

**FILED**

JUN 17 2011

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 291987-III

COURT OF APPEALS, DIVISION III

OF THE STATE OF WASHINGTON

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CHRISTOPHER G. BUTLER, et. al.,

Respondents

v.

SANDRA L. COYLE,

Appellant.

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BRIEF OF RESPONDENTS'

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WSBA No. 12377

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## **ASSIGNMENTS OF ERROR**

Respondents Butler do not assign error to the Trial Courts' Decisions and Judgments. Because Respondents strongly disagree with Appellant Coyle's characterization of alleged errors and issues, they are reframed herein.

### **ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Where substantial evidence demonstrated that the "present lane road" was a call to a monument in the parties' deeds, did the Trial Court err in giving that call to a monument precedence over the conflicting metes and bounds description? (Assignment 1)

2. Where substantial evidence demonstrated that the "present lane road," had been in existence since 1961, a date prior to the original deeds creating a boundary with reference thereto, and where the centerline of that road could be established with mathematical certainty, did the Trial Court err in finding that the centerline of the "present lane road" was the intended boundary between the parties' properties? (Assignment 1)

3. Where Coyle did not object to the admission of the testimony of expert witness Tomas E. Todd concerning the location of the boundary

line, can Coyle raise such objection for the first time on appeal? (Assignment 1)

4. Where substantial evidence demonstrated that the Easement contained a scrivener's error, did the Trial Court err in reforming the Easement to reflect the true legal description? (Assignment 2)

5. Did the Trial Court's reformation of the Easement and parties' deeds violate the Statute of Frauds? (Assignment 2)

6. Where substantial evidence demonstrated that the intended boundary line was the "centerline of the present lane road," which could be established with mathematical certainty, did the Trial Court err in reforming the metes and bounds boundary descriptions in the parties' deeds to conform to that line? (Assignment 2)

7. Where substantial evidence demonstrated that the "present lane road" was created as an access easement to the Butlers and Coyle properties, did the Trial Court properly conclude that the road was an easement mutually benefitting the parties/ properties? (Assignment 3)

8. Where Coyle obstructed the Butlers' road beginning in April, 2008, through August, 2008, was Butlers' action for Temporary Injunction and Complaint for Declaratory Relief, Reformation of Deeds; Slander of Title

and For Injunctive Relief filed July 8, 2008 barred by the Statute of Limitations? (Assignment 4)

9. Where substantial evidence showed that Coyle erected a fence on Butler's property as well as across the easement road, did the Trial Court properly conclude that Coyle had committed common law trespass? (Assignment4)

10. Where substantial evidence showed that Coyle had trespassed on Butlers' property and blocked the roadway access to their home, that Coyle intended to install her fence down the centerline of the "present lane road" if the court determined that to be the boundary, did the Trial Court properly grant Butlers permanent injunctive relief? (Assignment 5)

11. Where the Washington State Bar Association Office of Disciplinary Counsel, of its own volition, deferred Coyle's complaint against Attorney Montgomery due to pending litigation, did the Trial Court obstruct a state agency investigation by a) admitting evidence showing that neither Montgomery nor his agent forged a date on an aerial photo as claimed by Coyle, and b) admitting evidence as to the correct date of the photo in order to correct the record? (Assignment 6)

12. Where deeds in Coyle's chain of title describe the east boundary as the "*centerline* of present lane road" and where that road was visible and clearly in use, did Coyle lack notice, either actual or inquiry, that the road center was the boundary?

13. Where Butlers contended that the "centerline of the present lane road" was the true boundary line, and that the "present lane road" was a monument, was the action required to be brought under RCW 58.04.020 (pertaining to lost boundaries)? (Assignment 8)

14. Did the Trial Court's action in denying Coyle's Motion for Reconsideration violate the federal criminal statute prohibiting criminal conspiracies to violate civil rights? (Assignment 8)

15. Where Coyle did not argue, at trial or in her Motion for Reconsideration, that the boundary dispute should be brought pursuant to RCW 58.04.020 (pertaining to lost boundaries), but rather raised such issue for the first time in later Contempt proceedings to enforce the Trial Court's Judgment, did she waive such argument? (Assignment 8)

16. Where substantial evidence demonstrated that Coyle violated the Permanent Injunction by obstructing the entrance to Butlers' access roads with "No Trespassing" signs intended to deter visitors and invitees from

traversing the road, did the Trial Court properly find Coyle in Contempt and order her to remove the signs?

17. Where substantial evidence demonstrated that Coyle had not complied with the Trial Court order to obtain and record a corrected survey reflecting the centerline of the “present lane road” as the boundary within 30 days, did the Trial Court properly find Coyle in Contempt and enter a Judgment ordering Coyle to pay the Butlers’ costs to obtain and record such survey?

## STATEMENT OF THE CASE

This case involves a boundary line and easement dispute. Appellant Sandra Coyle (Coyle) and Respondents Christopher G. Butler and Kerri S. Butler, husband and wife (Butler), are owners of adjoining property located in Tum Tum, Stevens County, Washington. Butler and Coyle can both trace their title history back to a common grantor, Reforestation, Inc., a Washington Corporation (Reforestation). Reforestation acquired its common ownership by virtue of a Statutory Warranty Deed dated June 26, 1967 and recorded July 12, 1967 under Auditor's File No. 384202 (Ex. 1).

### Butler Ownership and Title History

Respondents Butler own real property located at 5583 Corkscrew Canyon Road, in Stevens County, Washington, legally described as follows:

That part of the N 1/2 of Government Lot 4 of Section 5, Township 27 North, Range 40 East, W.M., in Stevens County, Washington, lying East of LaPray-Bridge Road No. 590.

**EXCEPT that part thereof lying Westerly of center line of present lane road, the center line of which is described as follows:**

Commencing at a point on the North line of said Lot 4, which is South 89°29' East, 941.25 feet from the Northwest corner of said Lot 4, thence South 26°11'54" West

410.93 feet; thence South 52°28'59" West, 340.6 feet to the center of LaPray Bridge Road No. 590, *and reserving to the vendor, its successors or assigns easement and rights of way over prior and existing roads and easements for utilities.*

**SUBJECT TO Provisions, conditions, easements, restrictions and/or reservations of record.**

Assessor's Tax Parcel No. 2411800.

(Ex. 10; emphasis added).

Reforestation originally sold the Butler property to Paul E. Parker and Janet J. Parker (Parker) by virtue of an *unrecorded* real estate contract fulfilled in the form of a Statutory Warranty Deed that was executed on October 12, 1967, but not recorded until January 17, 1974 (Ex. 5). Before the unrecorded contract was paid off and the fulfillment Statutory Warranty Deed recorded, Reforestation executed an EASEMENT, entitled "Exhibit A" on April 18, 1973 that was recorded on April 24, 1973 under Auditor's File No. 419539 (Ex. 4).

The legal description of the Parker Statutory Warranty Deed reads as follows:

That part of the N 1/2 of Government Lot 4 of Section 5, Township 27 North, Range 40 East, W.M., in Stevens County, Washington, lying East of LaPray-Bridge Road No. 590.

**EXCEPT** that part thereof *lying Westerly of center line of present lane road*, the center line of which is described as follows:

Commencing at a point on the North line of said Lot 4, which is South 89°29' East, 941.25 feet from the Northwest corner of said Lot 4, thence South 26° 11'54" West 410.93 feet; thence South 52° 28'59" West, 340.6 feet to the center of LaPray Bridge Road No. 590, *and reserving to the vendor, its successors or assigns easement and rights of way over prior and existing roads and easements for utilities.*

**SUBJECT TO Provisions, conditions, easements, restrictions and/or reservations of record.**

(Ex 5; emphasis added.)

The Parkers sold their property to Neuman by real estate contract and statutory warranty deed (Ex. 6 & 7), Neuman quitclaimed to Potter (Ex. 8), Potter quitclaimed to Peone (Ex. 9), and finally Respondents Butler acquired title from Peone by virtue of a Statutory Warranty Deed dated July 6, 2004 and recorded July 23, 2004 under Auditor's File No. 2004 0008249 (Ex. 10). Each of these contracts and deeds included language making the conveyance subject to a reservation "*reserving to the vendor, its successors or assigns easement and rights of way over prior and existing roads and easements for utilities*" and "[E]asements, covenants, reservation, restrictions and conditions of record."

### **Coyle Ownership and Title History**

Appellant Coyle owns real property located at 5571 Corkscrew Canyon Road, legally described as follows:

That part of the N 1/2 of Government Lot 4, in Section 5, Township 27 North, Range 40 East, W.M., in Stevens County, Washington, lying East of LaPray-Bridge Road No. 590.

**EXCEPT that part thereof lying Easterly of the centerline of present lane road, the centerline of which is described as follows:**

Commencing at a point on the North line of said Lot 4, which is South 89°29' East 941.25 feet from the Northwest corner of said Lot 4; thence South 26°11'54" West 410.93 feet; thence South 52°28'59" West 340.6 feet to the center of LaPray Bridge Road No. 590.

**SUBJECT TO:** Those items specifically set forth on Exhibit "A" attached hereto.

(Ex. 14; emphasis added).

Reforestation originally sold the Coyle property to George B. Woodbury and Joanne L. Woodbury, husband and wife (Woodbury), by virtue of an *unrecorded* real estate contract fulfilled in the form of a Statutory Warranty Deed that was executed on August 8, 1968, but not recorded until January 17, 1974 (Ex. 11). Again, before the unrecorded contract was paid

off and the fulfillment Statutory Warranty Deed recorded, Reforestation executed an EASEMENT entitled "Exhibit A" on April 18, 1973 that was recorded on April 24, 1973 under Auditor's File No. 419539 (Ex. 4).

The legal description in the Statutory Warranty Deed from REFORESTATION to Woodbury identifies the property as "BB-4" and reads as follows:

That part of the North Half (N ½) of Government Lot 4, in Section 5, Township 27 North, Range 40 East, W.M., lying East of LaPray-Bridge Road No. 590 in Stevens County, Washington. *And reserving to the vendor, its successors or assigns easements and rights of way over prior and existing roads and easement for utilities.*

**EXCEPT** that part thereof lying Easterly of the centerline of present lane road, the centerline of which is described as follows:

Commencing at a point on the North line of said Lot 4, which is South 89°29' East 941.25 feet from the Northwest corner of said Lot 4; thence South 26°11'54" West 410.93 feet; thence South 52°28'59" West 340.6 feet to the center of LaPray Bridge Road No. 590, and reserving to the vendor, its successors or assigns easement and rights of way over prior and existing roads and easements for utilities.

(SUBJECT TO: See attached addendum)

(Ex. 11; italics added.)

Woodbury sold their interest in the Coyle property to Fifield by virtue of a Statutory Warranty Deed dated June 30, 1996 and recorded July 19, 1996 under Auditor's File No. 9607583. This Statutory Warranty Deed was made

SUBJECT TO: An Easement for road purposes for ingress and egress, over and across all roads presently existing or heretofore reserved by placed of record, or already of record within the above described property, and reserving to the Grantor herein rights of ingress and egress for itself and its assigns over the easement hereby granted, and the terms, covenants and provisions thereof: Recorded April 24, 1973 under Auditor's No. 419539 in Volume 226, page 543 from Reforestation, Inc., a Washington corporation.

SUBJECT TO: Provisions contained in Statutory Warranty Deed recorded January 14, 1974 under Auditor's No. 425582 in Volume 2, Page 810 and reads as follows

*Reserving to the vendor, its successors or assigns easements and rights of way over prior and existing roads and easement for utilities.*

*Unrecorded easement for access to the property to the North along the lane road described in the description above.*

(Ex. 12; italics added.) The easement referenced in this deed "Recorded April 24, 1973 under Auditor's No. 419539" is the Exhibit A EASEMENT by Reforestation (see Ex. 4). Fifield sold to Coyle by virtue of a Real Estate Contract dated March 27, 2007 and recorded April 2, 2007 under Stevens County Auditor's File No. 2007 0003451 (re-recorded on August 15, 2007 under Stevens County Auditor's File No. 2007 0009469 to correct the legal

description) (Ex. 13), and Statutory Warranty Deed dated March 27, 2007 and recorded September 9, 2007 under Stevens County Auditor's File No. 2007 0010934 (Ex. 14).

### **The Reforestation Easement**

As noted *supra*, the original Reforestation conveyances in both the Butler and Coyle chains of title were executed before, but recorded after, Reforestation executed an EASEMENT, entitled "Exhibit A" on April 18, 1973 that was recorded on April. 24, 1973 under Auditor's File No. 419539 (Ex. 4). That EASEMENT provides:

REFORESTATION, INC., a Washington corporation, for value received does hereby grant to the owners of record, and to those purchasers under contract whose deed from Reforestation will become of record, in severalty, and upon the same tenure as their interest appear of record, and their successors and assigns, of each and every part of;

The East Half (E ½) of Section 5, Township 27 North, Range 40 E.W.M., Stevens County, Washington, EXCEPT for the East Half (E ½) Northeast Quarter (NE 1/4), Northwest Quarter (NW 1/4).

, more particularly described on the attached map marked Exhibit A, attached hereto and made a part hereof.

and their successors and assigns, an easement for road purposes for ingress and egress, over and across all roads presently existing or heretofore reserved by the grantor herein in deeds executed and to be placed of record, or already of record within the above described property. Said easement to

be for the benefit of and appurtenant to each and every part of the subject legal description.

*Reserving to the Grantor herein rights of ingress and egress for itself and its assigns over the easement hereby granted, for the benefit of and appurtenant to all of the subject legal description, presently standing of record in the name of the grantor herein, and each and every part thereof, and lands not in the name of the grantor herein but to whom easements for ingress and egress have been given.*

(Underscore and italics added.) The EASEMENT includes a reference to “BB PROPERTY” in the upper left hand corner of the first page and also expressly incorporates an attached map. The BB properties on the Exhibit A map all lie totally within the West Half (W ½) of Section 5, Township 27 North, Range 40 E.W.M., Stevens County, Washington (Ex. 4). Thus, on the face of the document, there is a conflict between the legal description (East Half (E ½) of Section 5) and the actual location of the property (West Half (W ½) of Section 5). The Trial Court found this to be a scrivener’s error (Finding of Fact 3.3, CP 309; RP 79-80; 98-99) and reformed the EASEMENT to reflect the actual location of the property. Butlers now own parcel BB-3, and Coyle now owns parcel BB-4, as depicted on the Exhibit A EASEMENT map.

The “*present lane road*” referred to in each parties’ deed description is shown as the dividing line between parcels BB-3 and BB-4 (Ex. 4). At

trial, the parties stipulated that the “present lane road” had been in the same location since September 9, 1961 as depicted in the Washington State Department Transportation aerial photo, Ex. 22 (RP 10; *see also* Exs. 18, 22, 23 & 24).

### **Record of Survey and Discrepancies**

In October of 2007 Coyle contracted the services of Todd J. Emerson, PLS, (Emerson) to survey her real property, specifically, the boundary line between her property and that of Butler (RP 13). Emerson discovered a discrepancy between the location of the existing centerline of the “present lane road” and the metes and bounds description in both the Butler and the Coyle deeds defining the common boundary line between the parties’ real properties (RP 22). The BUTLER property description refers to their West Boundary as the centerline of “present lane road” and the COYLE property description refers to her East Boundary as the centerline “present lane road” (Exs. 10 & 14).

The Emerson survey graphically shows the edges and general location of the “present lane road” (not the center line thereof) and Emerson’s opinion as to the actual location of the metes and bounds description. However, the metes and bounds description of Emerson’s survey, as conceded by Emerson

at trial (RP 42), differs from the Butler and Coyle deeds in that it does not extend to the center of LaPray Bridge Road [now Corkscrew Canyon County Road] as an endpoint as described in those deeds, and it totally cuts off the “present lane road” (Exs. 10, 14 & 20) rather than sets the boundary at the centerline. Emerson testified that the deeds were poorly written, there was a conflict within the individual deed descriptions, and that he did not know how to resolve the ambiguity (RP 23-24; 26, 37-38; 52-53).

Emerson said that he had relied on a Record of Survey dated July 8, 1982 (Ex. 19) conducted by Scott Valentine which re-established a lost corner (the Northwest corner of Section 5), by a method known as “proportioning in;” he used that re-established corner as his starting point (RP 16-18; 51). However, as demonstrated by the testimony of, and exhibit prepared by, Thomas E. Todd, PLS, a surveyor with 27 years experience, the re-established corner appeared to be off about 32 feet from the corner used by the person who created the metes and bounds description (Ex. 21). Todd testified that if the metes and bounds line were shifted approximately 32 feet to the West, toward the Coyle property, it would put the boundary line on the “present lane road” as it is depicted in the aerial photographs (Ex. 22, 23 & 24). This shift would have the boundary line end in the center of LaPray

Bridge Road as described in the metes and bounds portion of the boundary description in the deed (RP 89-91). This analysis provided an explanation as to the inconsistency between the deed call to the centerline of the “present lane road” and the metes and bounds description as surveyed by Emerson. (Todd did note that there was still a discrepancy and recommended a survey of the center line and new legal description (RP 71)).

Although Emerson testified that he actually had surveyed the centerline of the “present land road,” he did not include that surveyed centerline on his survey map, and he had “no reason” to explain why he did not do so (RP 35-36). He did state that the “present lane road” was a sufficient monument, that he would have no problem establishing the centerline thereof (RP 27, 31) and that he had sufficient information in his survey notes to reform his survey of the deed description to reflect the surveyed centerline of the existing “present lane road” as the boundary (RP 40).

Both surveyors agreed that the boundary descriptions within the deeds were ambiguous (RP 26, 59), both agreed that a road could be considered a monument (RP 25, 27 ; 50-51; 58; 72), and both agreed that it was possible to locate [with mathematical certainty] the centerline of the “present lane

road” (RP 31,73-75). Todd gave his opinion that the boundary between the Coyle and Butler property should be the centerline of the present existing road and that the metes and bounds description should be disregarded; that the call to the monument takes precedence over the metes and bounds call (RP 71).

Despite the discrepancies as to the boundary location, and without resolving them, Emerson recorded his Survey on February 5, 2008. Based on the survey, Coyle began fencing her property in April, 2008 (RP 247). She went upon the Butler property and placed fence posts and fencing material across the “present land road” (which serves as Butler’s driveway) and on Butler’s land with the intent to enclose the road as part of her property (Exs. 28, 29, 32; RP 186-187; 194, 222). The Butlers were unable to use their driveway to access their home until they obtained a Preliminary Injunction ordering Coyle to remove the fence from the road and their property (RP 120-121; 186-87; 194). At trial, Coyle testified that she intended to fence her boundary according to the lines in the Emerson Survey (Ex. 20) and would cut off the Butler’s use of the “present land road” (RP 116-17.) Further, if the trial Court set the boundary as the centerline of the present lane road, she would place her fence on that line up the middle of the road (RP 120).

Butlers filed a Complaint for Declaratory Relief; Reformation of Deeds; Slander of Title; and for Injunctive Relief on July 8, 2008 (CP 1-31) and obtained a Preliminary Injunction, to restrain Coyle from building the fence on August 5, 2008 (RP 120-21 ). Trial was held on May 12, 2009 and June 15, 2009 and both parties were represented by Counsel (CP 307). Findings of Fact and Conclusions of Law (CP 307-333) and Reformation of Easement, Reformation of Deeds, Permanent Injunction and Judgment (CP 334-34) were entered on April 20, 2010. Defendant's Motion in Support of Motion for Reconsideration [sic.] was filed April 30, 2010 and an Order Denying Defendant's Motion for Reconsideration was entered by the Trial Court on June 1, 2010. Notice of Appeal was filed by Coyle July 1, 2010. An Order Finding Defendant in Contempt of Court and Judgment was entered on November 5, 2010, and Coyle filed a Motion to Amend Notice of Appeal on November 8, 2010 seeking review of that Order and Judgment as well.

### **ARGUMENT**

Appellant Coyle seeks review of the Trial Court's Findings of Fact and Conclusions of Law and Reformation of Deeds, Permanent Injunction and Judgment. She challenges the Trial Court's Order Denying Defendant's

Motion for Reconsideration as well as the Order Finding Defendant In Contempt of Court and Judgment. Much of her Brief is convoluted and incoherent; she cites numerous irrelevant statutes and principles, and she makes many unsubstantiated and/or frivolous claims.

Essentially, this case can be filtered down to whether the Trial Court's Findings are supported by substantial evidence, and in turn, whether those Findings support the Trial Court's Conclusions of Law and Judgment. *Ridgeview Props. v. Starbuck*, 96 Wn.2d 716, 719, 638 P.2d 1231 (1982) (citing *Holland v. Boeing Co.*, 90 Wn.2d 384, 390, 583 P.2d 621 (1978)). Evidence is substantial if it is sufficient to persuade a "fair-minded person of the truth of the declared premise." *Fred Hutchinson Cancer Research Ctr. v. Holman*, 107 Wn.2d 693, 712, 732 P.2d 974 (1987) (citing *Nichols Hills Bank v. McCool*, 104 Wn.2d 78, 82, 701 P.2d 1114 (1985)). When a trial court makes findings of fact from conflicting evidence and holds that they are supported by substantial evidence, the reviewing court will not disturb those findings. *Leonard v. Wash. Emp., Inc.*, 77 Wn.2d 271, 272, 461 P.2d 538 (1970); cf. *Fisher Props., Inc. v. Arden-Mayfair, Inc.*, 115 Wn.2d 364, 369-70, 798 P.2d 799 (1990) (stating that the rationale for deference to the factual findings of a trial court is based on the ability of the trial court to observe

witness demeanor and evaluate credibility). As the following will illustrate, the Trial Court's Findings and Conclusions are more than amply supported by substantial evidence and the Trial Court properly applied the law.

**1. The Trial Court Properly Determined That The Centerline Of The "Present Lane Road" Was The Boundary Between The Parties' Properties.**

In the present case, the evidence at trial clearly showed that there was an internal conflict between the boundary descriptions in both the Butler and Coyle deeds. The metes and bounds description did not match the "centerline of the present lane road" (RP 22, 37-38, 52-53). Thus, the Trial Court was faced with determining which of the two lines – the metes and bounds or the "centerline of the present lane road" was the intended boundary. The Trial Court concluded that the "present lane road" was a monument, and that the centerline of that road was the boundary.

The oldest method of describing land is by the use of natural or artificial monuments or boundaries, such as streams, roads, and railroads. *See generally* 3 American Law Of Property § 12.112 (A. J. Casner ed. 1952). In this case, the centerline of the existing "present lane road" was used in both the Butler deed and the Coyle deed.

A cardinal rule of interpretation is that a call to a monument takes precedence over an inconsistent call of either a course or distance. This is

true in both original government surveys and later private surveys. See *Camping Comm'n of Pacific Northwest Conf. of Methodist Church v. Ocean View Land, Inc.*, 70 Wn.2d 12, 421 P.2d 1021 (1966) (high tide line adopted as boundary); *Staaf v. Bilder*, 68 Wn.2d 800, 415 P.2d 650 (1966) (location of monuments in subdivision); *Neeley v. Maurer*, 31 Wn.2d 153, 195 P.2d 628 (1948) (monuments in plat of town); *Olson v. City of Seattle*, 30 Wash. 687, 71 P. 201 (1903) (monuments in subdivision).

In *Bullock v. Yakima Valley Transp. Co. et al.*, 108 Wash. 413, 184 P. 641 (1919) a call in a deed to the South line of a graveled roadway as then used, being a monument, was held to control a description by metes and bounds which would carry it beyond. And in *Gerald L. Ray, et al. v. King County*, 120 Wn. App. 564, 86 P.3d 183 (2004)(an action to quiet title to a strip of real property over which a railroad once ran) the court held that railroad tracks may serve as a monument for determining a boundary line even if the track was laid after the deed was executed, if it was subsequently erected with the intent that it mark the boundary line established by the deed.

In order for a monument to be a valid link between the description and the boundary in question, that monument must have either been: (a) already in place at the time of the execution of the deed, or (b) placed at, or soon after, the execution of the deed. See *Matthews v. Parker*, 163 Wash.

10,14, 299 Pac. 354 (1931); *Fairwood Green Homeowners v. Young*, 26 Wn. App. 758, 614 P.2d 219 (1980). The “present lane road” is a monument, and was in place when the legal descriptions for the Butler and Coyle properties were created (Exs. 5, 11, 22-24; RP 10).

Once sufficient evidence to prove the monument was introduced, the burden of proof shifted to Coyle to disprove the monument. *See State v. Shepardson*, 30 Wn.2d 165, 191 P.2d 286 (1948); *Lappenbusch v. Florkow*, 175 Wash. 23, 26 P.2d 388 (1933); *San Juan County v. Ayer*, 24 Wn. App. 852, 604 P.2d 1304 (1979). No such evidence was presented.

Coyle misrepresents the evidence at trial and the Trial Court’s Findings of Fact and Conclusions of Law when she asserts that the Trial Court’s decision was based on the “unsupported assumptions” of one of the expert witnesses, land surveyor Mr. Todd. Using an illustrative drawing (Ex.21), Todd showed that the discrepancy between the two descriptions in the deeds could be reconciled if the 1981 Valentine survey, re-establishing a lost corner by a method called ‘proportioning,’ was off by about 35 feet (RP 65-67). Coyle argues that Todd had a duty to record a corrected survey if he believed the Valentine survey was incorrect (Appellant’s Brief at 48). This assertion is basically irrelevant – Todd was not a party to the case and owes no duty to either Coyle or Butlers to record a new survey. Coyle’s argument

appears to challenge the weight the Trial Court gave Todd's testimony (RP 327). An appellate court should not weigh the evidence, judge the credibility of the witnesses, or substitute its judgment for that of the trial court. *Washington Beef, Inc. v. Yakima County*, 143 Wn. App. 165, 177 P.3d 162 (2008) (citing *In re Marriage of Greene*, 97 Wn. App. 708, 714, 986 P.2d 144 (1999)). Moreover, the Trial Court's decision is not solely dependent upon the Valentine survey – the court determined that the intended boundary was that set forth in the deed – a call to the monument of the centerline of the “present lane road” rather than a metes and bounds description. Todd was not a party to the case and any such alleged duty is irrelevant to the proceedings herein.

Substantial evidence supports the Trial Court's decision: the parties' stipulated that the “present lane road” has not changed location since 1961 (RP 10) and the aerial photographs confirmed that fact (Exs. 22-24). This 1961 date *precedes* the dates Reforestation originally severed the Woodbury (1968) and Parker (1967) parcels, thereby creating the boundary as the centerline of the existing “present lane road” (Exs. 5 & 11). That road is also depicted as the dividing line between lots BB-4 (Coyle) and BB-3 (Butler) on the map attached to and incorporated by reference in the Reforestation EASEMENT deed creating and granting the easement for road purposes, for

ingress and egress, over and across all roads presently existing or heretofore reserved by the grantor herein (Ex. 4).

Coyle's surveyor, Emerson, and Surveyor Todd agreed that the boundary descriptions within the deeds were ambiguous (RP 26, 59), both agreed that a road could be considered a monument (RP 25, 27, 50-51, 58 & 72), and both agreed that it was possible to locate [with mathematical certainty] the centerline of the "present lane road" (RP 31,73-75). Emerson testified that he had in fact surveyed the centerline of the road; he retained his notes of that survey but he did not show such line on his map. He offered no explanation as to why (RP 27, 31, 35-36, & 41). Emerson also stated that the parties' predecessors intended a road to be the dividing line between the properties (RP 27). Todd gave his opinion that the boundary between the Coyle and Butler property was the centerline of the existing present road, that the metes and bounds description should be disregarded, and that the call to the monument takes precedence over the metes and bounds call (RP 71).

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. The centerline of the "present lane road" is the common boundary of the Butler and Coyle properties, as it is a description with

reference to a monument which controls over the metes and bounds description.

A "boundary" is the dividing line between two parcels of land. The boundary lines comprising the four sides of a piece of property are identified by various descriptive elements, such as monuments, courses and distances, area, or by a combination of such elements. A "call" is the general term used to describe any or all of the aforementioned descriptive elements used to identify boundary lines. The term "monument" means a permanent natural or artificial object on the ground which helps establish the location of the boundary line called for. Natural monuments include such objects as mountains, streams, or trees. *Artificial monuments consist of marked lines, stakes, roads, fences, or other objects placed on the ground by man.* If the monument has width, the general rule is that the boundary is the center line of the monument. A "course" is the direction of a line run with a compass or transit and with reference to a meridian. "Distance" is a horizontal measurement in feet or "chains" -- a former surveyor's tool which was checked for deviation in length against a standard kept at the local county seat. A "tie" is a measurement between two points such as two monuments, for example, the distance between a tree and a building or road.

*DD&L, Inc. v. Burgess*, 51 Wn. App. 329, 332, fn. 3, 753 P.2d 561 (1988)

(italics and bolding added).

In construing a description in a deed the Court should consider the circumstances of the transaction between the parties and then read and interpret the words used in the deed in light of these circumstances. *DD&L, Inc. v. Burgess*, 51 Wn. App. 329, 335, 753 P.2d 561 (1988) (citing *Hirt v. Entus*, 37 Wn.2d 418, 224 P.2d 620 (1950); *Roeder Co. v. Burlington*

*Northern, Inc.*, 105 Wn.2d 269, 714 P.2d 1170 (1986)). "[W]hat are the boundaries is a question of law, and where the boundaries are is a question of fact." *Id.* (quoting *Rusha v. Little*, 309 A.2d 867, 869 (Me. 1973); *Texas Co. v. Andrade*, 52 S.W.2d 1063 (Tex. Civ. App. 1932)).

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 or area. 6 G. Thompson § 3044; *Matthews v. Parker*, 163 Wash. 10, 299 P. 354 (1931). Where it is shown by competent evidence that a monument does not accord with a survey or plat, the monument as established on the ground must control. *Martin v. Neeley*, 55 Wn.2d 219, 347 P.2d 529 (1959). If the property is resurveyed, the resurvey must rediscover where the original surveyors placed the boundaries rather than determine where new and modern surveys would place them. *Staff v. Bilder*, 68 Wn.2d 800, 415 P.2d 650 (1966); *Thein v. Burrows*, 13 Wn. App. 761, 537 P.2d 1064 (1975).

*DD&L v. Burgess, supra*, 51 Wn. App. at 334-35; *see also Bullock v. Yakima Valley Transp. Co. et. al., supra*, 108 Wash. 413 (a call in a deed to the South line of a graveled roadway as then used, being a monument, was held to control a description by metes and bounds which would carry it beyond).

In *Burgess*, the court concluded that the physical location of a subsequently-constructed railroad track referenced in a deed controlled over a conflicting description by distance calls in the same deed, noting "[T]o interpret the words, 'from the center line of the . . . railroad,' as referring to the center of the track, is to strengthen the descriptive part of the deed by

fixing an easily recognized monument. . . . The words ‘center line of the railroad’ refer to the center of the track, and indicate the track as a monument which aids in determining a certain boundary.” *DD&L, Inc. v. Burgess*, 51 Wn. App. at 335 (quoting *Peoria & P.U. Ry. v. Tamplin*, 156 Ill. 285, 294-95, 40 N.E. 960, 962 (1895) (italic added) and citing W. Robillard & L. Bouman, *Surveying and Boundaries* § 26.11 (5th ed. 1987) (a road as constructed becomes the monument and controls).

The authority relied on by Coyle, *Kesinger v. Logan*, 113 Wn. 2d 320, 779 P.2d 263 (1989) is readily distinguishable. In *Kesinger* no deed in the record chain of title actually conveyed the canal and right of way alleged to be the boundary line. Instead, the deeds merely referenced a contract to construct the canal. That lack of conveyance by deed was fatal to one landowner’s argument that the canal right of way constructed under the referenced contract was the boundary line. Thus, the court concluded that the “West right of way line” was not a monument capable of being mathematically ascertained because there was “no deed from the original landowners conveying a right of way that would establish the true width of the right of way, . . . the ‘West right of way line’ is not a point capable of being mathematically ascertained.” If nothing was actually conveyed, it could not be ascertained. 113 Wn.2d at 329. Furthermore, Coyle’s argument

that the fact that the Woodbury deed references an unrecorded easement for access to the property to the north is an indication that the road is entirely on the Coyle property (Appellant's Brief at 25) completely ignores the express language in both the Woodbury and Parker deeds that the boundary is the *centerline* of the road (Exs. 5 & 11).

In view of the foregoing, the Trial Court did not err in concluding that the centerline of the "present lane road" was a monument and that such centerline was the intended boundary between the Coyle and Butler properties, and substantial evidence and the law supports that determination.

**II. The Trial Court Properly Reformed the Reforestation Easement and the Parties' Deeds To Reflect The True Boundary and Easement Road.**

Although difficult to discern, Coyle's argument appears to be that the Trial Court's Reformation of the Deeds and EASEMENT violated the Statute of Frauds (Appellant's Brief at 25-26). Coyle cites no authority supporting her argument that a Trial Court's order is subject to the Statute of Frauds. Moreover, RCW 65.12.720 pertains to changes upon the registers of title and is not applicable. Her argument is devoid of merit.

In the case of an easement, the conveyance does not have to establish the easement's actual location; only the servient estate must be described in

sufficient legal terms. *Wilhelm v. Beyersdorf*, 100 Wn. App.836, 999 P.2d 54 (2000); *see Berg v. Ting*, 125 Wn.2d 544, 886 P.2d 564 (1995); *see also Kalinowski v. Jacobowski*, 52 Wash. 359, 100 P. 852 (1909) (if a right of way is entered upon and used, the way becomes definite and fixed even though it may have been indefinite in its description). A court has equitable power to reform an instrument if there is clear, cogent and convincing evidence of a mutual mistake or a unilateral mistake coupled with inequitable conduct. The party seeking reformation has to show only that the parties agreed to accomplish a certain objective and that the instrument was insufficient to execute their intention. *Wilhelm v. Beyersdorf, supra*, 125 Wn.2d at 843.

The evidence at trial, supplied by both Coyle's surveyor, Emerson, and Butlers' expert witness, Todd, also a surveyor, was that the deed descriptions contained an irreconcilable conflict between the call to the "centerline of the present lane road" and the metes and bounds description. The Trial Court determined that the original grantors intended the centerline of the "present lane road" to be the boundary, and simply reformed the deeds to reflect that intent. As to the Reforestation EASEMENT, the Trial Court determined that a scrivener's error had occurred when the legal description referenced the East Half of Section 5 when in fact all the property in the attached map incorporated by reference was located in the West Half of

Section 5. This Finding was supported by documentary evidence as well as testimony (Ex. 4; Finding of Fact 3.3, CP 309; RP 79-80; 98-99). Such an error is the proper subject of reformation. *See Edwards v. Thompson*, 99 Wash. 188, 169 P. 327 (1917) (when the parties to a transaction intended that a mortgage should contain a certain description of land and by a mistake on the part of the one who drew it a part of the property was omitted, the party affected was entitled to have the instrument reformed).

**III. The “Present Lane Road” Is A Mutual Easement Benefitting Both The Butler And Coyle Properties And Coyle Unreasonably Obstructed That Road.**

As set forth in the Statement of the Case, *supra*, in the parties’ chain of title is an EASEMENT dated April 18, 1973 which was recorded on April 24, 1973 under Auditor’s File No. 419539 (Ex. 4). The Reforestation EASEMENT granted

“to the owners of record, and to those purchasers under contract whose deed from Reforestation will become of record, . . . and their successors and assigns, . . . an easement for road purposes for ingress and egress, over and across all roads presently existing or heretofore reserved by the grantor herein in deeds executed and to be placed of record, or already of record within the above described property. Said easement to be for the benefit of and appurtenant to each and every part of the subject legal description.

*Reserving to the Grantor herein rights of ingress and egress for itself and its assigns over the easement hereby granted, for the benefit of and appurtenant to all of the subject legal*

*description, presently standing of record in the name of the grantor herein, and each and every part thereof, and lands not in the name of the grantor herein but to whom easements for ingress and egress have been given.*

(Ex. 4.) The attached map reference in the body of the easement depicted the “present lane road” as dividing what is now the Butler and Coyle properties (Ex. 4). This EASEMENT both benefits and burdens the Coyle and Butler properties. In addition, various deeds that pre-date both Statutory Warranty Deeds to Coyle and Butler create an easement in favor of Butler and Coyle, through reservations of easements or making the conveyances subject to easements. The first is a Statutory Warranty Deed dated October 12, 1967, and recorded under Auditor’s File No. 425664 (Ex. 5) that reserves to the vendor, its successors and assigns “easement and rights of way over prior and existing roads and easement for utilities.” Second is a Statutory Warranty Deed dated June 30, 1996, and recorded under Auditor’s File No. 9607583 (Ex. 12) and other instruments of record that states that the parties properties are subject to “an easement for road purposes for ingress and egress, over and across all roads presently existing or heretofore reserved by, placed of record, or already of record. (See Exs. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, & 14).

In this case, Coyle erected a fence along her property line and then across the common easement road without leaving a gate or opening for the existing roadway; she completely obstructed the road, preventing the Butlers

from accessing their property (RP 186-87, 194; Exs. 28, 29, 31 & 32). The location of the Butlers' personal driveway is shown on the Survey of Emerson (Ex. 20).

Following the Preliminary Injunction issued by the Trial Court, Coyle removed most of her fence, but left a section and post within the right-of-way of the mutual easement. However, at trial, Coyle testified that she intended to fence her property in accordance with the boundary as shown on the Emerson survey, Exhibit 20, cutting off Butlers' use of the "present lane road" at their driveway and at Corkscrew Canyon Road (RP 116-17). She also testified that if the Trial Court established the boundary in the centerline of the road, she would put her fence in the middle of the road (RP 120).

The law regarding restraints on the use of easements was established in *Green v. Lupo*, 32 Wn. App. 318, 647 P.2d 51 (1982), wherein the court found that

"[a] servient owner is entitled to impose reasonable restraints on a right of way to avoid a greater burden on the servient owner's estate than that originally contemplated in the easement grant, so long as such restraints do not unreasonably interfere with the dominant owners' use" citing *Rupert v. Gunter*, 31 Wn. App. 27, 640 P.2d 36 (1982).

32 Wn. App. at 324; *see also Evich v. Kovacevich*, 33 Wn.2d 151, 162, 204 P.2d 839 (1949) (affirming order requiring removal of fence; whether an owner of land over which an easement exists may erect and maintain fences,

bars, or gates across or along an easement way, depends upon the intention of the parties connected with the original creation of the easement, as shown by the circumstances of the case, the nature and situation of the property subject to the easement, and the manner in which the way has been used and occupied); *Logan v. Brodrick*, 29 Wn. App. 796, 799-800, 631 P.2d 429 (1981) (affirming trial court's decision finding the Brodricks in contempt for positioning a fence so that it intruded into a portion of an easement roadway, impeding the flow of two-way traffic; the degree of use may be affected by development of the dominant estate).

Coyle also argues that she did not sign anything giving away her right to real property and therefore the Trial Court's determination that the Butlers have an easement in the "present lane road" violates the Statute of Frauds. Again, Coyle demonstrates a fundamental misunderstanding of the Statute. She cites no authority supporting such an argument. Nor does she specify any particular deed in the parties' chains of title that might fail to meet the requirements of the Statute. Therefore, her argument should be disregarded by this Court. *See 1000 Friends of Washington v. McFarland*, 159 Wn. 2d 165, 149 P.3d 616 (2006).

#### **IV. The Trial Court Properly Determined That Coyle Had Trespassed Upon Butlers' Property.**

“A person ‘is subject to liability to another for trespass, irrespective of whether he thereby causes harm to any legally protected interest of the other, if he intentionally . . . enters land in the possession of the other, or causes . . . a third person to do so.’ Restatement (Second) Of Torts § 158 (1965); see *Bradley v. American Smelting & Ref. Co.*, 104 Wn.2d 677, 681, 709 P.2d 782 (1985).” *Peters v. Vinatieri*, 102 Wn. App. 641, 655, 9 P.3d 909 (2000).

Coyle contends that she could not have trespassed on Butlers' property because she placed her fence on her land. This argument basically disputes the Trial Courts' findings of fact and legal conclusion as to the location of the boundary. As discussed, *supra*, substantial evidence supports the Trial Court's determination that the boundary was the centerline of the “present lane road.” Trial testimony and photographic evidence clearly showed that Coyle crossed that boundary with her fence, obstructing the road and interfering with Butlers' access to their property (RP 179-81, 181-87; 194; Exs. 28, 29, 32).

The Trial Court properly found common law trespass and, as damages, ordered Ms. Coyle to have Mr. Emerson perform a re-survey of the metes and bounds description by surveying the center line of the “present lane

road,” and recording the re-survey to correct the previous Survey recorded February 5, 2008 under Auditor’s File No. 2008 0001134, and show the centerline of the “present lane road” on the face of the re-survey as the common boundary between the Coyle and Butler properties (CP 325). Coyle does not dispute the measure of damages.

**V. The Trial Court Properly Granted Injunctive Relief.**

In the present case, the evidence is overwhelming that Coyle did in fact unreasonably obstruct Butlers’ access easement. Accordingly, injunctive relief, first in the form of the Temporary Restraining Order and Preliminary Injunction and then in the form of a Permanent Injunction, was proper.

The statutes dealing with the power of the Court to grant Injunctions generally are codified at RCW 7.40.010-.210. RCW 7.40.010 provides that Restraining Orders and Injunctions may be granted by the Superior Court, or by any judge thereof. RCW 7.40.020 sets for the grounds for issuance of an injunction:

When it appears by the complaint that the plaintiff is entitled to the relief demanded and the relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce great injury to the plaintiff; or when during the litigation, it appears that the defendant is doing, or threatened, or is about to do, or is procuring, or is suffering some act to be done in violation of the plaintiff’s rights

respecting the subject of the action tending to render the judgment ineffectual; or where such relief, or any part thereof, consists in restraining proceedings upon any final order or judgment, an injunction may be granted to restrain such act or proceedings until the further order of the court, which may afterwards be dissolved or modified upon motion. And where it appears in the complaint at the commencement of the action, or during the pendency thereof, by affidavit, that the defendant threatens, or is about to remove or dispose of his property with intent to defraud his creditors, a temporary injunction may be granted to restrain the removal or disposition of his property.

A trial court is vested with a broad discretionary power to shape and fashion injunctive relief to fit the particular facts, circumstances, and equities of the case before it. Great weight is given to the trial court's exercise of that discretion, and the decision to grant or deny an injunction is reviewed only for an abuse of discretion. *Brown v. Voss*, 105 Wn.2d 366 , 372, 715 P.2d 514(1986); *Holmes Harbor Water Co. v. Page*, 8 Wn. App. 600, 603, 508 P.2d 628 (1973).

Judicial discretion is a composite of many things, among which are conclusions drawn from objective criteria; it means a sound judgment exercised with regard to what is right under the circumstances and without doing so arbitrarily or capriciously. Where the decision or order of the trial court is a matter of discretion, it will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.

Whether this discretion is based on untenable grounds, or is manifestly unreasonable, or is arbitrarily exercised, depends upon the comparative and compelling public or

private interest of those affected by the order or decision and the comparative weight of the reasons for and against the decision one way or the other.

*State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971) (citations omitted).

A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. *State v. Rundquist*, 79 Wn. App. 786, 793, 905 P.2d 922 (1995) *review denied*, 129 Wn.2d 1003, 914 P.2d 66 (1996).

One who seeks relief by a temporary or permanent injunction must show: (1) that he has a clear legal or equitable right, (2) that he has a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of are either resulting in, or will result in, actual and sustained injury to him. *Port of Seattle v. International Longshoremen's & Warehousemen's Union*, 52 Wn.2d 317, 324 P.2d 1099 (1958); *Tyler v. Van Aelst*, 9 Wn. App. 441, 443, 512 P.2d 760 (1973).

The criteria have been clearly established herein. Butlers had and continue to have a clear legal or equitable right not to have their easement

rights interfered with by Coyle. They had and continue to have a well-grounded fear of immediate invasion of that right, based upon Coyle's past acts in obstructing the road, and her stated intention of constructing a fence on her boundary line, which happens to be the centerline of the Butlers' easement road, the "present lane road." (RP 116-17; 120). The acts of Coyle have resulted in, or will result in actual and sustained injury to the Butlers (RP 186-87; 194) in that they are unable to access their property if the road is obstructed. The Butlers were entitled to both the preliminary injunction and the permanent injunction prohibiting Coyle from fencing off their easement.

In addition, the Trial Court properly exercised its discretion and fashioned a reasonable remedy by requiring any fencing to be five and one half feet (5 1/2') West of the center of the West swale of the "present lane road," and on the West side of any trees that may be at the five and one half foot (5 1/2') mark. This enables Butler to clear snow from the road during the Winter, and reduces the chance of future altercations with Coyle over any potential damage to her fence caused by snow removal (RP 198-99, 204-05, 211, 213, 215; Exs. 34, 35, 37, 38, 40, 41).

**VI. The Trial Court Did Not Impede A “State Agency Investigation” Nor Did Mr. Montgomery Or Any Person Acting On His Behalf Forge A Date On Any Aerial Photo Used As Evidence In The Preliminary Injunction Proceedings.**

Prior to the issuance of the preliminary injunction, Butlers’ attorney, Chris A. Montgomery, filed a Legal Memorandum In Support of Motion For Preliminary Injunction on August 4, 2008. Attached to that memorandum was an aerial photo with the date “1960” written on it (Ex. 43). Upon investigation Coyle discovered that the aerial photo was in fact taken in 1968. Coyle filed a Washington State Bar Association Grievance Against A Lawyer in which she accused Mr. Montgomery of forging the date on the photo exhibit for use in the Preliminary Injunction hearing (Ex. 43). Because the grievance was related to underlying litigation, the Office of Disciplinary Counsel deferred its investigation (Ex. 44).

At trial, Coyle admitted she accused Montgomery of forging the date and that she believed the forged photo influenced the Trial Court’s decision to grant the Preliminary Injunction (RP 121-123). In order to correct the record as to the date of the photo and to clarify its influence on the court, the Trial Court admitted Exhibits 43 and 44 (RP 124-25) overruling Coyle’s counsel’s objection as to relevance. Montgomery also clarified that Butlers were relying on three aerial photos taken in 1961 (Ex. 22), 1970 (Ex. 23) and

2006 (Ex. 24) in seeking the Permanent Injunction, not the erroneously marked 1960 photo (RP 125).

Testimony was also heard from Al Lang, a forester who routinely provides expert testimony in the area of aerial photography interpretation for Montgomery. Lang testified that in 2008 Mr. Montgomery asked him to get aerial photos of the properties at issue in the Butler/Coyle litigation. Lang went to the Soil Conservation Service and a woman working there retrieved the photo at issue, told Lang it was taken in 1960 and she wrote the date on the photo (RP 151-52). When it was later discovered that the date was wrong, Lang returned to the Soil Conservation Services and spoke with a Christine Titus who confirmed that it was her handwriting on the photo. She gave Lang her business card and wrote "1960" on it to demonstrate that the handwriting matched (Ex. 44; RP 153-54). Lang denied that either he or Montgomery put the date on the photo (RP 156). No objection was made to this testimony.

The Trial Court found that the photo had not been forged by either Montgomery or Lang and that the photo did not have a material effect on any issue in controversy at the Preliminary Injunction hearing or at Trial (Findings of Fact 5.2 & 5.3 CP 316). Clearly, substantial evidence supports these Findings. Despite this evidence, Coyle persists in her claims that

Montgomery submitted a “forged” aerial photo in an attempt to mislead the court. Coyle has offered no evidence or proof, she makes blanket claims that criminal statutes RCW 9A.72.020, RCW 9A.60.020, and 9A.72.150 pertaining to perjury in the first degree, forgery and tampering with evidence have been violated (Appellant’s Brief at 40), and she accuses the Trial Court of impeding the Bar Association investigation. The Bar Association Office of Disciplinary Counsel decided to defer its investigation on April 13, 2009, *before* the Trial commenced on May 12, 2009 (Ex. 44). Again, Coyle’s claims are patently frivolous and completely without merit.

**VII. Coyle Was Not a Bona Fide Purchaser.**

Coyle did not argue that she was a bona fide purchaser at trial (CP 32-42) but raised the issue for the first time in her Motion for Reconsideration (CP 45-68). "A bona fide purchaser for value is one who without notice of another's claim of right to, or equity in, the property prior to his acquisition of title, has paid the vendor a valuable consideration." *Steward v. Good*, 51 Wn. App. 512-13, 754 P.2d 150 (1988) (quoting *Glaser v. Holdorf*, 56 Wn.2d 204, 209, 352 P.2d 212 (1960)).

"It is a well-settled rule that where a purchaser has knowledge or information of facts which are sufficient to put an ordinarily prudent man upon inquiry, and the inquiry, if followed with reasonable diligence, would lead to the

discovery of defects in the title or of equitable rights of others affecting the property in question, the purchaser will be held chargeable with knowledge thereof and will not be heard to say that he did not actually know of them. In other words, knowledge of facts sufficient to excite inquiry is constructive notice of all that the inquiry would have disclosed." (Citation omitted)

*Steward v. Good*, 51 Wn. App. at 513. In this case, Coyle's Corrected Real Estate Contract, recorded on April 2, 2007 (Ex. 13), on its face, described her Eastern boundary as the centerline of the "present lane road," as did her subsequent Statutory Warranty Deed recorded on September 19, 2007 (Ex. 14). These events occurred before Coyle obtained her survey or constructed her fence. Coyle's surveyor, Emerson, testified that he traced Coyle's deed and Butler's deed back to Reforestation (RP 14). The boundary descriptions referencing the "present lane road" and the easement references are in Coyle's chain of title (Exs. 4, 11 & 12). The parties stipulated that the "present lane road" has been in its current location since 1961 (RP 10). Butlers purchased their property in 2004 and use the "present lane road" as the driveway to their property (RP 186-87; 194). There is a mailbox at the intersection of the "present lane road" and Corkscrew Canyon Road, indicating the road is an access point to property (Exs. 28 & 31). Coyle had both actual and inquiry notice of the boundary. Coyle has presented no evidence that these facts were not available to her or that she was reasonably

diligent in investigating the facts on the ground or the deeds in her chain of title. Coyle is not a bona fide purchaser.

Furthermore, Coyle's allegation that the denial of her Motion for Reconsideration violated her rights under 18 USC §§ 241 & 242, the federal criminal statute pertaining to conspiracies to violate civil rights, is patently frivolous. No conspiracy has been charged and she has alleged no facts to support such a claim.

**VIII. Coyle Did Not Seek A Remedy Under RCW 58.04.020 At Trial Or On Reconsideration, But For The First Time In Response To The Contempt Proceedings. The Statute Does Not Apply To This Case.**

RCW 58.04.020 provides

(1) Whenever the boundaries of lands between two or more adjoining proprietors have been lost, or by time, accident or any other cause, have become obscure, or uncertain, and the adjoining proprietors cannot agree to establish the same, one or more of the adjoining proprietors *may* bring a civil action in equity, in the superior court, for the county in which such lands, or part of them are situated, and that superior court, as a court of equity, may upon the complaint, order such lost or uncertain boundaries to be erected and established and properly marked.

(Emphasis added). RCW 58.04.030 provides that the court may, in its discretion, appoint commissioners and RCW 58.04.040 provides for the apportionment of costs.

In this case, the parties did not contend that the boundary was lost, but rather disagreed as to the location of the boundary. Butler contended that the “present land road” was a monument, that the centerline of that road was the boundary, and that the centerline of that road could be established with reference to the centerline of LaPray Bridge Road as called for in the deed description. Butler’s boundary location was not dependent on establishment of a lost corner. Coyle contended that her metes and bounds survey was correct based on the corner re-established by Valentine in 1982. However, she did not contend that the corner was *currently* lost, she did not contend that the boundary was lost, nor did she request relief pursuant to RCW 58.04.020 et seq. at trial or in her Motion for Reconsideration. (CP 32-42; CP 45-68). *See Stewart v. Hoffman*, 64 Wn.2d 37, 390 P.2d 553 (1964); *Rushton v. Borden*, 29 Wn.2d 831, 190 P.2d 101 (1948). The allegations of the parties did not trigger the application of RCW 58.04.020 et. seq. This new theory was not raised at trial nor in Coyle’s Motion for Reconsideration. Rather, it was raised for the first time during post-judgment contempt proceedings (CP 142-232). Coyle is simply attempting to bootstrap a new issue for the first time on appeal. It has been waived. RAP 2.5.

## **IX. The Trial Court Properly Found Coyle In Contempt.**

In Washington, there are three grounds on which a court can rely when using its contempt powers:

(a) criminal contempt prosecuted under RCW 9.23.010; (b) civil contempt initiated under RCW 7.20.010 et seq; and (c) contempt proceedings resulting from the long-exercised power of constitutional courts (1) to punish summarily contemptuous conduct occurring in the presence of the court, (2) to enforce orders or judgments in aid of the court's jurisdiction, and (3) to punish violations of orders or judgments.

*State v. Boatman*, 104 Wn. 2d 44, 700 P.2d 1152 (1985) (citing *Keller v. Keller*, 52 Wn.2d 84, 86, 323 P.2d 231 (1958)). An appellate court will uphold a contempt finding as long as a proper basis can be found. *State v. Boatman*, 104 Wn. 2d at 46. A civil contempt arises from disobedience of a court order entered for the benefit or advantage of a party to a civil action, and the object of the proceedings is not to punish the offender but to coerce him into obeying the mandate of the court. *State v. Boren*, 44 Wn.2d 69, 265 P.2d 254 (1954).

The Trial Court entered its Findings of Fact and Conclusions of Law and Reformation of Easement, Reformation of Deed, Permanent Injunction and Judgment on April 20, 2010, reconsideration of which was denied on June 1, 2010. In part, as a remedy for Coyle's trespass, the Trial Court had ordered Coyle to have Mr. Emerson re-survey the property, using the

centerline of the “present lane road” as the boundary and to record the re-survey to correct the previous survey recorded February 5, 2008. The Judgment gave Coyle 30 days to do so or thereafter the Butlers “shall retain a surveyor to have the Emerson Survey corrected and re-recorded.” The Permanent Injunction prohibited Coyle from:

Interfering with the use of any portion of the existing easement road....

The installation of any gates, fences, ditches or other obstructions anywhere across any portion of the easement roadway....

The placement of “No Trespassing and/or Private Road – Keep Off” signs perpendicular to any portion of the easement road... so as to indicate the use of the easement road... would be trespassing, and

The installation of any gates, fences, ditches or other obstructions anywhere along the East Line of the Coyle property shall be West of the center of the West Swale of the “present lane road” at least five and one half feet (5 ½’). And on the West Side of any existing trees that may be located at the five and one half foot (5 ½’) distance.

(CP 334-343.)

On September 9, 2010, **70 days** after Reconsideration was denied, Butler filed a Motion and Declaration for an Order to Show Cause re: Contempt and Why a Judgment Should not be Entered For Cost of Resurvey (CP 119-137) and on September 10, 2010, an Order to Show Cause was filed (CP 140-41). Butlers submitted photographs of various “no trespassing” signs Coyle had erected at the entrance to the roadway. Butlers also

submitted evidence that Coyle had failed to have a corrected survey recorded, as well as evidence of the cost they would have to pay LANDTEK to conduct a survey of the centerline of the easement road. (CP 120-137).

On September 20, 2010, Coyle filed a Response Affidavit of Sandra Coyle Showing Cause Why There Has Been No Contempt of Court, On The Defendants Behalf And Why A Judgment Should Not Be Entered For Cost of Re-Survey (CP 142-232). This Affidavit basically sought to re-litigate the issues that had been previously decided at trial, or to raise new legal theories as to why the Trial Court erred in its original judgment (*Id.*).

A Hearing was held on September 21, 2010, at which Coyle appeared in person, pro se. After the Hearing and after “reviewing the entire Court File, including the Motion, Order to Show Cause and supporting materials filed by Plaintiff thereto,” the Trial Court Entered an Order Finding Defendant in Contempt; And For Entry Of Judgment and Judgment in the amount of \$3,825.00 on November 5, 2010. The Trial Court found that Coyle had violated Nos. 1,3, and 4 of the Permanent Injunction and ordered Coyle to immediately remove the three (3) signs located at the East end of her fence line right next to the driveway [“present lane road”]. The Court also found that Coyle had failed to have the Emerson Survey corrected and re-recorded, that more than 30 days had passed since the June 1, 2010 Order

Denying Reconsideration and it awarded Butlers a judgment in the amount of \$3,825.00 representing the cost to retain Bruce Larsen of LandTek to conduct the survey (CP 383-387).

The evidence showed that Coyle had refused to comply with the Trial Court's Order. The Trial Court entered the Contempt Order and Judgment upon a proper basis: to enforce orders or judgments in aid of the court's jurisdiction. The decision should be upheld.

**X. Other Alleged Errors**

1. Coyle has alleged no injury as a result of the time delay for the presentment of the Proposed Findings/Judgment and Injunction, nor did she note the matter for hearing. No error has been show.

2. Coyle argues that Butlers' suit was barred by the three-year statute of limitations, RCW 4.16.080, because the Butlers did not survey their property within three years of purchasing it. Until Coyle obstructed their driveway and fenced in a portion of their property, Butlers had suffered no actionable injury. Coyle obstructed the Butlers' road beginning in April, 2008, through August, 2008. Butlers filed their action for Temporary Injunction and Complaint for Declaratory Relief, Reformation of Deeds; Slander of Title and For Injunctive Relief on July 8, 2008. Generally, a

cause of action accrues at the time of injury. *See generally, Dempsey v. Seattle*, 187 Wash. 38, 59 P.2d 293 (1936). The Statute of Limitations is not a bar.

3. Coyle included in her Designation of Clerk's Papers her Motion to Stay Judgment Pending Review By The Court Of Appeals, Division III, filed November 9, 2010 (CP 388-390), and her Motion and Affidavit For An Order To Show Cause Why Judgment And Order Should Not Be Vacated (CP 3940425) filed on December 20, 2010. These matters were not appealed and therefore are not properly before this Court. Coyle filed her last Motion To Amend Notice Of Appeal on November 8, 2010, *prior to* either of the two matters referenced above.

### **ATTORNEYS FEES AND COSTS**

Pursuant to RAP 18.1, the Butlers request attorney fees and costs. The Respondents have endured countless hours and great expense pursuing their legal remedies at trial and, once again, in defending this appeal. Pursuant to RCW 4.84.185 the Butlers are entitled to recover attorney's fees from Coyle for this appeal. In addition, the Butlers request that they be awarded their costs for opposing this frivolous appeal pursuant to RAP 14.2 and 14.3.

## CONCLUSION

In view of the foregoing arguments and legal authorities, Respondents Butler respectfully request that the decision of the Trial Court be affirmed and Appellant's appeal be dismissed. Respondents also request attorney fees and costs.

**DATED** this 15<sup>th</sup> day of June, 2011.

Respectfully submitted



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