2d 1212 (1991). CP 148-149.

Did entering the Order Denying Defendant's Motion For Reconsideration and barring COYLE from arguing the Bona Fide Purchaser Doctrine violate COYLE'S rights under the U.S.C., Title 18, Sec(s). 241 & 242, Reitz v. Knight, Levien v. Fiala, Tomlinson v. Clarke,

Glaser v. Holdorf, Peoples Nat'l Bank v. Birney's Enters., Inc.,

RCW 65.08.070 Real property conveyances to be recorded.

RCW 5.40.010 Pleadings do not constitute proof.

RCW 7.28.080 Color of title to vacant and unoccupied land?

No. 2 The trial court erred when entering Reformation Of Deeds on April 20, 2010. CP 105-114. The Court relied upon Mr. Todd's unsupported assumptions and theoretical speculations, that were not based on facts and were contrary to the unequivocal facts involved. RP 327, CP 055-068. Bedrock Washington case law, including the one and only case the BUTLER'S presented on reformation, Fairwood Green Homeowners v. Young, all require that in order for reformation to be the proper remedy, the parties must have reached a definite explicit agreement.

Did the courts reliance on Mr. Todd's unsupported assumptions and theoretical speculations, that were not based on facts, and were contrary to the unequivocal facts involved violate COYLE'S rights under the U.S.C., Title 18, Sec(s) 241 & 242, Matthews v. Parker, Fairwood Green Homeowners v. Young, Kesinger v. Logan, Desimone v. Spence, Stockwell v. Gibbons, Booten v. Peterson, Thompson v. Bain, Windsor v. Bourcier, **RCW 5.40.010** Pleadings do not constitute proof, **RCW 9A.72.020** Perjury in the first degree, **RCW 9A.72.150** Tampering with physical evidence, **RCW 9.38.020** False representation concerning

title, **RCW 19.36.010** Contracts, etc., void unless in writing, **RCW 64.04.010** Conveyances and encumbrances to be by deed, **RCW 64.04.020** Requisites of a deed, **RCW 64.04.030** Warranty deed - Form and effect, **RCW 65.08.070** Real property conveyances to be recorded, **RCW 65.12.720** Proceeding to change records, **RRS 10717** Alterations, etc. - Change of interests?

No. 3 The trial court erred in allowing this suit to be brought forth.

The survey in the deeds that allegedly warrants reformation was a 1967 survey. The BUTLERS were aware of the bearings & distances called for in their deed. The BUTLERS took \$900.00 off of the purchase price of the property they were buying to have a survey done "to their satisfaction" prior to closing. BUTLERS real estate transaction closed in July of 2004. Whether or not the BUTLERS did or did not have a survey done does not affect the fact that the 3 Year Statute of Limitations Expired in July 2007. BUTLER brought suit against COYLE in July 2008. CP 145-147.

Did the courts allowance of a suit that was one year past the expiration date of the 3 Year Statute of Limitations violate COYLES rights under U.S.C., Title 18, Sec(s) 241 & 242, Kundahl v. Barnett, **RCW 4.16.080** Actions limited to three years?

No. 4 The trial court erred in not following RCW 58.04 the Statutory

Procedure in the State of Washington for boundary litigation. CP142-145.

Did the Court violate COYLE'S rights by failing to follow the Statutory Procedure in the State of Washington for a civil action to establish lost or uncertain boundaries under Stewart v. Hoffman, Rushton v. Borden, Booten v. Peterson, Chaplin v. Sanders, Reitz v. Knight, **RCW 58.04.020** Suit to establish lost or uncertain boundaries, **RCW 58.04.030** Commissioners - Survey and report, **RCW 58.04.040** Proceedings, conduct of - Costs?

No. 5 The trial court erred when entering the following finding on April 20, 2010 CP 086, in regards to the Emerson survey of the COYLE parcel. "The discrepancy is the result of Todd J. Emerson, PLS, starting from the Northwest corner of Section 5 as proportioned and reestablished by Scott L. Valentine, PLS in his Record of Survey dated 1982..., admitted as Plaintiffs' Trial "Ex" 19, which by the greater weight of evidence was off about 32 feet when viewed in light of the demonstrative exhibit prepared by Thomas E. Todd... The BUTLERS presented no proof that the work of Mr. Valentine was in error, nor that it conflicted with any other surveys of record. CP 117.

Did the Court err when entering findings based solely on speculation and theory totally disregarding recorded documents and fact. Did entering these findings violate COYLE'S rights under **RCW 5.40.010**

Pleadings do not constitute proof, Clark On Surveying And Boundaries?

No. 6 The trial court erred when entering in the Findings of Fact and Conclusions of Law on April 20, 2010 CP 092, that #3 an alleged artificial monument takes priority over #1 the original survey performed by the common grantor, called out to a hundredth of a foot.

Did entering the finding that #3 takes priority over #1 in cases of conflicting calls violate COYLES rights under Staff v. Bilder (citing Stewart v. Hoffman), Neeley v. Maurer, G. Thompson REAL PROPERTY 3044 (1962 Repl.), CLARK ON SURVEYING AND BOUNDARIES?

No. 7 The trial court erred when putting forward an order to reform easements on April 20, 2010. CP 078-114. The reservation of easement in the original Parker and Woodbury deeds was never granted so therefore, the entire Fee Simple Estates were passed on. CP 037-039, 149-151.

Did entering an order to reform easements that were 1) only reserved and never granted, and 2) were conveyed expressly for the EastHalf (E1/2) of Section 5 violate COYLE's rights under U.S.C., Title 18 Sec(s) 241 & 242, The Statutes of Frauds **RCW 19.36.010**, **RCW 64.04.010** and **RCW 64.04.020**, Pitman v. Sweeney, Sanders v. City of Seattle, Zunino v. Rajewski, Beebe v. Swerda?

No. 8 The trial court erred in entering Reformation of Easement on April

20, 2010 CP 105-114 without a Motion to Amend Pleadings to include Reformation Of Easement.

Was it a procedural error of the Court when it granted Reformation Of Easement without a Motion ever being filed or granted to include Reformation Of Easement to the original Summons And Complaint For Declaratory Relief, Reformation Of Deeds, Slander Of Title, And For Injunctive Relief, filed on July 8, 2008 CP 001-031. Was this a violation of COYLE'S rights under U.S.C., Title 18, Sec(s) 241 & 242, **CR 15(a)**?

No.9 The trial court erred when it granted the Preliminary Injunction on August 5, 2008 without proof of a recorded easement for the BUTLERS to use the COYLE parcel. Ex 201-204.

Was it a procedural error of the Court when it granted the Preliminary Injunction violating COYLE'S rights under U.S.C., Title 18, Sec(s) 241 & 242, **CP 13.2 Preliminary Injunctions**?

No.10 The trial court erred when granting a TRO on July 8, 2008 CP 001-031 without showing any proof that the BUTLERS had a recorded easement on the COYLE parcel. Ex 201-204.

Was it a procedural error of the Court to grant a TRO when the BUTLERS never showed the Court that they had been granted a recorded easement on the COYLE parcel. Did that violate COYLE'S rights under

U.S.C., Title 18, Sec(s) 241 & 242, **CR 65(b)**?

No. 11 The trial court erred entering a Finding on April 20, 2010 CP 087 that neither Mr. Lang nor Mr. Montgomery forged the date on the aerial photo that was obtained by Lang and presented by Montgomery at the Preliminary Injunction Hearing RP120-131,150-159, 273-278, 342-343.

Was it a procedural error of the Court to make a finding that was not for the pending action only? Did that violate COYLE'S rights under U.S.C., Title 18, Sec(s) 241 & 242, **CR 36(a), ER 401**.

No. 12 The trial court erred in allowing an unauthenticated aerial photo to be entered at the Preliminary Injunction hearing. The trial court erred in allowing an unauthenticated date written on a business card as "evidence" at trial. RP 130-131, 154.

Did entering unauthenticated documents perpetuate acts of fraud, perjury, forgery and conspiracy violating COYLE'S rights under U.S.C, Title 18, Sec(s) 241 & 242, **RCW 9A.60.020** Forgery, **RCW 9A.72.020** Perjury in the first degree, **RCW 9A.72.150** Tampering with physical evidence **RPC 3.4(a), (b)** Fairness to opposing party and counsel.

No. 13 The trial court erred in recusing Chris A. Montgomery and Al Lang when entering a Finding on April 20, 2010 that neither Mr. Lang nor Mr. Montgomery forged the 1960 date on the 1968 aerial photo. The

Court further erred when Finding that the date was already written on the photo when Al Lang obtained it from Christine Titus at the Stevens County Conservation District. CP 087.

The Court was aware that COYLE had instituted an investigation into the matter by the WSBA. The Court impeded the state agency investigation.

Did impeding the state agency investigation by recusing Mr.

Montgomery and Mr. Lang violate COYLES rights under U.S.C., Title 18, Sec(s) 241& 242, **RPC 8.4** Misconduct (a), (b), (c), (d), (f), (i), **CR 36(a), ER 401.**

No. 14 The trial court erred when allowing the prevailing attorney of record, more than five and one half (5 1/2) months to file a Notice of Presentation and a Proposed Form of Order or Judgment on 12-04-2009.

Was it a procedural error of the Court that there was no direction from the Court that Mr. Montgomery could take more than 15 days to file a Notice Of Presentation Of The Findings/Judgment And Permanent Injunction. Did this violate COYLE'S rights under U.S.C., Title 18, Sec(s) 241 & 242, **CR 54(e)**?

No. 15 The trial court erred in entering the following artificial refinements as fact on April 20, 2010:

A) That the deeds contain language in them that does not exist in the register. CP 079-080.

B) That the original conveyances of the BUTLER and COYLE properties referred to the centerline of present lane road as "West" and "East" property lines of BUTLER and COYLE. CP 081.

C) That there were "unrecorded real estate contracts." CP 081 & 084.

D) That the present lane road is referred to on the Exhibit A map as "access road," in Auditors File #419539. CP 082.

E) Based upon the Emerson survey, COYLE went upon the property of BUTLER, erected a fence and invaded BUTLERS easement. CP 086.

F) The COYLE and BUTLER properties are benefited and burdened by Auditors File #419539, the 1973 easement for the EastHalf. CP 083.

G) Following the Preliminary Injunction issued by the Court, COYLE removed most of her fence, but has left a section and post within the right-of way of the mutual easement. CP 097.

Did entering the foregoing artificial refinements A-G as "fact" violate COYLE'S rights under U.S.C., Title 18, Sec(s) 241 & 242,

RCW 5.40.010 Pleadings do not constitute proof.

No. 16 The trial court erred in entering a Finding on April 20, 2010 that "the court finds common law trespass." Yet at trial, COYLES attorney asked the court "Are the damages for trespass, is that a common law damage?" The court replied "I would call it a sort of what you would say nominal damages." RP 340-341, CP 096.

Did entering a finding that was found to be "nominal damages" at trial which escalated to common law trespass when the written findings were entered violate COYLE'S rights under U.S.C., Title 18, Sec(s) 241 & 242 and the Statutes of Frauds **RCW 19.36.010, RCW 64.04.010?**

No. 17 The trial court erred in granting Injunctive Relief/Permanent Injunction on April 20, 2010. CP 099-100. A Motion to Amend the Pleadings to include fencing restrictions was neither submitted nor granted. In addition, the restrictions regarding no trespassing and/or private road keep off signs were never addressed at trial.

Did granting Injunctive Relief/Permanent Injunction violate COYLE'S rights under U.S.C., Title 18, Sec(s) 241& 242, U.S.C. First Amendment, **RCW 7.40.020, RCW 65.12.720, RRS 10717, CR 15(a), RCW 19.36.010, RCW 64.04.010?**

No. 18 The trial court erred when entering the Judgment Summary, on April 20, 2010, CP 105, that did not include on the first page the abbreviated legal description of the property in which the right, title or other interest was awarded by judgment, including lot, block, plat, or section, township, and range and reference to the judgment page number where the full legal description is included or the assessor's property tax parcel number pursuant to **RCW 4.64.030.**

Did the Court err when entering the Judgment summary pursuant to **RCW 4.64.030** without the award of any right, title or interest being included on the first page. Did that violate COYLE'S rights under U.S.C., Title 18, Sec(s) 241 & 242, **RCW 4.64.030**?

No.19 The trial court erred when it chose to ignore any factual review of the Supreme Court of Washington case law which put forth the requirements of what constitutes as a monument. A location referenced in a deed is not a monument unless it is capable of being mathematically ascertained from the deeds of record. CP 034-036.

Was the Court derelict in its duties when stating:

"This is in contrast to the situation in Kesinger, because there wasn't reference to the deed -- or, to the -- conveyance in the deed. There was -- there was -- Well, I adopt -- Let's put it this way: I adopt Mr. -- Mr. Montgomery's analysis of why it is that Kesinger is -- is a distinguishable case. RP 329.

Did this violate COYLE'S rights under U.S.C., Title 18, Sec(s) 241 & 242, Kesinger v. Logan, Matthews v. Parker ?

No. 20 The trial court erred by not reconsidering its decision at the hearing on June 1, 2010. CP117-118. It is now apparently stipulating that Mr. Valentine's survey of the NW Section corner is correct, but still alleging that the Emerson survey does not reflect the deeds of record. There is no proof to support such allegation.

Did the Court err by failing to reconsider its decision when no evidence was presented that the Emerson survey was inaccurate? Did failing to reconsider violate COYLE'S rights under U.S.C., Title 18, Sec(s) 241 & 242, Statutes of Frauds **RCW 19.36.010**, **RCW 64.04.010**, **RCW 5.40.010** Pleadings do not constitute proof., **RCW 9A.72.020** Perjury in the first degree., **RCW 9.38.020** False representation concerning title., **RCW 65.12.720** Proceeding to change records., **RRS 10717** Alterations, etc.- Change of interests., Miller v. Linkins, Safeco Ins. Co. v. Mc Grath, Mid-State Fertilizer v. Exchange Nat. Bank, Merit Motors, Inc. v. Chrysler, Theonnes v. Hazen, **The Survey Recording Act, chapter 58.09 RCW, WAC 196-27A?**

No. 21 The trial court erred in entering a second Judgment and Order on November 5, 2010 CP 383-387. Auditors File #419539, for the East Half (E 1/2) of section 5, has not been "reformed" CP 189-192. The issue of sign posting was neither addressed at trial nor stipulated to by COYLE. It is a clear violation of COYLE'S First Amendment Rights CP 151-152. The Order clearly ordered: The plaintiffs attorney shall cause this order to be personally served on the defendant. CP 385-387 Mr. Montgomery failed to do so. The Judgment and Order are contrary to **RCW 65.12.720** Proceeding to change records. The court does not have the authority to

open the original decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of the purchaser, holding a certificate for value and in good faith, or his heirs or assigns, without his or their written consent CP 147-148.

Did the court violate COYLE'S rights under **U.S.C., Title, 18 Sec(s) 241 & 242, The First Amendment, RCW 65.12.720, RRS 10717.**

Should Mr. Montgomery be found in contempt of court under **RCW 7.21.010(1)(b)** for disobedience of an order or process of the court, as well as **RPC 8.4(j)**, and should sanctions be imposed under **RCW 7.21.030(1)** Court of Appeals may initiate a proceeding to impose sanctions on its own Motion.

No. 22 The trial court erred when granting the Order for Issuance of Writ of Restitution Allowing the Sheriff to Break and enter to Enforce the Same on November 19, 2010. The writ was issued with absolutely no consideration for the bond and without summons. The action was not commenced, and therefore no writ of restitution could lawfully issue. After filing the order for writ with the clerk of the court, it was retrieved and two pages were removed and replaced with new documents CP 394-425.

Did the court violate COYLE'S rights under **The Fifth Amendment, Due Process Clause?** Were Statutory Procedures and RPC 8.4 breached? Did "amending" the order without leave of court violate **CR 15(e)?**

II. STATEMENT OF THE CASE

In March of 2007, COYLE purchased parcel 2411900. All of the legal documents including the title insurance, real estate contract and the purchase and sale agreement conveyed an incorrect legal description. COYLE was unaware that the description was not correct. It was corrected and the documents were re-recorded in August of 2007, RP 244-248, 317, CP 148-149, 202,-206. Butler stipulated, RP 286. COYLE is a Bona Fide Purchaser of land for value without notice of alleged mistake and pursuant to the BFP Doctrine, COYLE has a superior interest in the property, CP 065-066, 148-149. All the legal deeds and surveys show that the boundary is several feet east of the dirt road. EX 201-205. The Washington State Department of Licensing has conducted a formal investigation regarding the real estate transaction and it is currently under legal review and action, CP144, 166-167.

Regarding the legal documents involved in the BUTLERS real estate transaction, first, the BUTLERS were given a disclosure statement that stated that there were no easements affecting the property, CP182. Second, the addendum to the BUTLERS purchase and sale agreement reduced the sales price by \$900.00 to pay for 1/2 of the survey that BUTLER was to have done prior to closing, CP 145-147, 183-185. BUTLER refused to pursue inquiry. BUTLER signed a Closing

Agreement and Escrow Instructions stating that he 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. BUTLER also stipulated to surveying streams at work, RP 252-267.

The trial courts conclusion that these legal agreements are unenforceable undermines contract law, RP 322-345.

The BUTLERS cite several cases, but none of those cases states or even implies that courts have the authority to open the original decrees of registration without the purchasers written consent, RCW 65.12.720, RRS 10717, CP 147-148.

BUTLERS assert that the dirt road is a monument. This assertion fails as it does not qualify under Washington law as a survey monument, Kesinger v. Logan, CP 034-036, 047-048, 053-065.

In a case of conflicting calls, the priority of calls is #1) lines actually run in the field (a survey takes priority over an alleged) #3) artificial monument, G. Thompson, REAL PROPERTY 3044 (1962) CP 036, 054.

Under Washington law, a particular description in a deed prevails over a general description in a deed, Stockwell v. Gibbons CP 036-037, 054-055.

The BUTLERS have never been granted an express easement and are subject to the statue of frauds, CP 037-039, 046-053, 149-151.

COYLE did not trespass on the property of BUTLER, CP 039-041.

III. ARGUMENT

No. 1 "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)). CP 065.

COYLE purchased her property, which was vacant and unoccupied land, on April 2, 2007. COYLE was unaware of the actual legal description of her property because ALL of the documents in the real estate transaction, including but not limited to, the Purchase & Sale Agreement, the Commitment for Title Insurance (No.100692) by Stevens County Title, and the Deed conveyed ALL contained the legal description: That part of the N1/2 of Government Lot 4, In Section 5, Township 27N., Range 40 E. W.M, In Stevens County, Washington, Lying East of Lapray Bridge Rd. No. 590. Ex 206, RP 244-245.

After COYLE purchased parcel #2411900, she began contacting surveyors to survey the boundary line of her parcel so that she could erect a fence on her deeded boundary line. COYLE was informed by one of the surveyors that the legal description contained in the deed that was conveyed to her was incorrect. On August 15, 2007 COYLE'S Deed was

corrected and re-recorded. This was the first that COYLE was made aware of the bearings & distances that were contained in her Deed, and in the prior Fifield Deed, as well as the original Deed to Woodbury. COYLE measured the first distance contained in her Deed, starting at the monumented NW section corner, which was 941.25 feet and was then made aware that the BUTLERS were using her property RP 244-250.

COYLE paid off her Real Estate Contract and on September 19, 2007 the Fee Simple Statutory Warranty Deed (Fulfillment) was filed as Auditors File #2007 0010934. Ex 204.

COYLE contracted with Todd Emerson to survey the boundary line of her property. The survey was completed and filed on February 5, 2008 as Auditors File # 2008 0001134. Ex 205, Emerson ROS.

The "deed boundary" survey has been approved by the State of Washington Board of Registration for Professional Engineers and Land Surveyors. CP 168-169.

After the two day trial and court order alleging that the Emerson survey was incorrect therefore necessitating correction, COYLE was then compelled to file a complaint against Emerson. The response letter, after the formal investigation was completed, states that the investigation concluded that Emerson performed a "deed boundary" survey, as the

surveyor in this state is required to do and not determine ownership by other evidence. The Case Manager felt that no evidence existed to make an assertion that the Emerson survey was incorrect. CP 168-169.

In addition, the Court alleged that the NW section corner of Sec. 5, Twp. 27N., Rge. 40 E., W.M. in Stevens County, WA is 32 feet off with no proof to support such allegation.

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.

As a result of the Courts determination that the NW section marker is allegedly off 32 feet, COYLE was compelled to file a formal complaint against surveyor Scott Valentine. Consequently, the response letter from the "Board" concluded that the work of Mr. Valentine was consistent with sound and lawful practice. His chosen method to document his decisions via a Land Corner Record was permissible under the provisions of Board rules and the Survey Recording Act. CP 177-178.

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 Parker Deed, Defendant's Ex 201; BUTLER Deed, Defendant's Ex 202; Woodbury Deed, Defendant's Ex 203; COYLE Deed, Defendant's Ex 204; Emerson survey, Defendant's

Ex 205; Illustrative Exhibits of the Original Reforestation, Inc. parcel,
Defendant's Ex 206; Parker parcel: 1967, Defendant's Ex 207;
Woodbury parcel: 1968, Defendant's Ex 208; Stevens County
Assessor's Office Map, Defendant's Ex 209; and the map issued in
COYLE'S title policy by Stevens County Title CP 209-212.

RCW 7.28.080 Color of title to vacant and unoccupied land.
Every person having color of title made in good faith to vacant and
unoccupied land, who shall pay all taxes legally assessed thereon for seven
successive years, he or she shall be deemed and adjudged to be the legal
owner of said vacant and unoccupied land to the extent and according
to the purport of his or her paper title. All persons holding under such
taxpayer, by purchase, devise or decent, before said seven years have
expired, and who shall continue to pay the taxes aforesaid, so as to
complete the payment of said taxes for the term aforesaid shall be entitled
to the benefit of this section. CP 149-150.

Woodbury, Fifield and COYLE have paid all of the taxes assessed on
parcel #2411900 which was vacant and unoccupied land therefore COYLE
is ENTITLED to be deemed and adjudged to be the legal owner
according to the specific, surveyed legal description in the Deed.

"A bona fide purchaser of an interest in real property is entitled to rely
on record title; the protection afforded him by the real property recording
statute RCW 65.08.070, is unaffected by the vendor's lack of good faith or
by matters which the vendor has notice." Levin, Wn. App.at 299-300.CP66

RCW 65.08.070 Real property conveyances to be recorded.

A conveyance of real property, when acknowledged by the person executing the same (the acknowledgment being certified as required by law), may be recorded in the office of the recording officer of the county where the property is situated. Every such conveyance not so recorded is void as against any subsequent purchaser or mortgagee in good faith and for a valuable consideration from the same vendor, his heirs or devisees of the same real property or any portion thereof whose conveyance is first duly recorded. An instrument is deemed recorded the minute it is filed for record.

COYLE is a Bona Fide Purchaser and is ENTITLED to rely upon her Deed CP 065-067.

No. 2 COYLE has not agreed to REFORMATION OF HER DEED nor has express or implied authority been given to anyone, including SAFECO Insurance and their Attorney Sean Boutz, to stipulate to the entry of:

REFORMATION OF EASEMENT; REFORMATION OF DEEDS; PERMANENT INJUNCTION AND JUDGMENT, nor to approve the erroneous FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Bedrock Washington case law warrants reformation only when the parties have reached definite explicit agreement to do so RP 290.

The Court in its oral findings, stated its decision was primarily based upon Mr. Todd's trial testimony, which it stated in pertinent part:

Unfortunately here it was off. The greater weight of this evidence convinces me very clearly that Mr. Valentine was off. He did the best he could with all of these mile-long distances over hill and dale that you have to do to go over in order to proportion a missing point, but in doing so he was off about 32 feet. And it all came together in a sort of 'aha' moment for me when Mr. Todd showed in his demonstrative exhibit what happens if you move everything over 32 feet. RP 327.

Thus the cited testimony begs the question if the Court's reliance was premised on Mr. Todd's testimony that Mr. Valentine was off 32 feet, yet

he now opines that Mr. Valentine was correct, how can the deeds and easement be reformed? Mr. Valentine's survey is correct.

COYLE'S position prevails. CP 055-068.

"The trial court has wide discretion in ruling on the admissibility of expert testimony." Miller v. Likins, 109 Wn. App. 140, 147, 34 P.3d 835 (2001). But [i]t is well established that conclusory or speculative expert opinions lacking an adequate foundation will not be admitted." *Id.* at 148; see also, Safeco Ins. Co. v. McGrath, 63 Wn. App. 170,177, 817 P.2d 861 (1992) (citing Mid-State Fertilizer v. Exchange Nat. Bank, 877 F.2d 1333 (7th Cir.1989) (court must look behind expert's ultimate conclusion and analyze the adequacy of its foundation, especially when the opinion seems contrary to the other facts involved); Merit Motors, Inc. v. Chrysler Corp., 569 F.2d 666 (D.C. Cir. 1977) (although ER 703 broadened acceptable bases of expert opinion the court will still not allow unsupported assumption and theoretical speculations). "The opinion of an expert must be based on the facts." Theonnes v. Hazen, Wn. App. 644, 648, 681 P.2d 1284 (1984) CP 056-057.

In this case, Mr. Todd's trial testimony in support of the F&C is predicated on conclusory statements and without factual basis. His testimony is not based upon a record of survey, like that of Mr. Valentine and Mr. Emerson, who for example, utilized actual calculations and

measurements in determining the NW section corner of Section 5. To the contrary, Mr. Todd merely opines without physical investigation or inspection that Mr. Valentine's proportioned NW section corner was inaccurate as well as concluding that Mr. Emerson's ROS failed to accurately reflect the COYLE and BUTLER Deeds. There is no independent verification or evidence to support Mr. Todd's opinions other than conclusory statements because he never actually conducted a physical survey. CP 055-068.

RCW 5.40 010 Pleadings do not constitute proof.

RCW 9A.72.020 Perjury in the first degree.

- (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under oath required or authorized by law.
- (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor's mistaken belief that his statement was not material is not a defense to a prosecution under this section.
- (3) Perjury in the first degree is a class B felony.

RCW 9A.72.150 Tampering with physical evidence.

- (1) A person is guilty of tampering with physical evidence if, having reason to believe that an official proceeding is pending or about to be instituted and acting without legal right or authority, he:
 - (b) Knowingly presents or offers any false physical evidence.

RCW 9.38.020 False representation concerning title.

Every person who shall maliciously or fraudulently put forward any claim, by which the right or title of another to any real property is or purports to be transferred, encumbered or clouded, shall be guilty of a gross misdemeanor.

Mr. Todd was required by law to record a record of survey if he

believed that Mr. Valentine or Mr. Emerson's surveys contained substantive errors. CP 061-065.

The Court, in its oral findings, stated that the 1973 easement document for the EastHalf (E1/2) of section 5 has a "scrivener's error" without any evidence or proof of such assertion. The court also alleged that the NW section marker was off 32 feet, once again without any evidence to back up this unsupported speculation. The Court stated in pertinent part:

...because of the scrivener's error in "Ex" 4, and because of the lost NW property corner in Section 5 that Mr. -- Mr. Valentine proportioned and came out 32 feet to the bad. And so, the -- the BUTLERS are entitled to reformation of their deed and the COYLE deed... RP 330.

The court also misconstrued case law presented to support its decision to reform deeds. Taken in proper context, Matthews v. Parker, 163 Wash. 10, 299 P.354 (1931), refers to the north quarter corner of section 34 as the monument that the description calls 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, thus constituting it, in a legal sense, a monument call of the description.

Additionally, the court 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."

The Matthews and Fairwood Green Homeowners cases, when read in entirety, and taken in proper context, support COYLE'S position.

The court chose to ignore any factual review of the case law presented by COYLE. 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. This Court states:

"It is true, as the District points out, that a party seeking to quiet title to property must succeed on the strength of his or her title, not on the weakness of the other party's title (citing Desimone v. Spence, 51 Wn.2d 412, 415, 318 P.2d 959 (1957)).

"Since there is no deed from the original landowners conveying a right of way 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."

The Kesinger case is exactly on point to the instant case. The original conveyances only refer to present lane road. No instrument exists that establishes the road. As in Kesinger, the Court must hold that the courses and distances in the legal description must control and that the road is not a monument. CP 034-036.

COYLE also presented 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). CP 036-037.

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. In addition, the deed from Reforestation, Inc. to Woodbury contains an *unrecorded easement for access to the property to the north along the lane road described in the description above*, indicating that the lane road was located entirely on the Woodbury parcel, and not on the Parker parcel, which did not contain such language. Given the fact that the language in the deeds themselves specifically state that the lane road is located on the Woodbury parcel, the particular surveyed description should prevail CP 37

Agreements changing or affecting previously undisputed boundary lines are generally subject to the Statute of Frauds. Thompson v. Bain, 28 Wn.2d 590, 183 P.2d 785 (1947); Windsor v. Bourcier, 21 Wn.2d 313, 150 P.2d 717 (1944). CP146.

[T]here can be little question as to the intent of the legislature in the

enactment of **RCW 19.36.010** and **RCW 64.04.010**. The clear purpose and intent behind these Statutes of Frauds is the prevention of fraud.

To apply these Statutes in such a manner as to promote and encourage fraud would be to defeat the clear and unambiguous intent of the legislature in their enactment. CP 038,146-147.

RCW 19.36.010 Contracts, etc., void unless in writing. Any agreement, contract and promise shall be void, unless such agreement, contract or promise, be in writing and signed by the party to be charged therewith. CP 146.

CONVEYANCES - STATUTORY PROVISIONS

The present Washington Statute sets out two fundamental rules for transferring real property.

First, every conveyance of a real property interest (including any contract creating or evidencing a real property lien or encumbrance) must be by deed

RCW 64.04.010 CP 146-147.

Second, every deed must be in writing, signed by the grantor, and acknowledged before a notary public

RCW 64.04.020.

COYLE has been granted a Fee Simple Statutory Warranty Deed Ex 204

RCW 64.04.030

"A statutory warranty deed conveys all of the grantor's right, title and interest in the described property. It also creates, as of the date of delivery, the following statutory warranties in favor of the grantee:

- (1) that the grantor owns an indefeasible estate in fee simple in the land described;
- (2) that the grantor has good right and full power to convey the estate;
- (3) that the estate is free from all encumbrances;
- (4) that the grantee is entitled to quiet and peaceable possession of the premises; and

(5) that the grantor will defend the title against all persons who may lawfully claim the same.

Some drafters attempt to generally exclude all encumbrances in a warranty deed by making the grant subject to matters such as "easements, covenants, conditions, restrictions and reservations of record." Such an exclusion does not impose any new encumbrances on the title, nor does it revive any old ones which have been extinguished. Rather this language is merely precautionary, designed to protect the grantor against a claim for breach of warranty or unmarketability of title. CP 213-214.

The COYLE and BUTLER Deeds Meet all the Required Elements to be legally binding Valid Deeds. Ex 202 and Ex 204.

(1) Grantor; (2) Grantee; (3) Consideration; (4) Words of conveyance;
(5) Description; (6) Execution; (7) Delivery; (8) Constructive delivery;
(9) Delivery to escrow; (10) Acceptance. CP 215-220.

RCW 65.08.070 Real property conveyances to be recorded.
A conveyance of real property, when acknowledged by the person executing the same (the acknowledgment being certified as required by law) may be recorded. Every such conveyance not so recorded is void.

Remington's Revised Statues of Washington
10717 Alterations, etc - Change of interests, together with,
RCW 65.12.720 Proceeding to change records, both state:
That this section shall not be construed to give the court authority to open the original decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of the purchaser, holding a certificate for value and in good faith, or his heirs or assigns without his or their written consent. CP 148.

No. 3 An injury caused by an erroneous survey is subject to the three-year statute of limitations. **RCW 4.16.080**; *Kundahl v. Barnett*, Wn App. 227, 228, 486 P.2d 1164, *review denied*, 80 Wn.2d 1001 (1971). CP 145.

There has been no dispute that in 1967, Reforestation, Inc., the

common grantor of the two properties in this dispute, had surveyed the Woodbury/COYLE parcel to come up with a legal description down to a hundredth of a foot. CP 145.

BUTLERS Purchase & Sale Agreement stated: #11 Purchasers will do a survey to their satisfaction. The BUTLERS signed an ADDENDUM

stating: *1. Sales price reduced to \$102,900*
\$104,200

-200 ants

-200 furnace

*-900 1/2 survey -**

**1/2 survey amount can be lowered if we get a lower bid. CP 181-185*

See also RP 261-266.

Surveyor Thomas Todd keeps records of phone conversations and bids and on June 30, 2004, Jean Auerbach, the BUTLER'S real estate agent phoned Mr. Todd to get quotes for surveying 1) the entire boundary line of parcel #2411800, quoted price of \$1,600 - \$1,800 or 2) the westerly boundary line only, quoted price of \$1,200 - \$1,400.

The BUTLERS should have exercised reasonable diligence (getting a survey done to their satisfaction) they would have learned the facts which give rise to the cause of action. The 3 Year Statute of Limitations EXPIRED in July of 2007, however, the BUTLERS were allowed to bring this malicious lawsuit against COYLE in July of 2008. CP 145-147.

RCW 4.16.080 The following actions shall be commenced within three years: (1) An action for waste or trespass upon real property; (2) An action for taking, detaining or injuring personal property, including an action for

the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated; (3) Except as provided in RCW 4.16.040(2), an action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument: (4) An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud. CP 145-147.

No. 4 RCW 58.04

(1) Statutory provisions

RCW 58.04.020 provides for a civil action to establish lost or uncertain boundaries: Whenever the boundaries of lands between two or more adjoining proprietors shall have been lost or by time, accident or any other cause, shall have become obscure, or uncertain, and the adjoining proprietors cannot agree to establish the same, one or more of said adjoining proprietors may bring his civil action in equity, in the superior court of equity, for the county in which such lands, or part of them are situated, and such superior court, as a court of equity, may upon such complaint, order such lot or uncertain boundaries to be erected and established and properly marked. CP 142.

RCW 58.04.030 authorizes the court, in its discretion, to appoint no more than three commissioners, at least one of whom shall be a surveyor, who shall survey and properly mark the boundaries and prepare a plat of the survey together with and advisory report in support thereof, to which either party may take exception. CP 143.

RCW 58.04.040 directs the court to apportion the costs of the proceedings equitably, and the costs so apportioned are a lien upon the properties involved. CP 143.

(2) Availability of statutory action

The statutory action under **RCW 58.04** cannot be utilized when a party contends, either in pleadings or during trial, that an existing boundary line is the true dividing line; uncertainty as to the true dividing line must exist in both adjoining landowners. Stewart v. Hoffman, 64 Wn.2d 37, 42-43, 390 P.2d 553 (1964); Rushton v. Borden, 29 Wn.2d 831, 842, 190 P.2d 101 (1948). If a defendant alleges a certain line to be the boundary, and at trial prevails on this claim, the case is removed from the statute and proceeds as a common law action for establishment of the boundary line. CP 143.

Booten v. Peterson, 47 Wn.2d 565, 569, 288 P.2d 1084 (1949); Chaplin v. Sanders, 100 Wn.2d 853, 861 n.2 676 P.2d 431 (1984); Reitz v. Knight, 62 Wn. App. 575, 581 n.4 814 P.2d 1212 (1991). CP 143.

BASIC COMMON LAW DOCTRINES

Boundaries between adjoining properties, at odds with the true boundary as revealed by subsequent survey, may be established, under appropriate circumstances, through the following doctrines, all of which have been recognized by the state of Washington: (1) adverse possession, (2) parol agreement of adjoining landowners, (3) estoppel in pais, (4) location by a common grantor and/or (5) mutual recognition and acquiescence in a definite line by interested parties for ten years or more. CP 154-156.

The Court, apparently conceding that the argument before it was lost and uncertain boundaries stated:

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

"...based on a different unknown location of the Northwest Corner of Section 5 that has since been lost..." CP 117.

Yet the Court failed to follow the statutory procedure in **RCW 58.04**.

No. 5 The Court admitted speculative opinions of Thomas Todd without an adequate foundation which was contrary to the facts involved. CP 055-068.

The Woodbury/COYLE Deed and the Parker/BUTLER Deed meet all the necessary requirements to be legally binding valid deeds. CP 150-151.

The Emerson survey, which is a retracement of the original common grantors survey, is a "deed boundary" survey and has been approved by the State of Washington Board of Registration for Professional Engineers and Land Surveyors. CP 168-169.

Reforestation, Inc. owned both the Woodbury/COYLE parcel and the Parker/BUTLER parcel and was therefore entitled to place the boundary line where they so chose to. Reforestation had the land surveyed and demarcated the straight boundary lines that are called for in the deeds. The specific bearings and distances as called for in the deeds allow the continued perpetuation of the boundary line. The mathematically ascertainable boundary line is a locatable line that is called for in the deeds making it legally binding upon all parties who have relied upon the deeds since their creation. Ex 201-209.

The Court alleged that Mr. Valentine's re-establishment of the NW section corner was 32 feet off without any proof of such allegation. COYLE was therefore compelled to file a complaint with the "Board" who concluded that Mr. Valentine's work was consistent with sound and lawful practice. CP 177-178.

Mr. Todd's testimony and opinion lacks an adequate foundation to support the Court's Findings of Fact and Conclusions of Law. CP 055-065.

Attorney Montgomery, Surveyor Thomas Todd and Surveyor Todd Emerson concur that **Clark On Surveying And Boundaries** is a "reliable source." RP 298.

Quoting: **Clark On Surveying And Boundaries**

16.16 Lines presumptively straight.

It is a presumption of law that lines, recited by bearing and distance between angle points in a deed, are straight lines.

16.27 Fractional part of government subdivision usually means a fractional part of the width of that subdivision.

"The rule of law is that a deed must be so construed, if possible, [so] that no part shall be rejected ... if the description in a deed be general, followed by one that is more particular, the latter limits and defines the terms of the grant." (citing Edinger v. Woodke, 127 Mich. 41, 86 N.W. 397 (1901)).

16.41 The role of the surveyor in descriptions.

The ultimate question that is often presented by the courts to the surveyor is: "Is this description capable of being located on the ground by a competent surveyor?" If it is, the deed is valid but if it is not, the deed is void.

20.13 True and correct boundary

In many decisions written by the courts and numerous pleadings prepared by attorneys, one will find a reference to the "true and correct" line. The only reference to the correct meaning of this phrase 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)).

Clark On Surveying And Boundaries 2008 Cumulative Supplement

15.08A Applying the priority (dignity) of calls.

A surveyor is charged with knowing this classification of priorities so that he/she can conduct an adequate retracement. This is not a pick or

choose listing, but rather it is one of prioritization and then selection

1. Lines actually run in the field
2. Call for monuments
3. Call for adjoiningers
4. Reference to courses, in this order for most states but reversed for GLO surveys (a. bearings, b. distances).
5. Quantity of area.

30.09 Alteration of boundaries

One of the areas that landowners consider is that when once boundaries are created they can be changed or modified in accordance with the law, usually under very specific conditions. The usual methods the courts consider and render opinions on are agreement, estoppel, acquiescence, and any other method they may attempt to prove.

Sanders v. Thomas, 821 So. 2d 1214 (Fla. App. 2002)

In many instances in which these doctrines may be argued by attorneys, they either fail to raise the correct theory or they fail to raise a sufficient number of theories.

One of a recent decisions in this area reads as follows:

The parties in this case dispute ownership over a strip of land, varying in width, to the east of a dirt road. The road is fenced on each side of its right-of-way. Appellee argues that the fence on the road's eastern right-of-way is the boundary of the parcel of land that is on the east side of the road. Appellants argue that the boundary is several feet to the east of that fence, in accordance with the legal description in their deed.

After a bench trial, the trial court entered a final judgment awarding title of the disputed land to Appellee on the basis that (i) various recorded deeds and a mortgage should be reformed to exclude the disputed land, (ii) Appellee is the owner through adverse possession under color of title, (iii) Appellee is the owner through boundary by agreement, and (iv) Appellee is the owner through boundary by acquiescence. We agree with the Appellants that the trial court erred, and therefore reverse.

In discussing their reasoning some of the salient points the court made as to the various principles of boundary modification were discussed, including I. reformation of the original deed, changing the boundaries by either agreement or acquiescence or even as a last resort adverse possession.

The Court discussed these points as follows:

I. Reformation of the original deed.

It is undisputed that all of the recorded instruments and surveys show that the boundary of the disputed land is several feet east of the fence on the road's eastern right-of-way. Accordingly, Appellee sought to have

those various instruments in the chain of title reformed to exclude the disputed land. We reverse the trial court's ruling in favor of Appellee for reformation because Appellants are bona fide purchasers of the land for value without notice of the alleged mistake.

II. Adverse possession ...

III. Boundary by agreement ...

IV. Boundary by acquiescence ...

For the final decision the Court wrote:

In the instant case, the evidence falls short of showing that the true boundary was in dispute. The recorded instruments and surveys conclusively show Appellants' eastern boundary to be beyond the road. Appellants and their predecessors in title subsequent to Appellee's ownership did not show any acquiescence. Because neither of the elements necessary for establishment of a boundary by acquiescence were proven, we reverse.

No. 6 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.). CP 036

A survey takes priority over an alleged artificial monument.

Courts should ascertain and carry out the intention of the original platters. In case of discrepancy, however, between lines actually marked or surveyed on the ground and lines called for by plats maps or field notes, the lines marked by survey on the ground prevail *Staff v. Bilder*, 68 Wn.2d 800, 415 P.2d 650 (1966) (citing *Stewart v. Hoffman*, 64 Wash.2d 37, 390 P.2d 553 (1964); 11 C.J.S. Boundaries s 49c (1938)). RP 291

"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." *Neeley v. Maurer*, 31 Wn.2d 153, 195 P.2d 628 (1948). RP 291

Clark On Surveying And Boundaries

16.26 What will Control?

If a parcel of land is described "according to the government survey,"

the accepted principle is to proportion the distances in accordance with the returns of the original survey measurements. However, if the description does not contain the phrase "according to the government survey" then the distances measured at the time of the original survey will control. It will be presumed that the description was prepared under the conditions existing at the time of the survey.

No. 7 The Court has alleged that the BUTLERS have an express easement on the COYLE parcel (as alleged in Plaintiffs' Trial Memorandum, Legal Argument, Issues, "Fourth, is whether, an express easement failing, does legal theory of prescriptive easement apply to create an easement in favor of BUTLER over and across the present lane road?")

An express easement is clearly stated in a contract, deed, or will and is subject to the Statute of Frauds. CP 038.

In a breach of contract case where the statute of frauds applies, the defendant may raise it as a defense. In this case, the burden of proof is on the plaintiff to establish that a valid contract was in existence.

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). CP 048.

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 Wash. App. 375, 382, 793 P.2d (1990). CP 038.

The trial court has circumvented the one(1) line that is in the original deeds to Parker and Woodbury of: "reserving to the vendor, its successors or assigns easement and rights of way over prior and existing roads and easement for utilities."

The only easement granted for utilities is the easement along Corkscrew Canyon Rd. recorded as Auditors File #388163. And the only actual granted right-of-way for public and county roads is along Corkscrew Canyon Rd., recorded as Auditors File #(s) 343959 & 336567. Parker was never granted an easement over and across the present lane road therefore the alleged BUTLER easement is untenable.

A "reservation" of an easement is not a "grant" of an easement nor does it create any "new" rights. CP 037-039, 149-150, 207-208 RP 312.

The majority 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 actually reserves no estate or interest at all, and instead passes the entire fee simple estate to the grantee. CP 149.

COYLE has not signed any document giving away her right to her real property.

Mr. Montgomery and the Court have created documents stating that the legal description in Auditors File #419539 is "hereby reformed" to be for the WestHalf (W1/2) of Section 5. CP 094-095. However, COYLE requested a certified copy of Auditors File #419539 from Tim Gray, Auditor for Stevens County, Washington. The September 15, 2010 copy clearly shows that it has NOT been reformed. CP 188-192.

The Court has acted under "color of law" to conspire to deprive COYLE of her rights that are protected by the United States Constitution and the Laws of the State of Washington. CP 145.

**United States Department of Justice
Civil Rights Division**

CONSPIRACY AGAINST RIGHTS

Summary:

Section 241 of Title 18 is the civil rights conspiracy statute. Section 241 makes it unlawful for two or more persons to agree together to injure, threaten, or intimidate a person in any state, territory or district in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the United States, (or because of his/her having exercised the same). Unlike most conspiracy statutes, Section 241 does not require that one of the conspirators commit an overt act prior to the conspiracy becoming a crime.

The offense is punishable by a range of imprisonment up to a life term or the death penalty, depending upon the circumstances of the crime, and resulting injury, if any.

Title 18, U.S.C., Section 241

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so

exercised the same;...

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

DEPRIVATION OF RIGHTS UNDER COLOR OF LAW

Summary:

Section 242 of Title 18 makes it a crime for a person acting under color of law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States.

For the purpose of Section 242, acts under "color of law" include acts not only done by federal, state or local officials within their lawful authority, but also acts done beyond the bounds of that official's lawful authority, if the acts are done while the official is purporting to or pretending to act in the performance of his/her official duties. Persons acting under color of law within the meaning of this statute include police officers, prison guards, and other law enforcement officials, as well as judges, care providers in public health facilities, and others who are acting as public officials. It is not necessary that the crime be motivated by animus toward the race, color, religion, sex, handicap, familial status or national origin of the victim.

The offense is punishable by a range of imprisonment up to a life term, or the death penalty, depending upon the circumstances of the crime, and the resulting injury if any.

Title 18, U.S.C., Section 242

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, ... shall be fined under this title or imprisoned not more than one year or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping, aggravated sexual abuse, or attempt to commit

aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of ten years or for life, or both, or may be sentenced to death.

No. 8 No Motion was either filed or granted to Amend the Pleadings that were filed on July 8, 2008 CP 001-031 to include Reformation Of Easement. However, the Court granted Reformation of Easement on April 20, 2010. CP 105-114.

This is in direct violation of **CR 15(a)** which states in pertinent part: If a party moves to amend a pleading, a copy of the proposed amended pleading, denominated "proposed" and unsigned, shall be attached to the motion. If a motion to amend is granted, the moving party shall thereafter file the amended pleading pursuant to rule 5, serve a copy thereof on all other parties.

No. 9 Civil Procedure 13.2 Preliminary Injunctions states in pertinent part: Because an injunction is an extraordinary equitable remedy, mere inconvenience or speculative injury is not enough to justify issuing the order. The successful applicant must meet three prerequisites: First, a clear legal or equitable right. Second, a well-grounded fear of immediate invasion of that right. Third, that the acts complained of have or will result in actual and substantial injury.

The BUTLERS never presented any proof that they have a recorded easement on the COYLE parcel. The first prerequisite was not met. The Preliminary Injunction should not have been granted.

No. 10 **CR 65(b)** INJUNCTIONS states in pertinent part: Temporary Restraining Order may be granted without written or oral notice to the adverse party or his attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and (2) the applicants attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons

supporting his claim that notice should not be required.

The BUTLERS alleged that they have an express easement over and across the present lane road, however, they have not been granted an easement. Proof consists of verified and demonstrated evidence and not opinion, especially opinion unsupported by fact law and evidence. Ex 204.

No. 11 The Court violated **CR 36(a)** which states:

(a) Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request.

The Court made a "finding" without fact that was not for the pending action only. RP 342-343. No "written request" was served upon COYLE.

ER 401 DEFINITION OF "RELEVANT EVIDENCE"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable than it would be without the evidence.

Plaintiffs' Ex(s) 43-45 were objected to as well as Mr. Montgomery's line of questioning COYLE in order to get himself recused.

RP 4-5, 120-131

No. 12 At 4:45pm, on the eve of the Preliminary Injunction Hearing, Mr. Montgomery filed a Memorandum with the trial court. In said Memorandum was an unauthenticated photo with a hand written date of 1960 on it. COYLE later proved that it was a 1968 photo and Mr. Montgomery stipulated to that fact RP 120-131. COYLE believes that Mr.

Montgomery entered the forged aerial photo in an attempt to mislead the court as a tactical advantage to get the court to enter the Preliminary Injunction at that time. Subsequently at the two day trial, Mr. Montgomery entered a business card of Christine Titus, who was not a party to this trial, as a tactical advantage to get court to recuse Mr. Montgomery and Mr. Lang of affixing the 1960 date on the photo. RP 153-158.

COYLE believes that this violated her rights under:

RCW 9A.72.020 Perjury in the first degree.

- (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under oath required or authorized by law.
- (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor's mistaken belief that his statement was not material is not a defense to a prosecution under this section.
- (3) Perjury in the first degree is a class B felony.

RCW 9A.60.020 Forgery.

- (1) A person is guilty of forgery if, with intent to injure or defraud:
 - (a) He falsely makes, completes, or alters a written instrument or;
 - (b) He possesses, utters, offers, disposes of, or puts off as true a written instrument which he knows to be forged.

RCW 9A.72.150 Tampering with physical evidence.

- (1) a person is guilty of tampering with physical evidence if, having reason to believe that an official proceeding is pending or about to be instituted and acting without legal right or authority, he:
 - (a) Destroys, mutilates, conceals, removes, or alters physical evidence with intent to impair its appearance, character, or availability in such pending or prospective official proceeding; or
 - (b) Knowingly presents or offers any false physical evidence.
- (2) "Physical evidence" as used in this section includes any article, object, document, record or other thing of physical substance.

RPC 3.4 Fairness to opposing party and counsel.

A lawyer shall not:

- (a) unlawfully alter a document having potential evidentiary value. A lawyer shall not counsel or assist another person to do any act;
- (b) falsify evidence, counsel or assist a witness to testify falsely.

RP 121-131, 150-159, 273-277, 342-343.

No. 13 The court was aware that COYLE had instituted a formal investigation into the matter, of the forged aerial photo, by the WSBA.

RP 122. The Court impeded the state agency investigation when it recused Mr. Montgomery and Mr. Lang without required proof. The Court alleged that someone at the Stevens County Conservation District put the 1960 date on the 1968 photo RP 121-131, 342-343.

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.

The investigation should be remanded back to the Washington State Bar Association so that they may complete a thorough investigation.

The court violated **CR 36(a)** which states:

- (a) Requests for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request

RPC 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of

another;

(b) committ a criminal act that reflects adversely on the lawyers honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the adminstration of justice;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

(i) commit any act involving moral turpitude or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law, whether the same be committed in the course of his or her conduct as a lawyer or otherwise, and whether the same constitutes a felony or misdemeanor or not, and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disiplinary action, nor shall acquittal of dismissal thereof preclude the commencement of a disciplinary proceeding.

No. 14 CR 54(e) states in pertinent part: The attorney of record for the prevailing party shall prepare and present a proposed form of order or judgment not later than 15 days after the entry of the verdict or decision, or at any time as the court may direct.

The last day of trial was June 15, 2009. The Notice of Presentation of the Proposed Findings/Judgment/Injunction was not filed until December 4, 2009. This tactical delay was unreasonable in length and was an act of bad faith.

No. 15 A) First, lines 12-13, adding an *(s)* to easement for utilities. The language in the deeds only refers to one (1) easement for utilities and said easement runs along Corkscrew Canyon Rd. Second, the language in lines 14-18 *SUBJECT TO: An easement for road purposes for ingress... a Washington Corporation* is neither contained in the BUTLER nor the COYLE deeds. Third, the language in lines 18-20 *SUBJECT TO:*

easement reserved in Statutory Warranty Deed... in the description above is not contained in the BUTLER deed. Fourth, the language in lines 21-22 *SUBJECT TO: easements, covenants, reservations... as of this date* is not contained in either the Parker or BUTLER deeds. These assumptions, assertions and insertions are not predicated on the deeds of record.

B) The general language contained in the deeds is Westerly and Easterly not specific language of "*West*" and "*East*." Changing the language in the deeds changes the land that was actually conveyed.

C) There was no proof offered of "*unrecorded real estate contracts*." This was supposition and theory unsupported by evidence.

D) The present lane road is not referred to as "*access road*" on the map included in Auditors File #419539. This finding is contrary to the evidence.

E) "*Based upon the Emerson survey, COYLE went upon the property of BUTLER and placed fence posts and fencing material and invaded BUTLERS' property and easement rights.*" COYLE erected a fence totally contained within her legal deeded boundary line and did not "invade BUTLERS' easement as no easement of record exists for BUTLER.

F) Auditors File #419539 is a stand alone easement document for the EastHalf (E1/2) of Section 5. This 1973 document has gone unchallenged for over 37 years. Neither BUTLER nor COYLE relied upon this

document when purchasing their properties. And more importantly, as of September 15, 2010 this easement document has not been "reformed" to be for the WestHalf (W1/2) of Section 5 CP188-192 is a certified copy from Tim Gray Auditor of Stevens County, Wa. G) The Court approved the fence post at the Preliminary Injunction Hearing. COYLE cannot control the fact that BUTLER continues to drive closer and closer to the post.

No. 16 This finding flies in the face of the fact that COYLE cannot be found to have trespassed on land that is legally deeded to her. RP 320. **RCW 19.36.010** Contracts, etc. void unless in writing.

RCW 64.04.010 Conveyances and encumbrances to be by deed.

No. 17 The deeds of record clearly do not call for fencing restrictions.

RCW 19.36.010 Contracts, etc., void unless in writing. **RCW 64.04.010** Conveyances and encumbrances to be by deed. Ex 201-204.

Posting ones property with no trespassing signs is a right that is protected under the First Amendment of the U.S.C. which protects and guarantees the right to freedom of religion, freedom of expression (including speech, press, assembly, association and belief) from governmental interference. In addition, sign restrictions were never addressed at trial. CP 151-152.

A Motion was neither filed nor granted to Amend the Pleadings to

include fencing restrictions, violating **CR 15(a)**. CP 109.

The BUTLERS never produced a recorded easement document granting them an express easement on the COYLE property violating **RCW 7.40.020** as they never showed a clear legal or equitable right.

And most importantly, **RCW 65.12.720** together with **RRS 10717**, both clearly state that the court does not have the authority to change the original recorded deeds and, that nothing shall be done or ordered by the court which shall impair the title or other interest of the purchaser, holding a certificate for value and in good faith without his or their written consent.

No. 18 RCW 4.64.030 Entry of judgment - Form of judgment summary. (2)(b) If the judgment provides for the award of any right, title, or interest in real property, the first page must also include an abbreviated legal description of the property in which the right, title, or interest was awarded by the judgment, including lot, block, plat, or section, township, and range, and reference to the judgment page number where the full legal description is included, if applicable; or the assessor's property tax parcel or account number, consistent with **RCW 65.04.045(1)(f)** and (g).

All of this required information is omitted. CP 105.

No. 19 The Court erred when it chose to ignore what constitutes as a monument. 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.

The Kesinger, case is exactly on point to the instant case. The original conveyances only refer to present lane road. No instrument exists that establishes the road, including the width. As in Kesinger, the centerline of the road cannot be mathematically ascertained from any document of record. Additionally, as in Kesinger, the Court must hold that the courses and distances in the legal description must control and the road is not a monument. CP 034-037, 047-055, RP 314-316.

No. 20 RCW 5.40.0.0 Pleadings do not constitute proof. Pleadings sworn to by either party in any case shall not on trial, be deemed proof of the facts alleged therein, nor require other or greater proof of the adverse party.

No proof was presented at trial that the 1973 easement document for the EastHalf (E1/2) of Section 5 has a "scriveners error."

The dirt road contained entirely on the COYLE parcel has no direct ties to bearing or azimuth and distance between other monuments of record, to perpetuate any point or line of survey Ex 203, 204 It is not mathematically ascertainable from any document of record and therefore does not constitute as a monument pursuant to Kesinger v. Logan, 113 Wn.2d 320, 779 P.2d 263 (1989). Ex 203, Ex 204 and Ex 205.

BUTLER'S expert, witness Thomas Todd, opined at trial that Scott Valentine's re-establishment of the NW Section corner was inaccurate "So he came up with, I think about 32 feet longer than that." RP 62.

The Court, in its oral findings, stated its decision was primarily based

upon Mr. Todd's trial testimony, which stated in pertinent part:

"Unfortunately here it was off. The greater weight of this evidence convinces me very clearly that Mr. Valentine was off. He did the best he could with all of these mile-long distances over hill and dale that you have to do to go over in order to proportion a missing point, but in doing so, he was off about 32 feet. And it all came together in a sort of 'aha' moment for me when Mr. Todd showed in his demonstrative exhibit what happens if you move everything over 32 feet." RP 327.

"Well, because of the scrivener's error in Exhibit 4, and because of the lost northwest property corner in Section 5 that Mr. -- that Mr. Valentine proportioned and came out 32 feet to the bad. And so, the -- the BUTLERS are entitled to reformation... RP 330.

Thus, the cited testimony begs the question, if the Court's reliance was premised on Mr. Todd's testimony that Mr. Valentine was off 32 feet, yet now he opines that Mr. Valentine was correct, how can the deeds and the easement be reformed? CP 117. Mr. Valentine's survey was correct. COYLE'S position prevails. However the Court alleged Mr. Valentine's survey was not correct, as such, then Mr. Todd was required to record his survey pursuant to the applicable laws to reflect the NW section corner was off. Yet, Mr. Todd has never taken such action. CP 055-068.

No. 21 The Court failed to consider the facts presented by COYLE CP 032-041, 243-250, 169, 178, EX 201-209. A certified copy of the 1973 easement document was presented evidencing that it has not been reformed as stated by the court CP188-192. As a bona fide purchaser, COYLE was not given constructive notice of any of the allegations that the BUTLER'S

are contending and therefore has a superior interest in the property CP 065-067, 032-041. RP 312, 318. The Definition of "contempt of court" under RCW 7.21.010 (1)(b) is: Disobedience of any lawful judgment, decree, order or process of the court. It was not "lawful" to take away all of COYLE'S rights and then compel her to agree to "reform" all of the legal, recorded documents in the register. Bedrock Washington law concurs that reformation is the proper remedy only when the parties involved have reached definite and explicit agreement to do so. In the only reformation case presented by BUTLER 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."

No. 22 CP 394-425 this motion and affidavit are supported by facts, law, and evidence. BUTLER and the court are relying once again on "scrivener's errors" and "verbal approval." The argument is contrary to the facts, law and evidence. This abuse of color of law should not be tolerated.

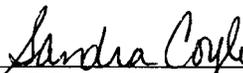
COYLE has the right to "Fundamental Justice" CP 403-404.

IV. CONCLUSION

Based on the foregoing reasons, COYLE respectfully requests that the Division III. Court of Appeals: 1) reverse the trial courts entire decision in favor of COYLE as accurate laws were not applied and laws were not applied properly; 2) order immediate removal of all clouds against

COYLE'S title; 3) award immediate reimbursement for all attorney fees, all costs, treble damages for trespass, mental and emotional damages, damages for loss of use of property, pecuniary damages for wrongful enjoyment and reimbursement of judgements plus interest, damages and additional costs and damages on the \$1,491.83 that was paid under duress; 4) prosecution for fraud, perjury, forgery, tampering with physical evidence, impeding a state investigation, clouding of COYLE'S title, violation of the Rules of Professional Conduct, willfully depriving or conspiring to deprive COYLE of her rights that are protected under the United States Constitution and the laws of the State of Washington; 5) order immediate removal of encroachments on the COYLE parcel of the shed BUTLER built that is out of compliance with Stevens County building code setbacks and the phone line that has been installed on COYLE'S parcel, together with a \$500.00 fine per day said encroachments remain; 6) remand the investigation of the 1968 aerial photo back to the Washington State Bar Association for a thorough formal investigation; 7) and any other awards that the Court of Appeals deems appropriate as a means of fundamental justice.

Dated this 25th day of March, 2011.


SANDRA COYLE, Appellant.

DECLARATION OF SERVICE

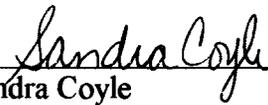
The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on March 25th, 2011, I arranged for service of the foregoing 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 25th day of March, 2011.



Sandra Coyle