

73433-4

73433-4

No. 73433-4-1
IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION I

ARBOR VALLEY FARMS, LLC; JOHN ANTHONY HALL;
NANCY HALL; and JERALD HALL,

Defendants/Appellants,

v.

CONSOLIDATED MIDLAND, INC.,

Plaintiff/Respondent

BRIEF OF APPELLANTS

Wendy E. Lyon, WSBA #34461
Shata L. Stucky, WSBA #39963
RIDDELL WILLIAMS P.S.
1001 Fourth Avenue Plaza,
Suite 4500
Seattle, Washington 98154

Attorneys for Defendant/Appellant
John Anthony Hall

Michele K. McNeill, WSBA #32052
SKYLINE LAW GROUP PLLC
2155 112th Ave NE,
Bellevue, WA 98004

Attorneys for Defendants/Appellants

FILED
COURT OF APPEALS
STATE OF WASHINGTON
NOV 20 2011 PM 4:27

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. ASSIGNMENTS OF ERROR	3
III. STATEMENT OF THE CASE.....	5
A. The Property and Claims at Issue	5
B. Consolidated Midland’s Motion for Summary Judgment	6
C. The Halls’ Motion for Reconsideration	10
D. The Halls’ Motion to Vacate the Summary Judgment Order.....	15
IV. AUTHORITY AND ARGUMENT	18
A. The Superior Court Abused Its Discretion When It Refused to Vacate the Summary Judgment Order Based on an Irregularity in Obtaining the Order	19
1. Consolidated Midland’s failure to offer evidence supporting the legal descriptions is an irregularity pursuant to CR 60(b)(1)	20
2. The irregularities affect the integrity of the proceedings and justify vacating the Summary Judgment Order	22
B. The Superior Court Abused Its Discretion When It Refused to Vacate the Summary Judgment Order Based on Newly Discovered Evidence	25
1. The Halls diligently pursued the testimony of Mr. Jones and presented it at their earliest opportunity	26
2. The testimony of Mr. Jones would have defeated Consolidated Midland’s Motion for Summary Judgment on the issue of adverse possession	27
C. The Superior Court Abused Its Discretion When It Refused to Vacate the Summary Judgment Order Based on Another “Reason Justifying Relief” Under CR 60(b)(11).....	29
1. The Halls’ first attorney was grossly incompetent.....	29

TABLE OF CONTENTS

(continued)

	Page
2. The Superior Court erroneously denied the Motion for Reconsideration as untimely.....	31
3. The Superior Court denied the Halls' Motion to Vacate without holding a show-cause hearing.....	32
V. CONCLUSION.....	34

TABLE OF AUTHORITIES

Page

STATE COURT CASES

<i>Barr v. MacGugan</i> , 119 Wash. App. 43, 78 P.3d 660 (2003)	27
<i>Buckner, Inc. v. Berkey Irr. Supply</i> , 89 Wash. App. 906, 951 P.2d 338 (1998).....	24, 29
<i>Burmeister v. State Farm Ins. Co.</i> , 92 Wash. App. 359, 966 P.2d 921 (1998).....	27
<i>Crown Cascade, Inc. v. O'Neal</i> , 100 Wash. 2d 256, 668 P.2d 585 (1983).....	29
<i>Dunlap v. Wayne</i> , 105 Wash. 2d 529, 716 P.2d 842 (1986).....	27
<i>Emwright v. King Cnty.</i> , 96 Wash. 2d 538, 637 P.2d 656 (1981).....	30
<i>Flannagan v. Flannagan</i> , 42 Wash. App. 214, 709 P.2d 1247 (1985)....	16
<i>Gorman v. City of Woodinville</i> , 175 Wash. 2d 68, 283 P.3d 1082 (2012).....	25
<i>Howell v. Inland Empire Paper Co.</i> , 28 Wash. App. 494, 624 P.2d 739 (1981).....	21
<i>King Cnty. v. Farr</i> , 7 Wash. App. 600, 501 P.2d 612 (1972).....	21
<i>Marie's Blue Cheese Dressing, Inc. v. Andre's Better Foods, Inc.</i> , 68 Wash. 2d 756, 415 P.2d 501 (1966).....	26
<i>In re Marriage of Maddix</i> , 41 Wash. App. 248, 703 P.2d 1062 (1985).....	31
<i>Miller v. Anderson</i> , 91 Wash. App. 822, 964 P.2d 365 (1998).....	21, 25
<i>Mosbrucker v. Greenfield Implement, Inc.</i> , 54 Wash. App. 647, 774 P.2d 1267 (1989).....	17, 19
<i>State v. Keller</i> , 32 Wash. App. 135, 647 P.2d 35 (1982).....	29
<i>Thompson v. Schlittenhart</i> , 47 Wash. App. 209, 734 P.2d 48 (1987).....	21
<i>Tyrrell v. Hossfeld</i> , 3 Wash. App. 610, 476 P.2d 710 (1970).....	22
<i>Kennewick Irrigation Dist. v. 51 Parcels of Real Prop.</i> , 70 Wash. App. 368, 853 P.2d 488 (1993), review denied, 122 Wn.2d 1027 (1993).....	18

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

RCW 4.16.020	25
RCW 64.12.030	6

COURT RULES

CR 56	27
CR 59	13, 14, 23, 24, 29
CR 60	1, 2, 3, 4, 14, 16, 17, 18, 20, 23, 26, 27, 29, 30, 31, 32
RAP 5.2(e)	24, 29

I. INTRODUCTION

Defendants/Appellants John, Jerald, and Nancy Hall seek relief from an Order Granting Summary Judgment that purports to quiet title to two access roads adversely possessed by Plaintiff/Respondent Consolidated Midland, Inc.

After the Superior Court granted summary judgment in favor of Consolidated Midland on the adverse-possession claim, the Halls promptly filed a Motion for Reconsideration. When the Motion for Reconsideration was erroneously denied as untimely, the Halls filed a Motion to Vacate the Order Granting Summary Judgment under CR 60 pointing out (1) that the absence of any material in the record supporting the legal descriptions in the Order is an irregularity in the proceedings justifying relief and (2) that newly discovered evidence from a former owner of the property now owned by Mr. Hall shows that Consolidated Midland's use of the property at issue was neither hostile nor exclusive during the relevant time period.

The Superior Court denied the Halls' Motion to Vacate without even holding a hearing on the motion as required by CR 60(e)(2).

The Halls now appeal that ruling, seeking relief on three grounds. First, the Superior Court abused its discretion by rejecting the Halls' argument that relief from the Order is justified under CR 60(b)(1) due to an irregularity in the proceedings. Specifically, the record is void of any evidence supporting the legal descriptions in the Order Granting Summary Judgment and is also void of any materials showing where the access roads are located in relation to the parties' property boundaries.

As a result of these irregularities, the legal description that is set forth in the Order Granting Summary Judgment is both under- and over-inclusive. It simultaneously fails to provide the relief sought by Consolidated Midland (quieting title to the access roads) and quiets title to property to which Consolidated Midland made no claim (property indicated by the legal description provided in the Order Granting Summary Judgment that is outside the actual boundaries of the access roads).

The legal descriptions therefore provide no guidance to the parties. Without an accurate description of the property at issue and claimed to be adversely possessed, the parties are left unable even to install fencing around the perimeters of their respective properties. Moreover, the Halls have asserted counterclaims in the instant litigation that depend on the parties' property boundaries. For example, the Halls' counterclaim for timber trespass will depend, in part, on whether the timber at issue was located on the Halls' property or on property that Consolidated Midland claims to have adversely possessed. Without an accurate property description and survey, these counterclaims cannot be properly litigated.

Second, the Halls seek relief on the basis of CR 60(b)(3) because the Superior Court abused its discretion by rejecting the Halls' argument that the newly discovered testimony from a former owner of Mr. Hall's property—particularly in combination with the clerical mistakes of counsel and the subsequent error by the Superior Court in ruling that the Motion for Reconsideration was untimely—justified relief from the Summary Judgment Order.

And, finally, the Halls' seek relief on the basis that the Superior Court abused its discretion in denying relief from the Summary Judgment Order under CR 60(b)(11) where several factors combined to create extraordinary circumstances affecting the regularity of the proceedings.

The Halls respectfully request that the Court reverse the Superior Court's denial of their Motion to Vacate and vacate the Order Granting Summary Judgment.

II. ASSIGNMENTS OF ERROR

Assignment of Error No. 1:

The Superior Court abused its discretion when it refused to vacate the Summary Judgment Order based on an irregularity in obtaining the order under CR 60(b)(1).

Statement of Issue Pertaining to Assignment of Error No. 1:

Did the Superior Court abuse its discretion by rejecting the Halls' argument that the absence of any material in the record supporting the legal descriptions in the Summary Judgment Order or showing where the access roads were located in relation to the property boundaries constituted an irregularity that justified relief from the Order?

Assignment of Error No. 2:

The Superior Court abused its discretion when it refused to vacate the Summary Judgment Order based on newly discovered evidence under CR 60(b)(3).

Statement of Issue Pertaining to Assignment of Error No. 2:

Did the Superior Court abuse its discretion by rejecting the Halls' argument that the newly discovered testimony from a former owner of Mr. Hall's property combined with the clerical mistakes of counsel and

Superior Court's error in ruling that the Motion for Reconsideration was untimely justified relief from the Summary Judgment Order?

Assignment of Error No. 3:

The Superior Court abused its discretion when it refused to vacate the Summary Judgment Order based on another "reason justifying relief" under CR 60(b)(11).

Statement of Issue Pertaining to Assignment of Error No. 3:

Do the gross incompetence of the Halls' first attorney, the erroneous determination that the Motion for Reconsideration was untimely, and the Superior Court's failure to hold a show-cause hearing as required by CR 60(e)(2) combine to create extraordinary circumstances affecting the regularity of the proceedings such that relief from the Summary Judgment Order is justified under CR 60(b)(11)?

III. STATEMENT OF THE CASE

A. The Property and Claims at Issue

Mr. John Hall purchased a parcel of land in north King County at 13455 Woodinville-Redmond Rd. NE in 2012. (CP 123.) He purchased the property to create a doggy daycare business where customers could walk trails and allow their dogs off leash in a forest environment. (CP 12.) Maintaining the forested sections of the land and adding fencing around the perimeter is essential to using the property for the doggy daycare business. (CP 125.)

Consolidated Midland owns the property to the south and to the west of Mr. Hall's property. (CP 9–10, 14.) It operates a nursery on the land. (CP 9.)

Consolidated Midland filed this lawsuit in September 2014, seeking to quiet title through adverse possession to two access roads: Boundary #1 running east-west and Boundary #2 running north-south. (CP 9–13.) Although John Hall owns the property at 13455 Woodinville-Redmond Rd. NE, Consolidated Midland filed suit against Mr. Hall, his parents, Jerald and Nancy, and Arbor Valley Farms, LLC, a Washington limited liability company of which John, Jerald and Nancy are members. (CP 9.) The parties named in the Complaint as Defendants are referred to as “the Halls” in this brief.

Consolidated Midland claimed that it had used the access roads along Boundary #1 and Boundary #2 openly, hostilely, and notoriously for over 25 years, from a period starting in 1985 long before Mr. Hall purchased the property in 2012. (CP 11-12.)

In describing the access roads, Consolidated Midland stated only that the “access roads . . . run on defendants’ property,” attached an aerial photo to the Complaint to show the access roads, and estimated that the access roads were “approximately 25 feet wide.” (CP 11, 14.) The aerial photo depicted the access roads with a broad black line. (CP 14.)

Answering the Complaint, the Halls denied the adverse-possession claim as well as Consolidated Midland’s allegations regarding the legal description of the access roads. (CP 16 at ¶¶ 11 & 12.) The Halls also raised a number of counterclaims including a claim that Consolidated Midland “removed and damaged valuable property from the land, wrongfully caused waste and injury to the land, and wrongfully injured the personal property and improvements to the real estate on the land.” (CP 18.) The Halls also asserted a counterclaim for timber trespass under

RCW 64.12.030, which provides for treble damages where a person “cut[s] down, girdle[s], or otherwise injure[s], or carr[ies] off any tree, . . . timber, or shrub on the land of another person” (CP 19.) These counterclaims have not been stayed pending the appeal and continue to be litigated below.

B. Consolidated Midland’s Motion for Summary Judgment

Consolidated Midland moved for summary judgment on the issue of adverse possession in November 2014. (CP 21.)

Notably, Consolidated Midland did not introduce a survey of the properties and access roads at issue in support of its motion for summary judgment. (CP 26–52.) Instead, with respect to the location of the access roads and property boundaries, Consolidated Midland relied on:

(1) the Declaration of Andrej Suske, the general manager of the nursery, who referred to photos attached as exhibits and described the access roads as “approximately 25 feet” and “about 25 feet” (CP 31–39);

(2) the Declaration of Wolfgang Mueller, the President of Consolidated Midland, who referred to an aerial photo and three statutory warranty deeds conveying certain property to Consolidated Midland that were attached as exhibits (CP 40–48); and

(3) the Declaration of Susanne F. Foster, a former manager of the nursery, who referred to an aerial photo attached as an exhibit and described an access road along Boundary # 1 that was “about 12 feet to 15 feet wide” (CP 50 at ¶ 4) and an access road along Boundary # 2 that “was also about 12 feet to 15 feet wide” (*id.* at ¶ 5). (CP 49–52.)

The proposed order that Consolidated Midland submitted with its motion for summary judgment contained legal descriptions for the

property for which Consolidated Midland sought to quiet title. (CP 24.) But the materials Consolidated Midland submitted in support of its motion for summary judgment are silent as to the origin and accuracy of the legal descriptions of the property. (CP 21–52, 85–106.) Consolidated did not submit a survey to show the location of the access roads in relation to Consolidated Midland’s or Mr. Hall’s property boundaries. (CP 21–52, 85–106.) And none of the testimony or exhibits submitted by Consolidated Midland attest that the legal descriptions in the proposed order correspond to the access roads that are described and shown in the declaration exhibits. (CP 21–52, 85–106.)

The Halls’ opposition to Consolidated Midland’s motion for summary judgment primarily argued that Consolidated Midland’s use of the access roads was neither exclusive nor hostile and had not occurred for a period of 10 years as required for adverse possession. (CP 53–84.) The Halls’ submitted a number of materials to support their position, including aerial photos from 2002, 2005, 2007, and 2009 to show that Consolidated Midland’s encroaching uses were recent and corresponded with a recent expansion of the nursery’s operations. (CP 68–78.) The Halls also submitted a letter from the personal representative of the former owner of Mr. Hall’s property to Consolidated Midland that recounted how the former owner had given Consolidated Midland permission to use the access road, which contradicted Consolidated Midland’s testimony that the use was hostile. (CP 77.)

In its Reply, Consolidated Midland argued that materials submitted by the Halls constituted “inadmissible hearsay” and “unauthenticated evidence,” and sought to have them struck from the record. (CP 85–106.)

The Superior Court agreed. (CP 109–11.) And, having struck much of the evidence relied on by the Halls to oppose the motion, the Superior Court granted Consolidated Midland’s motion for summary judgment on January 26, 2015, holding that there were “no genuine issues of material fact.” (CP 110.)

To describe the property that was being “formally quieted” in favor of Consolidated Midland, the Superior Court adopted the legal description from Consolidated Midland’s proposed order. *Compare* CP 110–11 with CP 23–24. Nothing in the record attests to the origin or accuracy of the legal descriptions or establishes that they correspond to the location of the access roads at issue. (CP 21–52, 85–106.)

Moreover, a comparison between the legal description in the proposed order and the warranty deeds granting property to Consolidated Midland, shows that the Court quieted title to property that Consolidated Midland already owned. The warranty deeds convey “an undivided half interest in and to the following described right-of-way” in a certain “Parcel B,” described as follows:

Beginning at the SOUTHWEST QUARTER of Section 23, Township 26 NORTH, Range 5 EAST, W.M., in King County, Washington; running thence EAST 1320 feet, more or less, to the North and South Center Line of the WEST HALF of said Section 23; thence NORTH 660 feet to the true point of beginning; thence EAST 520 feet, more or less, to State Highway No. 2; thence NORTH along the WESTERN margin of said Highway **12 feet**; thence WEST 520 feet, more or less, to the point **12 feet** NORTH of the point of beginning; thence SOUTH **12 feet** to the point of beginning;

(CP 45, 47 (emphasis added).) The legal description in the Superior Court’s Order Granting Summary Judgment is as follows:

Beginning at the SOUTHWEST QUARTER of Section 23, Township 26 NORTH, Range 5 EAST, W.M., in King County, Washington; running thence EAST 1320 feet, more or less, to the North and South Center Line of the WEST HALF of said Section 23; thence NORTH 660 feet to the true point of beginning; thence EAST 520 feet, more or less, to State Highway 2 [the Woodinville-Redmond Road, SR 202]; thence NORTH along the WESTERN margin of said State Highway **25 feet**; thence WEST 520 feet, more or less, to the point **25 feet** NORTH of the point of beginning; thence SOUTH **25 feet** to the point of beginning;

(CP 24 (emphasis added).) By replacing “12 feet” with “25 feet,” the Order merely added 13 feet to the legal description of the property Consolidated Midland already owned. (*Id.*)

Thus, in addition to relying on a legal description that was not supported by the record or shown to correspond with the location of the access roads at issue, the Superior Court’s Summary Judgment Order purports to “quiet title” to land in which Consolidated Midland held a property interest without acknowledging the issue or explaining how Consolidated Midland could adversely possess property in which it already had permission to use. (*Id.*)

C. The Halls’ Motion for Reconsideration

The Halls filed a Motion for Reconsideration on February 5, 2015. (CP 109.) The motion primarily sought relief from the Order Granting Consolidated Midland’s Motion for Summary Judgment (“Summary Judgment Order”) on two grounds: (1) the absence of any basis for the legal description set forth in the Superior Court’s Order , and (2) the

discovery of new evidence that was not available before the hearing on the summary judgment motion. (CP 112–22.)

In support of the Motion for Reconsideration, the Halls offered the affidavits of Mr. Hall; Robert Winters, a professional land surveyor who had been retained by Mr. Hall to review the legal description in the Summary Judgment Order; and Keith R. Jones, the former owner of Mr. Hall's property. (CP 123–48.)

In his affidavit, Mr. Hall explained that he was the owner of the property and attached the Bargain and Sale Deed that showed him as Grantee and contained a legal description of the property he owned. (CP 124, 127–29.) The legal description had previously been included in the Halls' Answer to Consolidated Midland's Complaint. (CP 16 at ¶ 14.) Notably the legal description appears to except a certain 12 foot tract of land:

Except the portion thereof described as follows:

Commencing at the southwest corner of said section;
Thence east 1320 feet, more or less, to the north and south center line of the west half of said section;
Thence north 660 feet to the true point of beginning;
Thence east 520 feet, more or less, to State Highway No. 2;
Thence north along the west margin of said highway, **12 feet**;
Thence west 520 feet, more or less, to a point north of the point of beginning;
Thence south **12 feet** to the point of beginning.

(CP 129 (emphasis added)). Thus it seems likely that the deed describing Mr. Hall's property excludes the same 12-foot tract that is included in Consolidated Midland's deed as Parcel B (and therefore could not have

been acquired by Consolidated Midland through adverse possession), although this can only be ascertained with a survey.

Mr. Hall also explained that had “never seen a survey that show[ed] where the actual boundary lines are located between my property and Consolidated Midland’s property relative to the access roads along what Consolidated refers to as Boundary #1 and Boundary #2.” (CP 124.)

In response to discovery requests, the Halls had received “one survey from Consolidated Midland” but it did not “show the location of the access roads.” (CP 124 at ¶ 3.) Mr. Hall attached the survey to his declaration as Exhibit B. (CP 124, 130–31.) The survey had not previously been entered into the record, nor had any other survey. (CP 1–111.) The survey showed a 12-foot-wide tract of land bordering the parcel that is now owned by Mr. Hall to the south. (CP 124 at ¶ 4.) Mr. Hall is not “aware of anyone who can definitely say whether the road along Boundary #1 sits entirely on this 12 foot tract of land, which is not [his] land, or to the north which is [his] land, or to the south on Consolidated Midland’s property.” (CP 124.)

Mr. Hall attached photos to his declaration to show that the “access road along Boundary #2 does not run in a straight line and appears to be mostly on Consolidated Midland’s property.” (CP 124 at ¶ 5, 6, CP 132–35.) Mr. Hall also explained that a survey of the access roads and the property boundaries is necessary for him create his doggy daycare business that will require fencing around the perimeter of his property. (CP 125 at ¶ 7.)

The Affidavit of Robert Winters stated that he is “a professional land surveyor licensed to practice in the State of Washington” with “over 40 years of experience in land surveying.” (CP 146 at ¶¶ 1, 2.) He determined that the legal descriptions in the Summary Judgment Order “are not surveyable as written.” (CP 147 at ¶ 4.) He reviewed the declarations offered by Consolidated Midland to support its motion for summary judgment “[i]n attempting to rectify and correct the legal descriptions” and concluded that, even with that material, he could not “prepare a legal description.” (CP 147.)

The Affidavit of Keith R. Jones—the former owner of Mr. Hall’s property—that was submitted in support of the Halls’ Motion for Reconsideration rebutted Consolidated Midland’s evidence that its use of the access roads was exclusive and hostile for 10 continuous years. (CP 136–45.) Mr. Jones explained that his family owned a tree nursery on the property that is now owned by Mr. Hall from the 1950s until “2009 or 2010 when our business closed” and “routinely used the road to the south of our land (what Consolidated Midland refers to as Boundary #1 in this matter).” (CP 136–37 at ¶¶ 2–3.)

He stated that “sometime in 1995 or 1996” he gave the owner of Consolidated Midland’s property permission to “use the west side of my property (what Consolidated calls Boundary #2) for an access road.” (CP 137 at ¶ 4.) According to Mr. Jones and aerial photos attached to his affidavit from the King County Archive, “There was no access road along the west side (Boundary #2) until about 1995 or 1996. Before then, there was just a drainage ditch, . . . [and] there still was not much of an access

road along the west side of our property (Boundary #2) in 2002.”

(CP 137–38 at ¶¶ 2–3.)

The photos attached to Mr. Jones’s affidavit from the King County Archive show boundary lines, indicating that the access roads do not run in straight lines along the property boundaries and are located at least partly on the property owned by Consolidated Midland. (CP 140–43.)

Mr. Jones noted that “[w]ithout a survey, I cannot confirm or deny that any of the lines shown in this image are a true representation of the actual boundary lines.” (CP 138 at ¶ 7.)

Additionally Mr. Jones explained that he is a very difficult person to contact:

I do not use email and I do not have voicemail. I also did not own my family’s property, my mother did. She passed away in 2001 and the property was put into a trust for me and my brother in 2002 who were the only heirs. My brother passed away in 2009. I have also been undergoing treatment for cancer over the last four years and was very ill last Fall until just recently. I am surprised the Hall family was able to find me last week, but I am glad they did.

(CP 138 at ¶ 7.)

The Superior Court denied the Halls’ Motion for Reconsideration on March 6, 2015 on the basis that “it is not timely.” (CP 151.) The Motion for Reconsideration was filed on February 5, 2015, within ten days of the entry of the summary judgment ruling on January 26, 2015, as required by CR 59(b). (CP 109.) But it was not noted “to be heard or otherwise considered within 30 days after the entry of the judgment.” (CP 193.) Although the Superior Court did not explicitly state why the Motion for Reconsideration was untimely, it appears that the ruling was

based on the failure to properly note the motion for a hearing within 30 days under CR 59(b).

D. The Halls' Motion to Vacate the Summary Judgment Order

On March 17, 2015, the Halls moved for an order vacating the Superior Court's Summary Judgment Order on two main grounds: (1) relief from the Summary Judgment Order should be granted under CR 60(b)(1) because the lack of any survey or other instrument showing where the access roads are located in relation to the boundary lines constituted an irregularity in obtaining the order; and (2) relief from the Summary Judgment Order should be granted under CR 60(b)(3) because Mr. Jones's testimony constituted newly discovered evidence that justifies relief. (CP 152–63.)

To support their Motion to Vacate, the Halls relied on several materials, including the affidavits of Mr. Hall and Mr. Winters (the professional land surveyor that had been retained by Mr. Hall to review the legal description in the Summary Judgment Order) that were submitted in support of the Motion for Reconsideration; an amended affidavit of Mr. Jones (the previous owner of Mr. Hall's property); a supplemental affidavit of Mr. Hall; and a declaration of Michele K. McNeill, the attorney who represented the Halls on the Motion for Reconsideration and who was retained by the Halls just three days before the deadline for filing that motion. (CP 166–96.)

In his amended affidavit, Mr. Jones clarified that his family “used both access roads along Boundary #1 and Boundary #2 to reach the back sides of what is now the Hall property to remove trees and for maintenance of the land and the roads.” (CP 168 at ¶ 9.) According to

Mr. Jones, “The use of the access roads was not exclusive to Consolidated Midland until at least 2010 when [Mr. Jones] moved away.” (CP 168 at ¶ 9.) He also explained that when he met with the Halls’ attorney, Ms. McNeill, in February 2015, he “had a previous engagement and was not able to provide a complete statement about everything [he] knew about the properties in this case.” (CP 168 at ¶ 10.) On the same point, the declaration of the Halls’ attorney, Ms. McNeill, explained that, due to Mr. Jones’s unavailability, she was unable to obtain his full statement until after the Motion for Reconsideration was filed. (CP 192–93 at ¶ 2.)

Ms. McNeill also explained in her declaration that, while the Motion for Reconsideration was timely filed, the hearing for the Motion for Reconsideration was not noted for within 30 days of the Superior Court’s order due to a calendaring error, a mistake she would have caught had it not been for serious family matters she was dealing with at the time. (CP 193 at ¶ 3.)

Mr. Hall’s supplemental affidavit stated that he had obtained an aerial image from King County public records from 2009 that showed, contrary to the testimony of Mr. Suske that was relied on by Consolidated Midland to support its Motion for Summary Judgment, that Boundary Road #1 “does not run in a straight line” and did not directly connect to the Woodinville-Redmond Rd. NE (Highway 202) until after 2009. (CP 194–96.)

In conjunction with their Motion to Vacate, the Halls filed a Motion for Order to Show Cause on March 17, 2015, moving for the Superior Court to issue an order requiring Consolidated Midland to appear and show cause why the Motion to Vacate should not be granted.

(CP 164–65.) The Halls’ attorney, Ms. McNeill, informed the Superior Court that she would be out of the country and unavailable by phone or email from March 31, 2015 through April 14, 2015. (CP 149–50.)

Instead of ordering Consolidated Midland to appear at a show-cause hearing, the Superior Court requested opposition briefing from Consolidated Midland. (CP 197–210.) Consolidated Midland submitted its opposition to the motion to vacate on March 30, 2015, one day before counsel for the Halls left the country. (CP 197–210.) Without holding a show-cause hearing and without allowing the Halls to file a reply brief, the Superior Court denied the Halls’ Motion to Show Cause and Motion to Vacate on April 8, 2015, before the Halls’ counsel returned from her trip out of the country. (CP 211–12.) The Superior Court did not provide any explanation for the ruling. (CP 211–12.)

IV. AUTHORITY AND ARGUMENT

On appeal, a superior court’s denial of a motion to vacate judgment is reviewed for an abuse of discretion. *Flannagan v. Flannagan*, 42 Wash. App. 214, 223, 709 P.2d 1247, 1252 (1985). “The discretion is abused when based on untenable grounds or reasons.” *Id.*

The Superior Court offered no tenable grounds or reasons for denying the Halls’ Motion to Vacate, and indeed none exist. The Halls’ Motion to Vacate was based on CR 60(b)(1), (3), and (11), which state:

Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or the party’s legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order; . . .

(3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b); . . .

(11) Any other reason justifying relief from the operation of the judgment.

The Superior Court abused its discretion when it rejected, without explanation, the Halls' arguments that (1) the absence of any material in the record supporting the legal descriptions in the Summary Judgment Order or showing where the access roads were located in relation to the property boundaries constituted an irregularity that justified relief from the Order; (2) the newly discovered testimony from Mr. Jones combined with the clerical mistakes of counsel and Superior Court's error in ruling that the Motion for Reconsideration was untimely justified relief from the Order; and (3) that this is a rare case justifying relief under CR 60(b)(11).

A. **The Superior Court Abused Its Discretion When It Refused to Vacate the Summary Judgment Order Based on an Irregularity in Obtaining the Order.**

“Irregularities pursuant to CR 60(b)(1) occur when there is a failure to adhere to some prescribed rule or mode of proceeding, such as when a procedural matter that is necessary for the orderly conduct of trial is omitted or done at an unseasonable time or in an improper manner.” *Mosbrucker v. Greenfield Implement, Inc.*, 54 Wash. App. 647, 652, 774 P.2d 1267, 1270 (1989).

A party's failure to call a court's attention to an instrument which could significantly impact the proceedings may constitute an irregularity and, if the instrument affects the integrity of the proceedings, justifies granting relief from the judgment. *Id.* at 1270–71 (holding that failure to attach a lease to the complaint when the complaint relied upon the lease as

an exhibit was an irregularity when there was an arguable assertion of alteration that would have provided a valid defense, and probably would have warranted a vacation of judgment if the lease had been in the file at the time the trial court granted default judgment).

Similarly, the failure to inform the court that the relief sought, and subsequently granted, is without justification or effect justifies granting relief from judgment under CR 60(b)(1). *Kennewick Irrigation Dist. v. 51 Parcels of Real Prop.*, 70 Wash. App. 368, 371, 853 P.2d 488, 490 (1993) (holding that trial court abused its discretion in denying motion to vacate where it entered a judgment requiring payment by a party without learning that the party had already tendered payment of the amount sought in the complaint), *review denied*, 122 Wn.2d 1027 (1993).

1. Consolidated Midland's failure to offer evidence supporting the legal descriptions is an irregularity pursuant to CR 60(b)(1).

An irregularity pursuant to CR 60(b)(1) occurred in the instant case when Consolidated Midland failed to offer any evidence supporting the legal descriptions in its proposed order or showing where the access roads were located in relation to the property boundaries. The Halls objected to the validity of the legal descriptions at the hearing on Consolidated Midland's summary judgment motion and in their Answer to the Complaint (CP 16 at ¶¶ 11 & 12), and Consolidated Midland failed to present any evidence to overcome this objection.

None of declarations and exhibits offered by Consolidated Midland's in support of its Motion for Summary Judgment show where the access roads are located relative to the boundary lines between the parties' respective properties. (CP 21–52, 85–106.) Consolidated

Midland did not provide a single survey or expert testimony to establish whether the access roads along Boundary #1 and Boundary #2 are on Consolidated Midland's property or Mr. Hall's property, or a combination of both. It provided only aerial photos with the alleged boundary lines and access roads approximately marked with a thick black marker. (CP 35, 48, 52.)

Similar to the plaintiffs in *Mosbrucker*, Consolidated Midland failed to call the Superior Court's attention to a survey in its possession showing a 12-foot-wide tract of land in the area of Boundary #1. (CP 177 at ¶¶ 3–4, CP 183–84.) Consistent with the survey, Consolidated Midland's Statutory Warranty Deed indicates that a "Parcel B" strip of land sits adjacent to Mr. Hall's property along Boundary #1. (CP 44–47.) The legal description for Parcel B is nearly identical to the legal description used in the Court's Order with the exception that the width of the land at Boundary #1 in the Order is 25 feet instead of the 12 feet in Consolidated Midland's deed. Parcel B is thus included in the legal descriptions in the Summary Judgment Order. Thus, prior to the Superior Court's Summary Judgment Order, Consolidated Midland had a property interest in Parcel B. (CP 128–29.)

The Summary Judgment Order therefore quiets title in Parcel B, in which Consolidated Midland already had a property interest, to Consolidated Midland, with no actual legal description of the area of Mr. Hall's land being adversely possessed. Thus, like the plaintiff in *Kennewick Irrigation*, Consolidated Midland allowed the Superior Court to enter an order that was, in part, without justification or effect.

The affidavits and exhibits offered by Mr. Winters, Mr. Hall, and Mr. Jones in support of the Motion to Vacate further demonstrate that an irregularity pursuant to CR 60(b)(1) occurred in the instant case. Mr. Winters, who is a professional land surveyor with over 40 years of experience, determined that the legal descriptions in the Summary Judgment Order “are not surveyable as written.” (CP 190 at ¶ 4.) Moreover, he was unable to prepare valid legal descriptions based on the materials that were submitted by Consolidated Midland in support of its Motion for Summary Judgment. (CP 190–91 at ¶¶ 5–6.) Mr. Hall’s and Mr. Jones’s affidavits introduced exhibits showing that the access road along Boundary #2 does not run in a straight line and appears to be mostly on the property of Consolidated Midland. (CP 167–68 at ¶¶ 6–7; CP 170–73; CP 177 at ¶ 5, 178 at ¶ 6; CP 185–88; CP 194–95 at ¶ 2–3; CP 196.)

2. The irregularities affect the integrity of the proceedings and justify vacating the Summary Judgment Order.

The irregularities in obtaining the Summary Judgment Order will affect the integrity of the proceedings in a number of ways. First, the Order purports to quiet title to property that is not any part of the access roads that are in dispute. As explained above, to the extent the Superior Court borrowed language from Consolidated Midland’s deeds, the Summary Judgment Order quiets title to strips of land that run in a straight line, but the access roads are not straight. Thus, the Summary Judgment Order simultaneously fails to provide the relief sought by Consolidated Midland (quieting title to the access roads) and quiets title to land that Consolidated Midland did not adversely possess (property within the legal

description provided in the Summary Judgment Order that is outside the actual boundaries of the access roads). *Cf. Howell v. Inland Empire Paper Co.*, 28 Wash. App. 494, 495, 624 P.2d 739, 740 (1981) (“[I]n order to comply with the statute of frauds, a contract or deed for the conveyance of land must contain a description of the land sufficiently definite to locate it without recourse to oral testimony, or else it must contain a reference to another instrument which does contain a sufficient description.” (internal quotations omitted)); *King Cnty. v. Farr*, 7 Wash. App. 600, 614, 501 P.2d 612, 622 (1972) (remanding case for the correction of an erroneous legal description in an Order of Public Use and Necessity).

Second, as discussed above, Consolidated Midland had a property interest in some of the land (Parcel B) described in the legal description prior to the entry of the Summary Judgment Order. Thus, the integrity of the proceedings is further affected by the fact that the Order reaches property that was not in dispute and could not have been adversely possessed by Consolidated Midland. *See Miller v. Anderson*, 91 Wash. App. 822, 828, 964 P.2d 365, 369 (1998) (“Use with the true owner’s permission thus cannot be use hostile to the true owner’s title.”); *Thompson v. Schlittenhart*, 47 Wash. App. 209, 213, 734 P.2d 48, 51 (1987) (“A person cannot adversely possess his own property.”).

Third, Consolidated Midland’s interest in Parcel B is a “right-of-way.” (CP 45, 47.) There is no evidence in the record showing the identity of the fee owner of Parcel B. Mr. Hall’s deed indicates that he is not the fee owner because the deed appears to specifically exclude the 12-foot tract that is Parcel B, although it is impossible to definitively know without a survey. (CP 128–29.) The Superior Court’s Order is void to the

extent it reaches the property of any party that was not before the Court. *See Tyrrell v. Hossfeld*, 3 Wash. App. 610, 611, 476 P.2d 710, 710 (1970) (“The trial court . . . recognized its lack of jurisdiction to affect any property, the owners of which were not before the court. Both counsel agreed on appeal that the trial court lacked jurisdiction to determine the boundary between Pipkin’s property and that of the neighboring landowner on the west who was not a party to the action. That part of the judgment was void.”).

Fourth, to the extent the legal descriptions in the Summary Judgment Order do not correspond with the access roads at issue, they do not settle the parties’ dispute and cannot be relied upon. This is particularly problematic because Mr. Hall needs to install fencing around the perimeter of his property for his doggy daycare business. He is unable to do so without a proper survey of the adversely possessed areas.

Fifth, and finally, the irregularities in obtaining the Summary Judgment Order will affect the integrity of the proceedings because it severely hinders the parties’ ability to litigate the Halls’ counterclaims for, among other things, real property damage, personal property damage, waste, and timber trespass. (CP 18–19.) The counterclaims depend on the parties’ property boundaries. For example, Consolidated Midland removed a fence that was installed by the Halls that may or may not be within the legal description in the Summary Judgment Order. (CP 124 at ¶ 5; CP 132–33.) Without a survey, these counterclaims cannot be properly litigated.

For all these reasons, Consolidated Midland’s failure to offer any evidence supporting the legal descriptions in its proposed order or

showing where the access roads were located in relation to the property boundaries constituted irregularities in obtaining the Summary Judgment Order that will affect the integrity of the proceedings. The Summary Judgment Order should therefore be reversed.

B. The Superior Court Abused Its Discretion When It Refused to Vacate the Summary Judgment Order Based on Newly Discovered Evidence.

Relief from the Summary Judgment Order is also justified by CR 60(b)(3) because the Halls presented newly discovered evidence as part of their Motion for Reconsideration and Motion to Vacate which, if presented earlier, would have raised a genuine issue of material fact to defeat summary judgment.

CR 60(b)(3) authorizes vacating a judgment on the basis of “[n]ewly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b).” It also provides that “[t]he motion shall be made within a reasonable time and for [newly discovered evidence] not more than 1 year after the judgment, order, or proceeding was entered or taken.” CR 60(b). CR 59, in turn, provides that when there are grounds for a new trial or reconsideration, a motion must be filed not later than ten days after the entry of the order. CR 59(b). The Halls’ motions complied with these standards.

1. The Halls diligently pursued the testimony of Mr. Jones and presented it at their earliest opportunity.

In the instant case, the Halls presented the newly discovered testimony of Keith R. Jones in support of a timely filed Motion for Reconsideration on February 5, 2015, within ten days of Summary Judgment Order on January 26, 2015. (CP 136–45.) The Superior Court,

however, ruled that the Motion for Reconsideration was untimely presumably because it was not noted “to be heard or otherwise considered within 30 days after the entry of the judgment” as required by CR 59(b). (CP 151.)

The Superior Court’s ruling that the motion was untimely merely because the hearing was not properly noted is contrary to law and led to the harsh result of the Halls being denied a ruling on the merits of their Motion for Reconsideration. *Cf. Buckner, Inc. v. Berkey Irr. Supply*, 89 Wash. App. 906, 916, 951 P.2d 338, 343 (1998) (“We hold that a timely served and filed motion for reconsideration satisfies the requirements of RAP 5.2(e) and extends the time limit for filing the notice of appeal. The failure to note the motion at the time it is served and filed does not affect the extension of time for appeal under RAP 5.2(e).”). The Motion for Reconsideration should not have been denied without consideration of the merits based on a mistaken noting date.

Although the Halls knew of Mr. Jones and spoke with him before Mr. Hall purchased the property in 2012, they were unable to locate him in the fall of 2014 when Consolidated Midland filed the lawsuit. As noted in the affidavits submitted in support of the Halls’ Motion for Reconsideration and Motion to Vacate, Mr. Jones does not use email and does not have voicemail. (CP 138 at ¶ 9.) He has been undergoing treatment for cancer and was very ill in the fall of 2014 until recently before the filing of his first affidavit in February 2015. (CP 138–39.) He was surprised even that the Halls were able to find him in early February 2015 when they did. (CP 138.)

Mr. Jones's testimony contradicts points that are essential to Consolidated Midland's adverse-possession claim and should be considered.

2. The testimony of Mr. Jones would have defeated Consolidated Midland's Motion for Summary Judgment on the issue of adverse possession.

Adverse possession requires possession for at least 10 years in a manner that is open and notorious, actual and uninterrupted, exclusive and hostile. RCW 4.16.020; *Gorman v. City of Woodinville*, 175 Wash. 2d 68, 71, 283 P.3d 1082, 1083 (2012). Permission to occupy land negates the element of hostility. *Miller v. Anderson*, 91 Wash. App. 822, 828, 964 P.2d 365, 369 (1998). And summary judgment is only appropriate when the pleadings, depositions, and admissions in the record, together with any affidavits, show there is *no genuine issue as to any material fact* and the moving party is entitled to judgment as a matter of law. CR 56(c).

Mr. Jones is the prior owner of Mr. Hall's property. (CP 136–37 at ¶ 2, 9.) He worked the land from the 1950s up until 2010 when his nursery business closed down. (CP 136–37 at ¶¶ 2–3.) According to Mr. Jones, he gave Consolidated Midland permission in 1995 or 1996 to maintain a road along Boundary #2 in exchange for maintaining the shared road at Boundary #1. (CP 137 at ¶ 4.) Prior to that there was no road along Boundary #2. (*Id.*) He also gave permission for Consolidated Midland to park and set up a picnic area along Boundary #2 so its employees could eat in the shade. (*Id.* at ¶ 5.)

Mr. Jones routinely used the access roads to reach the back sides of his property (the property now owned by the Halls) to remove trees and to maintain his land and the access roads. (CP 168 at ¶ 9.) He also recalls

the access roads being no more than 12 feet in width up until 2008.

(CP 168 at ¶ 9.)

The testimony presented in Mr. Jones's affidavits would have defeated summary judgment because it raises genuine issues of material fact as to (1) the location and width of the land in dispute; (2) whether the use of Mr. Hall's property was hostile for 10 years or more; and (3) whether the use of Mr. Hall's property was exclusive for 10 years or more.

The Halls diligently pursued the testimony of Mr. Jones and presented it at their earliest opportunity, i.e., in support of their Motion for Reconsideration. Due to a clerical mistake of the Halls' attorney in noting the hearing and an error of the Superior Court in ruling that the Motion for Reconsideration was untimely, Mr. Jones's testimony was not considered in conjunction with the Motion for Reconsideration. Under these circumstances, relief from the Summary Judgment Order is justified by newly discovered evidence under CR 60(b)(3).

C. **The Superior Court Abused Its Discretion When It Refused to Vacate the Summary Judgment Order Based on Another "Reason Justifying Relief" Under CR 60(b)(11).**

Relief pursuant to CR 60(b)(11) is granted in "situations involving extraordinary circumstances not covered by any other section of the rule." *State v. Keller*, 32 Wash. App. 135, 140, 647 P.2d 35, 37 (1982). As with the other grounds for relief under CR 60(b), CR 60(b)(11) authorizes vacation of judgments for reasons "extraneous to the action of the court or go[ing] to the question of the regularity of its proceedings." *Marie's Blue Cheese Dressing, Inc. v. Andre's Better Foods, Inc.*, 68 Wash. 2d 756, 758, 415 P.2d 501, 502 (1966).

A number of factors in the instant case combine to create extraordinary circumstances affecting the regularity of the proceedings such that relief is justified under CR 60(b)(11).

1. The Halls' first attorney was grossly incompetent.

One factor contributing to the extraordinary circumstances justifying relief in this case is the gross incompetence of the Hall's first attorney who handled the opposition to Consolidated Midland's Motion for Summary Judgment. *Cf. Barr v. MacGugan*, 119 Wash. App. 43, 47–48, 78 P.3d 660, 662–63 (2003) (noting that, while traditional rule is that the incompetence or neglect of a party's own attorney is insufficient to justify relief from a judgment in a civil case, Washington courts have not determined whether “gross negligence” is sufficient grounds and citing federal case law adopting this standard under nearly identical federal rule).

It is well established and well known rule that evidence submitted in opposition to a motion for summary judgment must be presented through affidavits that are (1) made on personal knowledge; (2) set forth facts as would be admissible in evidence; and (3) show that the affiant is competent to testify on the matters contained therein. *Burmeister v. State Farm Ins. Co.*, 92 Wash. App. 359, 365, 966 P.2d 921, 924 (1998) (citing CR 56(e)). Authentication or identification of a document is a condition precedent to admissibility. *Id.* at 365, 966 P.2d at 925. And simply attaching a document to a memorandum in opposition to a motion for summary judgment falls short of the required standard. *See id.* at 366–67, 966 P.2d at 925. Moreover, it is well known that a court cannot consider inadmissible hearsay when ruling on a motion for summary judgment. *Dunlap v. Wayne*, 105 Wash. 2d 529, 535, 716 P.2d 842, 846 (1986).

Although these principles would not have been obvious to the Halls as laypersons, they are known to every law-school graduate, and the failure of an attorney to even attempt to lay proper foundation for materials that are critical to his clients' case through the preparation of affidavits constitutes gross incompetence.

Here the Halls' first attorney simply attached key materials to his opposition brief. (CP 53–78.) These materials consisted of several aerial photos from the King County Archive showing that the Boundary #1 and Boundary #2 access roads do not run in a straight line and call into question whether the roads are on Mr. Hall's property, Consolidated Midland's property or both. (CP 68–75.) The attorney also failed to properly lay foundation for a letter that was sent from the personal representative of the estate of the former owner of the property to Consolidated Midland in 2012, noting that the Jones family had given Consolidated Midland permission to use the property, thereby contradicting Consolidated Midland's assertion that its use of the property was hostile as required for adverse possession. (CP 77–78.)

Consolidated Midland challenged the admissibility of these materials and succeeded in having them struck along with portions of the Declaration of Jerald Hall that were determined to be inadmissible hearsay. (CP 109 at ¶¶ 6–7.) The redacted pages that Consolidated Midland submitted in conjunction with its Reply Memorandum in Support of the Motion for Summary Judgment show that excising the inadmissible material eviscerated the Halls' opposition brief and supporting affidavit. (CP 85–106.)

Thus, due to their first attorney's incompetence, the Halls were effectively deprived of their day in court.

2. The Superior Court erroneously denied the Motion for Reconsideration as untimely.

The Halls' troubles continued with the filing of their Motion for Reconsideration. As explained above, the Halls' second attorney, who was retained by the Halls only a few days before the deadline for filing the Motion for Reconsideration failed to catch the fact that the hearing had been noted outside the 30-day period set forth in CR 59(b). The Superior Court ruled that the Motion for Reconsideration was untimely presumably based solely on the noting error, a ruling that is not supported by case law. *Cf. Buckner, Inc. v. Berkey Irr. Supply*, 89 Wash. App. 906, 916, 951 P.2d 338, 343 (1998) (holding that noting error did not render motion untimely for purpose of RAP 5.2(e)).

3. The Superior Court denied the Halls' Motion to Vacate without holding a show-cause hearing.

These injustices were further compounded when the Superior Court denied the Halls' Motion to Vacate without holding a show-cause hearing.

The rule setting forth the procedure for Motions to Vacate requires the court to hold a show-cause hearing: "Upon the filing of the motion and affidavit, the court *shall* enter an order fixing the time and place of the hearing thereof and directing all parties to the action or proceeding who may be affected thereby to appear and show cause why the relief asked for should not be granted." CR 60(e)(2) (emphasis added); *see also Crown Cascade, Inc. v. O'Neal*, 100 Wash. 2d 256, 261, 668 P.2d 585, 588 (1983) ("Presumptively, the use of the word "shall" in the statute is

imperative and operates to create a duty rather than to confer discretion.”); *Emwright v. King Cnty.*, 96 Wash. 2d 538, 544, 637 P.2d 656, 660 (1981) (holding that ordinary rules of statutory construction apply in construing rules of court).

The Halls filed a Motion for Order to Show Cause on March 17, 2015, moving for the Superior Court to issue an order requiring Consolidated Midland to appear and show cause why the Motion to Vacate should not be granted. (CP 164–65.) The Halls’ attorney, Ms. McNeill, had previously informed the Superior Court that she would be out of the country and unavailable by phone or email from March 31, 2015 through April 14, 2015. (CP 149–50.) Despite the rule requiring courts to enter an order fixing the time and place for a show-cause hearing, the Superior Court did not order Consolidated Midland to appear and show cause, and instead requested opposition briefing from Consolidated Midland. (CP 197–210.) Consolidated Midland submitted its opposition to the motion to vacate on March 30, 2015, one day before counsel for the Halls left the country. (CP 197–210.) The Superior Court then denied the Halls’ Motion to Show Cause and Motion to Vacate on April 8, 2015 without holding a show-cause hearing and without allowing the Halls to file a reply brief. (CP 211–12.) The Halls’ counsel had not even returned from her trip out of the country when the motion was denied. (CP 149–50.)

In the instant case, where the Halls’ affirmatively moved for a show-cause hearing and had been repeatedly deprived of their day in court, the Superior Court’s failure to hold a show-cause as required by CR 60(e)(2) further compounded the already extraordinary circumstances

justifying relief under CR 60(b)(11). *Cf. In re Marriage of Maddix*, 41 Wash. App. 248, 252, 703 P.2d 1062, 1065 (1985) (holding that court erred in ruling on motion to vacate “without first hearing and weighing testimony regarding fraud, misrepresentation or other misconduct”).

The gross incompetence of the Halls’ first attorney, the erroneous determination that the Motion for Reconsideration as untimely, and the Superior Court’s failure to hold a show-cause hearing as required by CR 60(e)(2) constitute extraordinary circumstances affecting the regularity of the proceedings. When viewed in light of the facts (discussed above) that the Summary Judgment Order is wholly inadequate to resolve the parties’ dispute regarding ownership of the access roads or even provide the clarity necessary to litigate the Halls’ counterclaims, these extraordinary circumstances demonstrate that this is a unique case warranting relief under CR 60(b)(11).

V. CONCLUSION

The Superior Court’s Order denying the Halls’ Motion to Vacate should be reversed on three grounds. The Summary Judgment Order should have been vacated under CR 60(b)(1) based on the absence of any evidence in the record supporting the legal descriptions or showing where the access roads were located in relation to the property boundaries. The Order entirely fails to resolve Consolidated Midland’s quiet-title cause of action. It does the opposite, creating confusion and additional grounds for dispute by setting forth a legal description that is both over- and under-inclusive.

The Summary Judgment Order also should have been vacated under CR 60(b)(3) based on newly discovered testimony from a former

owner of Mr. Hall's property and under CR 60(b)(11) based on several factors that combined to create extraordinary circumstances affecting the regularity of the proceedings.

The Halls respectfully request that the Court reverse the Superior Court's denial of their Motion to Vacate and vacate the Order Granting Summary Judgment.

Dated this 20th day of July, 2015.

RIDDELL WILLIAMS, P.S.



Shata L. Stucky, WSBA #39963

Wendy E. Lyon, WSBA #34461

Attorneys for Appellant

John Anthony Hall

SKYLINE LAW GROUP PLLC



(Per email authorization)

Michele K. McNeill, WSBA #32052

Attorneys for Appellants

CERTIFICATE OF SERVICE

I, Susan E. Miller, certify that:

1. I am an employee of Riddell Williams P.S., attorneys for Appellant John Anthony Hall in this matter. I am over 18 years of age, not a party hereto, and competent to testify if called upon.

2. On the date below written, I served a true and correct copy of the foregoing document on the parties as follows:

Service List	
<p><u>ATTORNEY FOR PLAINTIFF/RESPONDENT</u> James M. Thomas, WSBA #7512 Law Office of James M. Thomas, PLLC Two Union Square 601 Union Street, Suite 4100 Seattle, WA 98101-1368 Tel: (425) 577-8846 Fax: (206) 628-6611 Email: jamesthomas@jthomas-law.com</p>	<p><input checked="" type="checkbox"/> Via Email (PER AGREEMENT)</p>
<p><u>ATTORNEY FOR DEFS./APPELLANTS</u> Michele McNeill, WSBA #32052 SKYLINE LAW GROUP PLLC 2155 112th Ave NE, Bellevue, WA 98004 Tel: (425) 455-4307 Fax: (425) 401-1833 Email: michele@skylinelaw.com julia@skylinelaw.com</p>	<p><input checked="" type="checkbox"/> Via Email (PER AGREEMENT)</p>

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED at Seattle, Washington, this 20th day of July, 2015.



 Susan E. Miller

FILED
 COURT OF APPEALS DIV 1
 STATE OF WASHINGTON
 2015 JUL 20 PM 4:27