

04661-3

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Court of Appeals # 64661-3-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

LARRY W. & KAAREN A. REINERTSEN,
Respondents

vs.

CAROLYN RYGG, et al
Appellants

BRIEF OF APPELLANTS

Appeal from Snohomish County Superior Court
Case No: 04-2-08016-7
Pro Tempore Judge Hulbert

Marja Starczewski
WSBA # 26111
10 Cove Ave. S. #28
Wenatchee, WA 98801
(509) 884-6545
Attorney for Appellants

FILED
COURT OF APPEALS
STATE OF WASHINGTON
2010 SEP 30 AM 10:21

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I. INTRODUCTION: The Remand Was “An Exercise In Futility”; This Court’s Mandate Was Ignored and There Are Still No Findings for the Relevant Time-Period of 1976-1986.

This court reversed quiet title in the Reinertsens by vacating the erroneous 2005 judgment that did “*not reflect the evidence or theories presented*” and that also got the burden of proof wrong. But despite this Court’s express holdings, Pro Tem Judge Hulbert summarily re-issued the same erroneous 2005 judgment. Judge Hulbert erred that he was “not reversed” despite “reverse” meaning “to overthrow, vacate, set aside, make void... as to reverse a judgment.”¹ The errors in the burden of proof have not been corrected. No findings exist on any theory’s element for the relevant 10 year time period of 1976-86; the Reinertsens admit notice of the Ryggs’ hostile claims and use of the land as an owner as early as 1976.

II. ASSIGNMENT OF ERRORS.

Specific Errors in Findings / Conclusions.

1. The Court erred in entering Supplemental findings not supported by the evidence, and inconsistent with each other as well as with the conclusions. Due to the abundance of errors, and the failure to either number the Findings or separate Findings from Conclusions, errors in the Findings have been noted by underlining², on the copy placed in the Appendix, and

¹ (emphasis added) Black’s Law Dictionary, Rev. 4th Ed., p. 1482.

² *Turner v. Rowland*, 2 Wn.App. 566, 567 468 P.2d 702 (1970) (“Plaintiffs assign error to the underlined portions of the findings of fact.”).

numbers have been assigned by the Appellants ('findings' start with F, and 'conclusions' with C.³ Errors F1 through F67, C1 through C53).

General Errors:

2. Reissuing the same 2005 Judgment, already-found-to-be-erroneous. (CP 454-459), that is not a final judgment (calling for further trial).
3. Not following the Court of Appeals' Mandate in *Reinertsen v. Rygg, I.*
4. Failing to make findings of fact and conclusions of law for the correct 10 year period.
5. Not following the laws on determining grantor's intent.
6. Granting title to the Reinertsens, on undetermined property.
7. Denying the Ryggs' counterclaims as to title to the land.
8. Finding assault but denying any relief, based on "mutual combat" which was specifically disallowed by the Court of Appeals in *Reinertsen v. Rygg I* (and not supported by the record).

Procedural and Due Process Errors;

9. Failing to determine its lack of jurisdiction in 2005 and on remand in 2008-09.
10. Presiding Judge erred in assigning to pro tem, and failing to rein in ex parte and out-of-court proceedings.⁴

³ RAP 10.4 (f): "Suitable abbreviations for other recurrent references may be used."

⁴ This was subject to a prior petition for writ. Supreme Court said relief was available on direct appeal.

11. Granting the ability amend to the Reinertsens while denying the ability to amend to the Ryggs.
12. Granting last-minute expert declaration revising legal description with no actual survey, no ability to cross-examine, and no foundation for expert opinion – including no indication of where the legal description falls on the ground.
13. Engaging in ex parte contact and decision-making (and failing to disclose same).
14. Conducting off-the-record proceedings.
15. Failing to recuse.
16. Failing to disqualify counsel.
17. Failing to provide relief for discovery violations.
18. Failing to grant the Ryggs' motion for CR 11 sanctions

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Did the trial court lack jurisdiction in 2005 due to lack of assignment as Pro Tem and lack of oath of office?
2. Did the trial court lack jurisdiction in 2007, after initial remand, but prior to Mandate or assignment as pro tem, when he had off-the-record correspondence with counsel?
3. Did trial court lack jurisdiction to “overrule” existing common law?

4. Should any change in the law be purely prospective due to Ryggs' reliance on the current law in preparing their prior appeal?
5. Did the trial court lack jurisdiction, after being served a Writ Petition and Supreme Court request for Answer? The request for Answer having replaced the "alternative / preemptory" writ process.
6. Does Wash. Const. Art. 4, section 7 Amendment 80 (hereafter Amend. 80) apply to require proceedings before Judge Pro Tem, contrary to express legislative intent, and contrary to published case law?
7. Does Amendment 80's imputed consent apply, when original consent to trial judge was based on (a) failure to disclose full extent of relationship with Respondents' Counsel, and (b) subsequent *changed* relationship of judge and counsel, also not disclosed?
8. After a financial relationship, and ex parte contact, between judge and counsel is disclosed, do Appellants have a right to refuse to waive the conflict?
9. After admitting a financial relationship, and ex parte contact, between judge and counsel, are Appellants entitled to full details of the relationship – and is recusal objectively required?
10. Is Trial Judge required to follow this Court's Mandate on remand, as to specific findings and burden of proof and limited issues which prohibit alteration of the legal description?

11. Does ex parte contact between judge and counsel require reversal?
12. Do proceedings by off-record correspondence (emails and letters) with insufficient notice to counsel, require reversal?
13. Does entry of findings, with no prior decision on the merits, and no demonstrated understanding of the import or impact of the findings, require reversal?
14. Does the appearance of fairness require reversal, when Judge is “represented” by counsel during the proceedings, judge and his counsel appear in an Appeal and argue against the Appellants, Judge’s counsel moves for sanctions against appellants and joins efforts ex parte with Respondent’s counsel on briefing, Judge’s counsel provided advice on process in Superior Court?
15. When Counsel for Respondents fails to disclose his motivation, as a neighbor who is indirectly benefiting from this suit by currying favor with other neighbors, does this failure require reversal due to (a) discovery violation – Ryggs specifically asked questions about the identity of neighbors involved and Mr. Gibbs directed incomplete or false responses, and (b) due to significant impact on Mr. Gibbs’ relationship with the Judge, having a view of the Rygg property and misstating the condition of the fence which is visible from his own back porch?

III. STATEMENT OF FACTS

This 2004 case was filed by the Reinertsens to change the limits of the land they have “maintained to” for over 34 years “defined” by the Ryggs’ fence-line completed “in about 1970.” (Reinertsens’ admissions at CP 263, 269). An aerial photo dated April 2, 1976 (Ex 34, A5) shows the fences dividing the two properties, about the time of the Ryggs’ purchase (Ex 19, Ex 21). The Ryggs’ house is on the right, enclosed on all sides by the fences and hedges. In 1995, Ms. Rygg had a survey made because her neighbors to her east side, the Schindeles, “broadened” their driveway onto her land, which they then cut back; “The survey exposed the property line on my side at the same time. And that’s when I started to detect, Uh-oh, there’s a problem here.” (Mr. Reinertsen at CP 745).

The problem exposed in 1995 came to a head in 2003 when “I started to build the deck... to the property line.” (CP 746). Reinertsens’ new deck stopped at Ryggs’ board fence, but its flooring notched into the corrugation of the fascia boards (Ex 38) and Reinertsens removed some of the railroad ties under the fence, replacing them with concrete blocks to rest support beams for their deck on; these blocks do not extend east of the board fence (Ex 39, Ex 40). Ryggs “jumped right on that deck issue.” (CP 746). Mr. Reinertsen located the property line on the ground 7.5 feet from his house as shown on two building permits for his new deck, one in 2003

and one in 2004 submitted to the City of Everett Planning Department *during* this lawsuit. (Ex 24 and CP 434). Mr. Reinertsen stated he “relied” on the 1966 McCurdy Survey (Ex 1) that “was given to me as an explanation of what I was buying.” (CP 254). The 1966 McCurdy Survey locates the property line on the ground 7.5 feet from the foundation of the Reinertsens’ house. “I believe the intent was for the property line to be 7.5 feet from that structure. And that is depicted on McCurdy’s survey.” (Surveyor Downing testimony, CP 236, l. 14-16).

Mr. Reinertsen assaulted Ms. Rygg’s son, Craig Dilworth, when Dilworth raised issues about the deck.⁵

Mr. Reinertsen then filed this suit, claiming the Ryggs’ board fence, which attaches to Ryggs’ garage (Ex 46), was “my fence.” (CP 749). Mr. Reinertsen also claimed that he knew the location of the property line to be past the limit of his deck built “to the property line,” and past the Ryggs’ board fence, back before the 1995 “survey exposed the property line”; but when faced with CR 11 sanctions, Reinertsens admitted, “*it is a complete misrepresentation that the Plaintiffs at all times, knew the exact location of the property line and further this assertion is irrelevant.*” (CP 1091). In 2008 McCarty plead: “At the time Dr. McCARTY built a

⁵ (CP 154-55, 201). **Ex 45**, shows contact was made with Craig Dilworth’s face, leaving wounds above and below his left eye. (CP 188). **Ex 15** shows the bent frame of Craig’s

fence, the property was not surveyed. He neither knew that the fence was nor was not on the property line” (CP 1714).

When Ms. Rygg moved into her property in 1976, she claimed possession of her fence-line; Mrs. Reinertsen admits notice of Ryggs’ claim.⁶ Reinertsens’ counsel, Ms. Ryggs’ former counsel during her divorce, acknowledged from the prior representation that Reinertsens took no action to the fence-line or past the fence-line from 1976-1990:

There is no evidence that there was any knowledge even of the claims of the Reinertsens by Ms. Rygg in 1989 or 1990.
(RP of October 7, 2005, p. 10, l. 19-20, *Reinertsens v. Rygg, I*).

Mr. Reinertsen admitted he did not prune “around the outside” of the line pyramidalis (CP 341). Mr. Reinertsen admitted he did not come to the Ryggs’ side of the board fence, and instead put up a ladder to spray poison over the fence to soak the Ryggs’ firewood (CP 320-21). Mr. Reinertsen admitted he used the west edge of the split-rail fence as “*a defined line to maintain to*” even after some of the timbers fell to the ground and “*remained on the ground.*” (CP 262-63).

Just prior to filing this suit, attorney Geoffrey Gibbs had become a neighbor, on the east side of Schindeles, with a view of the back fence at

glasses caused by the assault. Contrary to findings CP 1108, L. 5-16, numbered F1, F2, F3, F4, F5 and F6 in Appendix.

⁶ Mrs. Reinertsen admits receiving notice that Ms. Rygg claimed the fence-line that runs through the white laurel bush on the bluff in 1976: “When they moved in . . . she insisted

issue from his deck.⁷ This was unknown to Appellants/Ryggs until well after trial, not until Mr. Gibbs moved in permanently in 2009, as Mrs. Reinertsen lied that she could not remember Mr. Gibbs was a neighbor during her deposition, and Mr. Gibbs prevented Mr. Reinertsen from disclosing, during his deposition, that Mr. Gibbs was a neighbor and therefore a potential witness. (CP 1528 – 1532).

Railroad Ties

An alleged “retaining wall” or railroad ties is a new subject in the supplemental findings⁸. Historic photos show no retaining wall, and no difference in grade that would require a retaining wall. The aerial photo (Ex 33) taken prior to the development of the Rygg property show paths in the area where the alleged “retaining wall” is described.

In *Reinertsen v. Rygg I*, this Court describes the Howard property, divided for purposes of sale in 1966. (Unpublished opinion, case 55842-1-I, p.1). Exh. 1 is the original survey, indicating the new property line 7.5 feet east of the NE corner of Howard’s house (now, Reinertsens’

[the white laurel] was hers...” (CP 338-39, 1980’s photo at CP 438 showing split rail fence and white laurel).

⁷ Counsel’s assertion that the location of the split-rail fence’s original location is unknown, contrary to the evidence presented at trial (see 1976 overhead photo, Ex 34,) and Mr. Gibbs’ own personal knowledge as a neighbor with sweeping views of this fence prior to this litigation, law firm’s appraisal includes sketches and photos of the split rail fence in 1989. (CP 1576, 1579, 1581, 1584, 1591, 1594,).

⁸ “the Court finds that the Reinertsens originally laid down a line of used railroad ties as a retaining wall, not necessarily on the surveyed boundary but close to the actual line.” CP 1109, l.15-17.

house). The decision in *Reinertsen v. Rygg I* does not mention railroad ties or a retaining wall. The Reinertsens had claimed adverse possession to the location of the railroad ties, not the Ryggs. CP 539: "...the Court could and should find the Plaintiffs (Reinertsens) have adversely possessed to that line [of railroad ties]." Also CP 651.⁹

Dr. McCarty, "I put a solid cedar fence from the house to the west property line." (Exh. 8, emphasis added).

In 2005, Judge (honorific) Hulbert did not agree that the line in the new Exhibit 3 (from the hearing on Reconsideration) represented the effect of his ruling, but also declined to further define the distance between the Reinertsen house and the property line (RP of April 15, 2005, pg 46 line 22 - pg 47, line 18). At the hearing on December 15, 2009, Pro Tem Judge Hulbert refused to say where on the ground in relation to the Reinertsen house he intended the judgment to place the property line.

Facts After Remand of 2007

This Court vacated the trial judge's findings and judgment of 2005, and remanded the matter by unpublished opinion of July 9, 2007, case No. 55842-1-I consolidated with No. 56240-1-I. (CP 1838).

While reconsideration of that opinion was pending, counsel for Respondents/Reinertsens immediately contacted former Judge Hulbert, for

⁹ Contrary findings are at CP 1108, 1.18-25, numbered F7, F8, and F9 in Appendix.

purposes of having supplemental findings entered. See email from Hulbert, CP 2018. Also in 2007, Mr. Gibbs hired former Judge Hulbert as a paid mediator, CPI 1358 – 1359. See letter of counsel, procured by T. Seder, counsel for Hulbert, CP, 1693 – 1694¹⁰. Appellants’ assertion that at this time Hulbert was in severe financial distress, CP 1360, (see eg, tax warrant for year 2005, at CP 1699) has never been refuted. In 2007, Mr. Gibbs and former Judge Hulbert had already agreed on a “procedural preference” for conducting the remand (CP, 1948 – 1949.) This was not known to the Court of Appeals at the time of its October, 2007 reconsideration decision (CP 1844 – 1845).

Judge Hulbert’s conducting mediations at Mr. Gibbs’ office was discovered when Mr. Gibbs received an advance copy of a letter-ruling personally from Judge Hulbert CP 1873. Mr. Gibbs admitted that Judge Hulbert had been in his office “most of the day” when Judge Hulbert’s letter-ruling was written CP 1941. There were inconsistent assertions by Judge Hulbert and Mr. Gibbs as to the number of Mediations and amount of use of Mr. Gibbs’ offices by Judge Hulbert, (RP 9-15-2010, p. 39).

Due to new evidence of a relationship between Judge Hulbert and Mr. Gibbs, as well as Mr. Gibbs’ relationship as a neighbor, (second house

¹⁰ Bottom notation indicates this letter was billed to the Reinertsen case.

to the East)¹¹, which had not been previously disclosed, the Ryggs notified the Court that their prior consent to Judge Hulbert, from 2004, was voided (CP 1794 et seq).

Appellants asserted their right to have court proceedings in an open forum CP 1872 - 1873 (argument to Presiding Judge McKeeman).

Appellants repeatedly objected to ex parte proceedings, and out-of-court proceedings. See CP 2009 (Objection to prior mailing of unknown portions of record), CP 1946 (2nd objection to mini-trial in a black box), CP 1947 (documents given to Court, not copied to counsel). Letter-rulings of June 15, 2009, signed by Hulbert, were sent by Gibbs' office (See Hulbert's email, explaining he had asked Gibbs to "scan" his letter CP 1957). CP 1963 shows that the letter of June 11, 2009 was "calendared" by Mr. Gibbs, and "sent to client", and later mailed to appellants' counsel from Mr. Gibbs' Everett Office (Envelope at CP 1965). A similar letter, dated June 15, 2009, is at CP 1977 – 1978. (Note fax stamp from Mr. Gibbs' office). Cleaner copy, CP 1937.

Appellants repeatedly objected to proceedings had without sufficient notice, CP 1982-1995, as well as proceedings agreed upon ex parte, such as a two-hour time frame for a hearing, determined between

¹¹ See Declaration of Dilworth, CP 1524 et seq., and motion to disqualify counsel based on failure to disclose evidence, CP 1576 et seq.

Judge Hulbert and Mr. Gibbs (CP 1849 – 1850). (Prior ex parte contact objected to at CP 1856).

Appellants moved to be allowed additional evidence, and witnesses, including the Respondents' surveyor, Mr. Downing, CP 1934. Appellants also moved to amend their Answer, due in part to inconsistent new assertions by the Reinertsens and Dr. McCarty, CP 1705 – 1725. The appellants' motions for witnesses, including Mr. Downing, were denied, (CP 1788), the motion to amend the Answer was denied. However, the Respondents were permitted to amend their Complaint, and to bring in a new declaration of Mr. Downing, a few days before the final hearing of December 15, 2009. Ryggs were not allowed to cross-examine.

In furtherance of their objection to the manner in which proceedings were being conducted, appellants filed a Writ of Prohibition and Mandamus action with the Supreme Court. On July 24, 2009, the Supreme Court by letter requested Judge Hulbert to Answer (CP 1781).

Appellants withheld serving a copy of the writ action upon Mr. Gibbs, as a "test case" to see if Mr. Gibbs would be informed of the Writ, ex parte, by Judge Hulbert. Ex parte contact was in fact proven, CP 1783-4.

Appellants objected to proceedings continuing after the writ action was served, and the Supreme Court had actually requested an Answer, and because Judge Hulbert asserted he was represented by attorney T. Seder

(CP 1777 – 1778, CP 1516). Mr. Seder, on behalf of Hulbert, had ex parte correspondence with Mr. Gibbs (CP, 1518-1519).

Judge Hulbert submitted a declaration to the Supreme Court, CP 1689 et seq., which was not subject to cross-examination by appellants.

The Supreme Court denied the writ, stating that all trial court rulings were subject to appeal by direct review (CP 1571). This appeal will therefore include issues from the Writ action, as well as this direct appeal.

V. ARGUMENT:

A. ERRONEOUS 2005 JUDGMENT HAS BEEN RE-ISSUED IGNORING THIS COURT’S ORDER VACATING IT.

1. Vacated Is Reversed; Judge Hulbert Erred that He “Was Not Reversed” and that Only “One Kind of Remand” Exists, Which Is to “Buttress Those Findings That We Had Before.”

“[W]e vacate the order quieting title in the Reinertsens.” (*Prior Opinion*). The definition of “reverse” is “to overthrow, vacate, set aside, make void... as to reverse a judgment.”¹² But the judgment errs that the quiet title order “was not reversed.” When remand is due to deficient findings, it follows “one of three courses.”¹³ This remand was a “reverse and remand,” but Pro Tem Judge Hulbert thinks “There aren’t three kinds

¹² (emphasis added) Black’s Law Dictionary, Rev. 4th Ed., p. 1482.

¹³ *Bowman v. Webster*, 42 Wn.2d 129, 135, 253 P.2d 934 (1953) (“The most extreme remedy [is] to reverse and remand for a new trial. The most lenient, utilized where one finding of fact is incomplete, [is] to remand (without reversal)... The remedy most frequently applied [is] to reverse and remand... from which either party may appeal.”).

of remands, there is the one kind of remand they gave us,”¹⁴ which he believes is only to “buttress those findings that we had before.”¹⁵

The trial court lacked jurisdiction to ignore that this Court vacated the 2005 order quieting title in the Reinertsens under the implicit assumption that the trial court would set aside prior opinions and consider the evidence and theories with an open mind.¹⁶

2. No “Self-Respecting Court Would or Should Respond to Our Remand Order With a “Summary Reissuance” of Essentially the Same Opinion.” U.S. Supreme Court (2010).

The vacated 2005 judgment was literally re-issued in 2009.

[W]e do not believe that a “self-respecting” court... would or should respond to our remand order with a “summary reissuance” of essentially the same opinion... To the contrary... we assume the court will consider, on the merits, whether petitioner’s allegations, together with the undisputed facts, warrant [relief].¹⁷

Pro Tem Judge Hulbert, appearing as a self-termed “interested party” in Court of Appeals #63939-1-I, said the prior Opinion of this Court that vacated his erroneous 2005 judgment “wasted time.”¹⁸

¹⁴ RP of 7-17-09, p. 21.

¹⁵ RP of 9-15-09, p. 25; repeated in judgment “the case was remanded for additional findings; it was not reversed...a judge having formed opinions and made findings [before reverse and remand] which are now being supplemented.” (CP 1117).

¹⁶ *In re Marriage of McCausland*, 129 Wn. App. 390, 499-400, 118 P.3d 944 (2005), reversed on other grounds, 159 Wn.2d 607, 152 P.3d 1013 (2007) (“mandate is “binding” on the superior court... nor could the trial court ignore our specific holdings.”)

¹⁷ *Wellons v. Hall*, 558 U.S. ---, 6 (2010) (“vacate” and “reserve” used interchangeably).

¹⁸ CP 1702, “[Ryggs] have wasted too much of this Court’s time already.” The only other time Ryggs were at the Court of Appeals was in *Reinertsen v. Rygg, I.*

3. The Remand Was “An Exercise In Futility”; the Same Errors this Court Found in 2007 Remain; End of Review.

The remand was “an exercise in futility [in which] the Court is merely marching up the hill only to march right down again,” as explained by U.S. Supreme Court Justice Blackmun of the problem in remanding to a judge who has “difficulty in putting out of his mind... previously expressed views.”¹⁹ The re-issued 2005 judgment does not correct the errors found by this Court in 2007: it retains its same error in the burden of proof that this Court has found “shifted to the Reinertsens” (making no findings or conclusions on a revocable license / permissive use), ignores the holdings that Rygg proved her use of the “land has been open, notorious, continuous, and uninterrupted for the required time,” ignores the holding “that the parties regarded the line represented by a collapsed portion of the split rail fence as a boundary,” and again “does not reflect the evidence” or “address the facts relevant” to the causes of action.

4. The “Difficulty in Putting Out of His Mind Previously Expressed Views or Findings” Shows the Evidence Was Not Considered By a “Fair-Minded Person.”

Where Pro Tem Judge Hulbert was only interested in buttressing his former reversed findings, he did not act as a “fair-minded person” in reviewing the evidence.²⁰

¹⁹ *U.S. v. Robin*, 553 F.2d 8, 11 (1977) (remand to a different a judge with an open mind).

²⁰ *Id.*; By definition, “substantial evidence” requires first a “fair-minded person” to find.

B. TRIAL COURT AND PROSECUTOR'S OFFICE LACKED JURISDICTION; THE JUDGMENT IS A NULLITY.

1. A Void Judgment Must Be Vacated Whenever Lack of Jurisdiction Comes to Light.

When a “court is faced with a void judgment, it has no discretion and the judgment must be vacated whenever the lack of jurisdiction comes to light.”²¹ If a court acts “without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void.”²²

2. Hulbert Was Not an Elected or a Pro Tem Judge In 2005.

In February of 2005 when the judgment was entered, Hulbert was no longer an elected sitting judge and there is no order appointing him to this case. Amend. 80 still requires an order of appointment and oath of office for a pro tem judge to have authority.²³ There is no judicial office that is neither elected nor appointed; “there can be no such thing as an *office de facto*.”²⁴ “No one is under obligation to recognize or respect the acts of an intruder, and for all legal purposes they are absolutely void.”²⁵

3. Discovery Violations Hiding Gibbs as a Neighbor and Witness Prevented Consent in 2004 that Cannot Be Transferred to 2008.

Contrary to the findings that all relevant facts on Mr. Gibbs and Judge Hulbert were “fully explored,” full disclosure was not given to the Ryggs

²¹ *Mitchell v. Kitsap County*, 59 Wn.App. 177, 180, 797 P.2d 516 (1990); RAP 2.5 (a)(1).

²² *Elliott v. Lessee of Peirsol*, 26 U.S. 328, 340 (1828).

²³ *Zachman v. Whirlpool*, 123 Wn.2d 667, 674, 869 P.2d 1078 (1994).

²⁴ *State v. Canady*, 116 Wn.2d 853, 857, 809 P.2d 203 (1991).

in 2004. The discovery violations hiding that Gibbs was a neighbor with a direct view of the split-rail fence from the property he has owned since 2003 prevented the Ryggs from consenting. Not only was Gibbs an undisclosed witness with knowledge of the split-rail fence's existence and location in 2003 (while in this case he is falsely asserting it did not exist in 2003), it is unknown if Judge Hulbert may have visited there with his friend Gibbs and viewed the disputed land before or during the 2004 trial.

The Ryggs would not have consented in 2004 had they known of the discovery violations committed before trial, as seen in their seeking recusal in 2005 as soon as issues "entered a new realm" when the court was asked "to rule on possible misconduct of opposing counsel himself."²⁶

The undisclosed information and the bad-faith misconduct itself, in breach of the duty to disclose and continuing duty to correct before the Ryggs discovered the violation on their own in 2009,²⁷ prevented consent in 2004, which cannot be transferred as informed consent in 2008-09. "[L]ogically, an "uninformed" consent is tantamount to *no* consent."²⁸

²⁵ *Green Mountain School District v. Durkee*, 56 Wn.2d 154, 158, 351 P.2d 525 (1960), citing with approval 2 Cooley's Constitutional Limitations (8th ed.) at 1355.

²⁶ CP 1972; 2005 *Motion for Recusal*: "the ramifications of which potentially include reprimand, fines, suspension, and even disbarment. This is a situation in which no true friend could be impartial. Further, if the Honorable Judge Hulbert fails to recuse himself before making a decision on the misconduct of his friend, one could reasonably raise suspicion that the failure to disqualify oneself from ruling on the misconduct of a friend is a biased act to shield said friend from the unflinching eye of an impartial judge."

²⁷ CR 26(e)(1)(a) and (2)(a).

²⁸ (emphasis in original) *Hunter v. Brown*, 4 Wn.App. 899, 903, 484 P.2d 1162 (1971).

4. Ryggs Never Consented to a Pro Tem Judge Who Was Receiving Paychecks From the Anderson Hunter Law Firm and Owed His Job and Future Jobs to Counsel Gibbs.

The Ryggs never consented to a pro tem judge sitting on their case who was simultaneously receiving paychecks, free office space, free office equipment, and free office staff from opposing counsel. Before reaching whether or not the repeated employment, non-disclosure of it and lies concerning it, create an appearance of unfairness, review must first be had on the effect of Ryggs' express refusal to consent to this new situation.²⁹

Amend. 80 does not do away with the consent requirement, rather it transfers prior consent to an elected judge by a party who “decided not to exercise their statutory right to file an affidavit of prejudice” so that a change would not be “disruptive of the trial process.”³⁰ An elected judge is barred by CJC Canon 5(E) from working as a mediator and barred by Canon 5(C)(2) from frequent business transactions with lawyers who come before them. When Ryggs agreed to an elected judge they expressly refused to have someone who was concurrently violating these Canons. Amend. 80 has only been applied to a “pending” “trial process,” where there is little time for new conflicts to arise; unlike here. This is the first application years after trial process ended and final orders were vacated.

²⁹ *In re Niemi*, 117 Wn.2d 817, 823-24, 820 P.2d 41 (1991) (conflicts can be consented to if disclosed; Niemi also being a senator was agreed to by the parties upon disclosure).

³⁰ *Zachman*, at 672; In *Belgarde*, remand in 1988 was *before* Judge Deierlein retired in 89

5. In 2007, Hulbert Was Not a Judicial Officer When He Decided Ex Parte with Gibbs to Re-Issue His Vacated Judgment.

Hulbert was not a judicial officer when he and Gibbs came to the ex parte agreement between 7-13-07 and 7-20-07 that Gibbs would write the opinion without any need for Hulbert to independently make a memorandum or oral decision on the facts or law first.³¹ (CP 2020).

Gibbs' 7-20-07 letter refers to a decision by Hulbert granting Gibbs' "proposed procedure" requests made in Gibbs' 7-13-07 letter, which said only "additional findings" were needed while omitting the prior judgment was vacated; Hulbert first contacted Ryggs after-the-fact on 7-24-07, by email, stating the procedure would be as Gibbs wanted. (CP 2018).

The superior court had no jurisdiction until after this Court's Mandate issued on 11-8-08.³² Hulbert did not have even color of judicial office until 10-16-08 (oath of office for order of appointment as pro tem judge).

"A judicial officer is a person authorized to act as a judge in a court of justice." (RCW 2.28.030). The remand was decided in 2007 on this ex parte decision made at the instance of Gibbs when Hulbert was not a judicial officer. Later proceedings were a sham.³³

³¹ *State v. Watson*, 155 Wn.2d 574, 579, 122 P.3d 903 (2005) defines an ex parte decision as one "Done or made at the instance and for the benefit of one party only, and without notice to, or argument by, any person adversely interested."

³² RAP 7.2 (authority of trial court limited while case is at the appellate courts).

³³ *U.S. v. Thompson*, 166 F.2d 87, 88 (7th Cir. 1948) ("There must not be a mere sham proceeding or idle ceremony of going through the motions of a trial.").

6. Prosecutor Seder Was Not a Judicial Officer When He Decided None of Ryggs' Motions Had Been Set for Trial Hearings at the Ex Parte Instance of Gibbs; Seder Was Left in Charge of the Trial Case While Pro Tem Judge Hulbert Vacated.

Prosecutor Seder was not a judicial officer under RCW 2.28.030 nor “court personnel whose function is to aid judges in carrying out their adjudicative responsibilities” under CJC Canon 3 (A)(4) when he decided no trial hearings were set for the Ryggs’ motions, or when he was left in charge of the trial case while Pro Tem Judge Hulbert went on a vacation:

I am writing to ask you to augment your discussion of the current status of this case... Please feel free to contact Mr. Seder in connection with this matter... I will be out of town until the 20th of this month. (Judge Hulbert’s 11-13-09 email).

Judge: Just got a fax from Geoff Gibbs*... [Ms. Starczewski] thinks she has asked for hearing dates, he wants to make sure no hearing have been set... Since the case is preassigned, they need to contact you to get an available hearing date. No one has done that yet. (Prosecutor Seder’s 10-15-09 email, CP 1160).

*This “fax from Geoff Gibbs” was never “copied” to the Ryggs; F63.

Pro Tem Judge Hulbert abnegated his judicial duties to the Executive in violation of the *Separation of Powers Doctrine*. He also engaged in prohibited ex parte contact with Seder on whether trial hearings were set. Ultimately, the decision was first made ex parte by Counsel Gibbs, who told Prosecutor Seder “to make sure no hearing have been set,” who then told Pro Tem Judge Hulbert how to decide. All of this happened in about an hour, from 10:44 a.m. to 11:56 a.m., without notice to the Ryggs.

These instances of Seder taking on judicial roles also violate the *Appearance of Fairness Doctrine*, because “prosecutors are neither expected nor required to be completely impartial... unlike judges.”³⁴

7. Trial Court Cannot “Overturn” Our Supreme Court Law in *Bowman* that Grants a New Trial “Where the Trial Judge Who Entered Inadequate Findings Is No Longer on the Bench.”

Lower courts are “without authority” to overturn higher courts.³⁵ It is beyond mere err to see but not follow law, it is beyond “the nature of the judicial power itself. [A]s the Framers intended, the doctrine of precedent limits the “judicial power” delegated to the courts in Article III.”³⁶

After holding the footnote added sua sponte in *Reinertsen v. Rygg I* was dicta and did not require him to appoint Hulbert to the remand (“I know it’s not required, so you don’t need to argue that”),³⁷ Judge McKeeman saw our Supreme Court precedent in *Bowman* at 136, “where the trial judge who entered inadequate findings is no longer on the trial bench, the only recourse is to grant a new trial,” and ignored it. “A more alarming doctrine could not be promulgated by any American court.” *Anastasoff*, at 904. *Bowman* is still the law, and binding on lower courts.

³⁴ *State v. Orozco*, 144 Wn.App. 17, 20, 186 P.3d 1078 (2008).

³⁵ *State v. Gore*, 101 Wn.2d 481, 487, 681 P.2d 227 (1984), other grounds superseded by statute as stated in *State v. Hickok*, 39 Wn. App. 664, 695 P.2d 136 (1985).

³⁶ *Anastasoff v. United States*, 223 F.3d 898 (8th Cir.2000), vacated as moot due to acquiescence by IRS in 235 F.3d 1054 (8th Cir.2000) (en banc).

³⁷ Presiding Judge McKeeman at CP 2011; *Holloway v. Brush*, 220 F.3d 767, 778, 781 (6th Cir. 2000) (Dicta is not precedent, and is not law of the case).

8. 1987 Amend. 80 Can Co-exist With *Bowman* (See 1999’s *In Re Marriage of Greene*), If Legislative Intent Is Followed to Limit Amend. 80 to a “Pending” “Trial Process” Left Unfinished.

The plain language of Amend. 80 is that it applies when an elected judge “retires leaving a pending case.” A judge who retires after entering final judgment while a case is on appeal has left no case pending at the trial court. A “trial process” “refers to a relatively finite set of proceedings.”³⁸ In *Zachman* at 672, it was found the Legislative intent was to stop a change of judge from being “disruptive of the trial process.” Senate hearings confirm “pending case” under Amend. 80 is the “trial process” before a final judgment “will go up on appeal.” (CP 2067).

1987 Amend. 80 “must be construed with reference to the common law,” which “must be allowed to stand unaltered as far as is consistent with... the new law.”³⁹ Both have co-existed, as seen in the 1999 case of *In Re Marriage of Greene*, 97 Wn. App. 708, 710, 986 P.2d 144 (1999).

Unintended conflict with the common law is created by this first application beyond a pending “trial process.”⁴⁰ Here, “new issues arising out of new facts occurring since final judgment” created new conflicts.⁴¹

³⁸ *State v. Belgarde*, 119 Wn.2d 711, 717, 837 P.2d 599 (1992) (construing “case” not to Amend. 80 but to affidavits under RCW 4.12.050, which apply only to elected judges).

³⁹ *Marble v. Clien*, 55 Wn.2d 315, 317, 347 P.2d 830 (1959).

⁴⁰ At CP 2041, Reinertsens misrepresented *Belgarde* faced “the same situation,” but “Judge Deierlein’s term expired on January 9, 1989” and the first hearing on remand was before him on “July 8, 1988” when he was still an elected judge. *Id.* at 713-14, 718.

⁴¹ *Belgarde*, *Id.* (change of judge allowed on new issues from new facts); See §C3 & C4.

9. Expanding Amend. 80 to After Remand of Final Judgment Creates a Prohibited Money Interest to Err or Make a Not-Self-Executing Decision (as Here) to Receive Future Pay.

This unprecedented application of Amend. 80 to assign remand to a judge not on the bench, years after final judgment, creates a financial interest prohibited by CJC Canon 3(1)(C) for that judge to continually err or enter non-self-executing decisions in order to continually guarantee future pay as a pro tem under RCW 2.08.180. The 2009 judgment is again not-self-executing, calling for yet further trial court proceedings “to assure that the legal descriptions of both properties are clarified” (CP 1118). A successor judge would lack authority to decide how the legal descriptions should be “clarified” or other vague necessities requiring trial.⁴²

10. Ryggs Relied On the Existing Law During their Prior Appeal; Prejudice to the Ryggs Requires a Purely Prospective Application of Any Reasoned Change in the Law.

Prospective application of any change in the common law or new application of Amend. 80 is needed to avoid hardship and treat equally similarly situated litigants.⁴³ In the 2005 appeal, Ryggs relied on the law that makes the 2005 recusal issues moot; a change deprives Ryggs of their 2005 right to have recusal issues reviewed then. In *Crosetto* at 91, similar parties got a new judge on remand because the first judge had retired.

⁴² *Crosetto v. Crosetto*, 101 Wn. App. 89, 95, 1 P.3d 1180 (2000) (also repeating the common law holding, “new trial required if trial judge has left the bench.”).

⁴³ *Lunsford v. Saberhagen Holdings*, 166 Wn.2d 264, 278, 208 P.3d 1092 (2009).

11. Amend. 80 Does Not Apply to Judges “Involuntarily Retired By the Voters” as Printed in the Senate Journal; This “Is the Law and Must Be Given Effect.” U.S. Supreme Court.

Under the Doctrine of Separation of Powers, where the “precise issue” is “squarely addressed in the legislative history... that intention is the law and must be given effect.”⁴⁴ Any question on “retired” was answered and printed in the Senate Journal for all the People of Washington to see⁴⁵:

SENATOR HALSAN: “Is it the intent of this legislation to allow a judge who has been voted out of office by an election to continue to hear cases?”

SENATOR TALMADGE: “My understanding, Senator, is no. The understanding was that it was a voluntarily retired judge, not one who has been involuntarily retired by the voters.” (CP 1813).

This understanding of the whole Senate body was again confirmed prior to final passage on February 4, 1987, where the sponsor of the bill, Judiciary Chairman Talmadge,⁴⁶ again answered this precise question,

SENATOR TALMADGE: “It would not apply, as we said in the question and answer on the floor on the bill, to judges who are involuntarily retired by an action of the voters.” (CP 2066).

Zachman did not consider the above. This issue should be transferred via RAP 4.4 to give the law effect and uphold our system of government.

⁴⁴ *Chevron v. Nat. Resources Defense Council*, 467 U.S. 837, 841-43 (1984)

⁴⁵ Vol. I, of the Regular Session of the 50th Legislature, first reading of Amend. 80 on February 2, 1987.

⁴⁶ To try to have these comments ignored, Reinertsens may again miss-cite *North Coast Air Servs., Ltd. v. Grumman Corp.*, 111 Wn.2d 315, 326, 759 P.2d 405 (1988) (Holding only that an ambiguous comment in conflict with the committee report on the bill did not show intent) or *Wilmot v. Kaiser Aluminum and Chemical Corp.*, 118 Wn.2d 46, 64, 821 P.2d 18 (1991) (“Patently, comments about the purpose of an amendment which does not become part of the enacted legislation... cannot serve as evidence of legislative intent.”).

12. Without RCW 7.16.310's Command to "Desist or Refrain from Further Proceedings" During Application at a Higher Court, Writs of Prohibition Would No Longer Exist as a Preventative Remedy; Decision to Not "Desist" Made Ex Parte With Gibbs.

"The writ of prohibition is a preventative, not a corrective, remedy."⁴⁷

To ensure prohibition is a viable preventative remedy, RCW 7.16.310 requires a lower court to "desist or refrain from further proceedings in the action... until further order of the Court," once "notice of the application for a permanent writ" is had by service of the application.⁴⁸ After proof of service was filed, the Supreme Court issued a letter calling for Pro Tem Judge Hulbert to answer; the modern "show cause" order (CP 1781).

A court has only "two courses... one, to refrain from the alleged illegal action; the other, to contest" by answering the application.⁴⁹ If the choice is to answer, a court must "refrain from further proceedings" or face fines and imprisonment under RCW 7.16.280. The failure to heed such a strong "automatic stay" renders those proceedings "void."⁵⁰

The err to not halt was made ex parte with Gibbs, where Ryggs did not give Gibbs the writ, but he still knew of it prior to the 7-17-09 hearing.⁵¹

⁴⁷Bancroft's *Code Pleading Practice and Remedies*, Supplement, §4038, 1926-1936, citing "*State v. Brown*, 157 Wash. 292, 290 Pac. 328."

⁴⁸ *State ex rel Waterman v. Superior Court for Spokane County*, 127 Wash. 37, 39, 220 P. 5 (1923); the old practice was that the Court itself served the application in either "alternative" or "preemptory" form with a return date set, now the parties serve the application and on proof of service the court issues a return date for answer by letter.

⁴⁹ *Ex rel Hart v. Superior Court of Snohomish County*, 16 Wash. 347, 347 (1897).

⁵⁰ *Abboud v. Abboud*, 237 B.R. 777, 782 (10th Circ. 1999).

⁵¹ See "test case" to expose more undisclosed ex parte contact: CP 1783-1784.

C. EX PARTE CONTACT REQUIRES REVERSAL.

1. Admissions By Gibbs of In-Person Ex Parte Contact on June 11, 2009 and by Judge Hulbert in his Declaration, Show the Finding of No Ex Parte Contact Is Untrue.

Gibbs admitted in-person ex parte contact with Judge Hulbert regarding this case occurred at Gibbs' office on June 11, 2009 (CP 1941). Judge Hulbert made a negative-pregnant admission of ex parte contact, admitting "there has been no ex parte communication on any substantive issue in the underlying matter." (Declaration, CP 1689). The nature and extent of the ex parte contact on issues Judge Hulbert did not consider "substantive" remains undisclosed. Finding #63 (CP 1115) of no ex parte contact is false; whether Judge Hulbert is aware of what he signed is its own issue (§ I-2). CP 1903 has a partial list of ex parte contact.

2. False Findings, Failure to Disclose, and Failure to Have Evidentiary Hearings on Admissions of Ex Parte Contact Caused an Incomplete Record Requiring Reversal.

Judge Hulbert's failure to promptly disclose ex parte contact, like the in-person contact on June 11, 2009, requires reversal. Ryggs should not have had to sleuth out ex parte contact or have "offers of proof" of "whatever was going on" in Gibbs' office taken "as presented" without a full evidentiary hearing (CP 1877, 1882). This "denied the defense the opportunity to investigate or present a complete factual record."⁵²

⁵² *State v. Johnson*, 125 Wn.App. 443, 461, 105 P.3d 85 (2005) ("This error cannot be presumed harmless. We reverse and order a new trial before a different judge.").

3. The Ex Parte Letter/Order of June 11, 2009 Is Void as Are All Subsequent Orders and Proceedings Based on It.

An ex parte order is by definition done on the application of one party.⁵³ The letter/order of June 11, 2009, done on the application of Gibbs' June 3, 2009 letter without notice to, or argument by, the Ryggs, is a void ex parte order. The hearing on 7-17-09 was a sham, with the result predetermined, "THE COURT: by the time we leave here this morning we will have accomplished substantially this: [quotes ex parte decision]. That is taken as a direct quote from my letter to counsel of June 11, 2009."⁵⁴ All subsequent orders stemming from the ex parte letter/order are void.⁵⁵

4. Ex Parte Contact Creates the Appearance of Unfairness.

Prejudice to the Ryggs is shown in the err that the quiet title judgment "was not reversed" (§ A). "However, in deciding recusal matters, actual prejudice is not the standard," a court's violation of CJC Canon 3(A)(4), prohibiting ex parte communications concerning a pending or impending proceeding, requires recusal regardless of actual prejudice.⁵⁶

⁵³ *State v. Moen*, 129 Wn.2d 535, 541 n.3, 919 P.2d 69 (1996).

⁵⁴ RP of 7-17-09, p. 6-7.

⁵⁵ *Ex rel Ridgely v. Superior Court of Chelan County*, 86 Wash. 584, 586, 150 P. 1153 (1915) (holding in favor of relator that since the original order "is void because made without notice... all subsequent orders made with reference thereto are likewise void because of the invalidity of the original order.").

⁵⁶ *Sherman v. State*, 128 Wn.2d 164, 205-06, 905 P.2d 355 (1995) (recusal required even when ex parte contact did not show favoritism to one party, but was with a neutral third party; "where a trial judge's decisions are tainted by even a mere suspicion of partiality, the effect on the public's confidence in our judicial system can be debilitating.").

D. PROCEEDINGS BY EMAIL / LETTER WERE IRREGULAR.

1. Our Constitution Requires Open Proceedings of Record.

The email and letter proceedings violated Ryggs' rights under Wash. Const. Art. 1, § 10, "all cases shall be administered openly," and Wash. Const. Art. 4, § 11, "superior courts shall be courts of record." A judge is not a court.⁵⁷ Under RCW 2.28.030 (2), Pro Tem Judge Hulbert had no authority to act or consider Reinertsens' email and letter requests.⁵⁸

2. Secret Proceedings "Foster Mistrust... and Misuse of Power."

Open proceedings are a check on the misuse of judicial power, whereas proceedings "cloaked in secrecy foster mistrust and, potentially, misuse of power."⁵⁹ Access to judicial records protects "basic fairness" and safeguards "the integrity of the fact-finding process." *Id.* There can be no access to judicial records where none are created and proceedings are held out-of-court by email or letter. Email orders are prone to non-receipt (Gibbs "moved" to strike by email, then claimed no receipt of email order, CP 1139); many emails refer to others Ryggs still do not have (CP 1388).

3. The No-Notice Proceedings Denied Ryggs Due Process.

"Due process of law means that the procedure was according to the established forms and rules of law."⁶⁰ There is no established rule for

⁵⁷ *State ex rel. Romano v. Yakey*, 43 Wash. 15, 85 P. 990 (1906).

⁵⁸ *In re Jaime v. Rhay*, 59 Wn.2d 58, 61, 365 P.2d 772 (1961) (RCW 2.28.030 (2) "means that a judge may not pass upon a matter that was never properly submitted to him.").

⁵⁹ *Dreiling v. Jain*, 151 Wn.2d 900, 908-09, 93 P.3d 861 (2004).

⁶⁰ *State v. Buddress*, 63 Wash. 26, 32, 114 P. 879 (1911).

email or letter proceedings without notice done at any time, of any day, including court holidays (CP 1338-45). A “departure from established modes of procedure will often render the judgment void.”⁶¹ “[I]rregularity in proceedings is regarded as a more fundamental wrong, a more substantial deviation from procedure than an error of law,” which justifies vacation of judgment under CR 60(b)(11).⁶² The “elements of a fair hearing” that the email and letter proceedings violated are: “an unbiased tribunal,” “notice,” “an opportunity” to respond, “the making of a record,” “public attendance,” and “judicial review” (if no record is made by the proceedings, full review cannot be had).⁶³ The email/letters were not some kind of hearing; they were no hearing at all. “[J]urisdiction is the right to hear and determine not determine without hearing.” *Windsor*, Id.

4. Gibbs Sending Letters to Hulbert’s Private Residence Creates “Appearance of a Special Relationship” that Requires Recusal.

Gibbs’ letters to Hulbert’s private residence, starting four days after this Court’s Opinion in 2007, show Reinertsens’ desire to have no one else act as judge on remand. Such letters create “the appearance of a special relationship” requiring recusal.⁶⁴ Who contacted Presiding is undisclosed.

⁶¹ *Windsor v. McVeigh*, 93 U.S. 274, 283-4, 23 L. Ed. 914 (1876).

⁶² Philip A. Trautman, *Vacation and Correction of Judgments in Washington*, 35 Wash. L.Rev. 505, 515 (1960).

⁶³ Henry J. Friendly, *Some Kind of Hearing*, 123 U. PA. L.REV. 1267, 1279-95 (1975).

⁶⁴ *Caleffe v. Judge Vitale*, 488 So. 2d 627, 629 (1986 Fla. App) (letter from counsel to judge’s private residence “reasonably substantiate[d] fear” of unfair trial.).

E. DENIAL OF RELIEF FOR DISCOVERY VIOLATIONS IS ERR, WHERE BASIS IS THE TIME WASTED BEFORE THE VIOLATIONS WERE KNOWN PRECLUDES RELIEF.

1. A Discovery Violation Results in “Wasted Effort” in Trial and Appellate Proceedings Taxed *Against* the Discovery Abuser.

A discovery violation causes “wasted effort” in both trial and appellate proceedings; the wasted effort is sanctioned *against* the abuser of discovery, it is not used to armor the abuse from remedy or shield the abuser from sanction.⁶⁵ Finding a violation, then denying relief because of effort wasted on “the trial and five years of litigation” is *opposite* law.

2. Due Process Factors of Willfulness and Prejudice Unaddressed.

Mrs. Reinertsen lied on direct question to conceal Gibbs was a neighbor with knowledge of discoverable matters; Gibbs then manipulated the same question to Mr. Reinertsen to conceal himself. Both acts were willful; no excuse has been given. *Id.*, 688. Default should be granted.

Reinertsens also withheld documents that contradicted Dr. McCarty’s letter and showed they know their claims lack merit. Reinertsens willfully delayed assertion of the contradicting claims to Ryggs’ fence-line on their other, east side until the end of trial in 2005, to keep this smoking gun from undermining their claims in this action. The conclusion that Ryggs’ fence-line on their east side is “not... material” to this action is

⁶⁵ *Mayer v. Sto Industries*, 156 Wn.2d 677, 132 P.3d 115 (2006) (Sanctions awarded for wasted first trial and first appeal; “Mayers should be fully compensated for the money wasted on the first trial and for the loss of use of that sum.”).

inconsistent with the finding using Ryggs' 1995 survey⁶⁶ that "shows a "split rail fence" on the eastern boundary of the Rygg property" as material for making conclusions in this action (Compare F43 with C51). Evidence that makes "facts" based on the McCarty letter "less probable" is relevant to this action.⁶⁷ Willful violation to hide witnesses and evidence creates a presumption that the evidence is material and the abuse itself "is an admission of the absence of any merit in the asserted" claims.⁶⁸

When determining a discovery violation sanction, it is not for the court to decide if production "would have made no difference. That is not for us to decide. It is precisely because we cannot know what impact full compliance would have had, that we must grant a new trial."⁶⁹ The abuse prejudiced Ryggs' ability to prepare for trial. Conclusion of "no conflict," does not address: (1) RPC 3.7 is no bar to calling Gibbs as a witness, and (2) that the abuse is what prevented a pre-trial disqualification motion.

3. No Relief Allows Reinertsens to Profit from their Wrong.

Sanctions "should at least insure that the wrongdoer does not profit from his wrong."⁷⁰ Denial of further discovery on the facts kept hidden from the Ryggs allowed the discovery violations to succeed.

⁶⁶ The Ryggs' 1995 survey was done *because* of issues on the east side (CP 388).

⁶⁷ *Saldivar v. Momah*, 145 Wn.App. 36, 395, 186 P.3d 1117 (2008).

⁶⁸ *Assoc. Mortgage Inv. v. G.P. Kent Const.*, 15 Wn.App. 223, 228, 548 P.2d 558 (1976).

⁶⁹ *Gammon v. Clark Equipment Co.*, 38 Wn.App. 274, 228, 686 P.2d 1102 (1984).

⁷⁰ *Id.*, 280.

**F. DECISION FINDING TRUE WHAT REINERTSENS ADMIT
“IS A COMPLETE MISREPRESENTATION” DEFIES JUSTICE.**

When faced with CR 11 sanctions for false claims that Reinertsens and McCartys knew the location of the property line at the time Ryggs’ fence-line was built, Reinertsens abandoned this falsehood as “irrelevant” to their suit and admitted it “is a complete misrepresentation.”⁷¹ On remand, Reinertsens re-asserted this lie as “true,” despite Dr. McCarty pleading “He neither knew that the fence was nor was not on the property line.”

Substantial evidence must be “credible evidence.”⁷² Finding the previously-admitted-as-false story that Reinertsens knew the location of the line, to place pyramidalis or railroad ties back from it, to now be “credible” cannot “insulate” this absurd finding from review. “[F]actors other than demeanor and inflection go into the decision whether or not to believe a witness. Documents or objective evidence may contradict the witness’ story; or the story itself may be so internally inconsistent or implausible on its face that a reasonable factfinder would not credit it.”⁷³

CR 11 was invoked on Reinertsens’ contradicting testimony admitting they knew no line other than the fence-line in 1995, their own placement of the line at 7.5 feet, and the defects making prior knowledge impossible.

⁷¹ CP 1901: “It is a complete misrepresentation that the [Reinertsens], at all times, knew the exact location of the property line and further this assertion is irrelevant.”

⁷² *Cuillier v. Coffin*, 57 Wn.2d 624, 628, 358 P.2d 958 (1961).

⁷³ *Anderson v. Bessemer*, 470 U.S. 564, 575 (1985).

G. IF FINDINGS ON RYGGS' CR 11 MOTION HAD BEEN MADE, AS REQUIRED, REINERTSENS' FALSE CLAIMS ARE UNLIKELY TO HAVE BECOME ERRS IN THE DECISION.

Findings are required to support a denial of CR 11 sanctions.⁷⁴ Had findings been made on Ryggs' CR 11 motion, it is unlikely Reinertsens' gross misrepresentations would have become errs in the 2009 judgment.

1. The Correct 10 Year Period Is the Earliest.

Sanctions were sought for Reinertsens' not warranted by law assertion of the wrong 10 year period. There are no findings for the correct period.

When the law is properly applied to focus on the first ten years, the [Ryggs] have met their burden by 1979 through tacking back to the McCartys (Ex 21), by 19[8]3 by tacking to the Slaters (Ex 20), or by 1986 by their possession alone (Ex 19).

2. Split-Rail Fence Existed for More than 10 Years.

Sanctions were sought for Reinertsens' not-well-grounded in fact claim that the split-rail fence did not exist for a period of 10 years:

Plaintiffs themselves admit the split rail fence was built in 1970... Mr. Reinertsen himself admits it may have been standing full erect until at least 1990..

1970 to 1990 is 20 year.

20 years is more than 10 years.

The split rail fence has existed continuously for an uninterrupted period of 10 years. (CP 1073; above 1072).

The Reinertsens' own admissions to not support the 2009 judgment that the split rail fence had not "existed for longer than the required 10 year-period." (C20, C33, CP 1110 and 1112).

⁷⁴ *Doe v. Spokane & Inland Empire Blood Bank*, 55 Wn. App. 106, 780 P.2d 853 (1989).

H. NO FINDINGS FOR 1976-1986, THE RELEVANT 10 YEARS.

Ms. Ryggs' physical possession began in 1976. Without tacking to her predecessors, her title by possession "matured under the statute of limitations" by 1986 regardless of where her defective paper title puts the theoretical line. The only finding on a 10 year period is 1995, which is wrong. After the first 10 year period, Rygg's title is fully vested and the fence-line no longer needs to exist.⁷⁵ The only way she can be divested of her title is if the Reinertsens adversely possessed the land, which the conclusions hold they did not do by any action taken to the railroad ties.

Mrs. Reinertsen admits express notice of Ryggs' hostile possession of the fence-line in 1976 (CP 338-39). Even had a revocable license been concluded to have existed originally (there are no conclusions of a revocable license) the admission of express notice in 1976 would begin the 10 year period.⁷⁶ None of Reinertsens' alleged actions to any of the fence-line could have occurred during 1976-1990, since their counsel, who was Ms. Ryggs' former counsel, knew from the former representation:

There is no evidence that there was any knowledge even of the claims of the Reinertsens by Ms. Rygg in 1989 or 1990.
(RP of Motion for Disqualification of Attorneys, October 7, 2005, p. 10, l. 19-20, *Reinertsens v. Rygg, I*).

⁷⁵ *Mugaas v. Smith*, 33 Wn.2d 429, 431-32, 206 P.2d 332 (1949)

⁷⁶ *N.W. Cities Gas Co. v. Western Fuel Co.*, 13 Wn.2d 75, 84, 123 P.2d 771, (1942); *Shelton v. Strickland*, 106 Wn. App. 45, 51-52, 21 P.3d 1179 (2001).

I. DEFECTS IN JUDGMENT PRECLUDE REVIEW.

1. Judgment States It Is “Inconsistent” on Its Face.

The 2009 “Supplemental Findings” states it is “inconsistent” with the incorporated 2005 judgment. Judgments cannot be inconsistent, and must come “in some concrete form.”⁷⁷ The inconsistencies are myriad.⁷⁸ At CP 456, the 2005 judgment in turn incorporates the 2004 Memorandum Decision, which was the only one drafted by Judge Hulbert. Part 6 of the Memorandum Decision holds that the Ryggs can keep their fences:

“The Defendant’s are entitled to complete/create any fence work now existing or in the future...” (CP 553).

Elsewhere, the judgment inconsistently says Reinertsens can “replace or erect a new fence.” (CP 458). Reinertsens cannot create a new fence or replace a new fence where Ryggs’ 30 plus year old fences exist. There is no injunction requiring the Ryggs to remove their fences, and no injunction was ever pled by the Reinertsens, who would be barred under RCW 7.28.190 to force the Ryggs to remove their fences had they sought an injunction. The inconsistency between the expressly incorporated Memorandum Decision and other parts of the judgment “prevents this court from concluding which facts the court actually found.”⁷⁹

⁷⁷ *Turner v. Creech*, 58 Wash. 439, 442, 108 P. 1084 (1910).

⁷⁸ Due to page limits, inconsistencies are cross-referenced in the Appendix.

⁷⁹ *Ruskin Fisher & Associates, Inc. v. Mt. Spokane Chair Lift, Inc.*, 14 Wn. App. 330, 332, 540 P.2d 1393 (1975).

Illustrative of the confusing and inconsistent findings and conclusions are those dealing with the railroad ties (CP 1109-10). It was found they were never located sufficiently to make a conclusion on them:

It was never made clear to the Court by either party the actual location of the original line of railroad ties or even the current line of cement blocks... This was insufficient for the Court to make a specific finding of the location [to make a legal conclusion].

But a conclusion of “dominion and control over the area in which the railroad ties or concrete blocks were located” was inconsistently made.

Inconsistent again, and internally, is the finding they were laid down in 1969 “not necessarily on the surveyed boundary but close to the actual line” --- but the “surveyed boundary” was not supposedly determined until this action in 2005 due to the defective legal description.

In addition to the inconsistent findings and conclusions, the finding that the railroad ties or concrete blocks extend “east of the fence” is just wrong, they extend west to the Reinertsens’ side. Ex 40 and Ex 39. No dates are given for the “replacing”; the only known time some, but not all, of the railroad ties were replaced by concrete blocks was in 2003 as part of Reinertsens’ new deck construction, which started this dispute and prompted Ryggs to counterclaim for trespass: “Plaintiffs removed railroad ties under Defendant RYGG’s board fence and replaced them with cement bricks intended to support the offending deck structure.” (CP 958).

2. Judgment Was Not a Product of Independent Judicial Analysis, Since No Framework Was Provided Before the Opinion Drafted by Gibbs Was Adopted Verbatim.

Failing to perform the “core work-product of judges,”⁸⁰ Pro Tem Judge Hulbert did not provide any “framework for the proposed findings,” or conclusions of law, or even who the prevailing party was, and “uncritically accepted findings prepared without judicial guidance.”⁸¹

Record evidence shows lack of independent review and lack of understanding of what was being signed. When asked where the judgment places the line on the ground in reference to Reinertsens’ house at final presentation, Pro Tem Judge Hulbert was unable to answer. Trial judges should not sign findings the effects of which they do not understand.⁸²

3. Judgment Is Not Final and Calls for Further Trial Court Proceedings, Admitting the “Corrected” Legal Description May Still Need to Be “Clarified”; This Was Needed Before Reinertsens’ Action Under RCW 7.28.120.

The judgment is not final, and requires future vague proceedings, including unspecified “documentation” to “assure the legal descriptions of both properties are clarified, enforceable and insurable.” (CP 1118). This was needed before Reinertsens could even bring their action. RCW 7.28.120 requires the property claimed to “be described with such

⁸⁰ *Bright v. Westmoreland County*, 380 F.3d 729, 732 (3rd Cir. 2004).

⁸¹ *Anderson v. Bessemer*, 470 U.S. 564, 572 (1985).

⁸² *Keuffel & Esser Co. v. Pickett & Eckel*, 182 F.2d 581, 585 (7th Cir. 1950) (“I would not hesitate to sign these findings except for [the] reason... they display an erudition in mathematics which I do not possess.”).

certainty as to enable the possession thereof to be delivered if a recovery be had.” Where the location is uncertain due to an ambiguous description, a whole separate proceeding needs to be conducted first to determine the theoretical line’s location.⁸³ Due process requires a certain line:

Plots in ejectment are part of the pleadings made to elucidate conflicting locations, and by which parties are notified of the precise grounds of adversary claims, and enabled to resist them.
Medly v. Williams, 7 G. & J. 61 (1835).

The still pending trial proceedings on the defective legal description show the fundamental error that Ryggs’ title claims were decided first, contrary to the maxim that “the plaintiff must recover on the strength of his own title, and not upon the weakness of the claim of his adversary.”⁸⁴

It is an admission that the last minute “corrected” legal description entered contrary to the Mandate, without petitioning for leave to do so,⁸⁵ is no better than the first defective description. “Northwesterly” does not meet the statute of frauds.⁸⁶ These further proceedings cannot change the original 1966 plat map designating 7.5 feet from the monument of Reinertsens’ house.⁸⁷ The rejection in 2005 of Krell’s survey attempt to tie the judgment to the monument, will make this an action to restore it.

⁸³ *Campbell v. Reed*, 134 Wn. App. 349, 139 P.3d 419 (2006).

⁸⁴ *Helm v. Johnson*, 40 Wash. 420, 82 P. 402 (1905)

⁸⁵ Reinertsens appear to have in bad faith resisted, for years, Ryggs’ attempts to have the error of a not-self executing land decision reviewed as means of judge-shopping.

⁸⁶ *Bonded Adjustment Company v. Edmunds*, 28 Wn.2d 110, 112, 182 P.2d 17 (1947).

⁸⁷ *McPhaden c. Scott*, 95 Wn.App. 431, 436, 975 P.2d 1033 (1999).

J. ERRS IN INCONSISTENT RULINGS ON AMENDING.

1. Allowing Reinertsens to Amend Prejudiced Ryggs' Defense that Plaintiffs' Claim Was Barred Under RCW 7.28.120, and Denied Due Process By Permitting No Cross-Examination.

Ryggs had asserted in 2004 the defense that Reinertsens' claims were insufficient under RCW 7.28.120; allowing Reinertsens to amend without consideration of this defense was prejudicial. Also, the inability to "conduct additional discovery or cross-examine" Downing made amendment under CR 15 an err.⁸⁸

2. Denying Ryggs' Ability to Amend or Call Witnesses on Basis that Amendments Needed to Have Been Made Before Trial in 2004 Shows Unfair Treatment; No Factors of CR 15 Given.

In addition to the fundamental unfairness shown in denying Ryggs' ability to amend or call witnesses, the denial of Ryggs' ability to amend on the basis of time spent on appeal was an abuse of discretion, where the quiet title judgment was vacated and thus not in a post judgment setting.⁸⁹ The blanket denial did not review each amendment sought under CR 15 factors, and thus was arbitrary. Statute of limitations is inherently pled when adverse possession is pled, they being "co-equal."⁹⁰ Other amendments were based on new admissions by Reinertsens and McCartys.

⁸⁸ *Green v. Hooper*, 149 Wn.App. 627, 638, 205 P.3d 134 (2009)

⁸⁹ *Johnson v. Berg*, 151 Wash. 363, 370-72, 275 P. 721 (1929).

⁹⁰ *Somon v. Murphy Fab. & Erection Co.*, 160 W.Va.84, 89 (1997) ("the period for holding property under the doctrine is co-equal to the statute of limitations barring suits for recovery of real property which at the present time is ten years.").

K. AS A MATTER OF LAW, 7.5 FEET FROM REINERTSENS' HOUSE CONTROLS GRANTOR'S INTENT.

1. Settled Law on Construing A Defective Description Controls; Prior Opinion Erred that Grantor's Intent Is a Question of Fact.

“In construing a description... what are the boundaries is a question of law.”⁹¹ The prior opinion erred by reviewing grantor's intent as a question of fact, “But the intent of parties to a deed as well as the legal consequences of that intent are in reality mixed questions of law and fact: legal rules of deed interpretation determine how the underlying facts reflect the intent of the parties.”⁹²

2. “It May Be Laid Down As an Universal Rule, that Course and Distance Yield to Natural and Ascertained Objects.”

The original 1966 McCurdy Survey ascertains the Reinertsens' house to be 7.5 feet from the property line (Ex 1). As held by the United States Supreme Court, “It may be laid down as an universal rule, that course and distance yield to natural and ascertained objects.”⁹³

Prima facie, a fixed, visible monument can never be rejected in favor of mere course and distance...The general rule that courses and distances must yield to natural or artificial monuments or objects is upon the legal presumption that all grants and conveyances are made with reference to an actual view of the premises by the parties thereto. (citations omitted).

Garrard v. Silver Peak Mines, 82 F. 578, 585 (1897).

⁹¹ *DD&L v. Burgess*, 51 Wn.App. 329, 335, 753 P.2d 561 (1988).

⁹² (emphasis added) *King County v. Rasmussen*, 299 F.3d 1077, 1084 (9th Cir. 2002).

⁹³ *Davies v. Wickstrom*, 56 Wash. 154, 158, 105 P. 454 (1909), citing Justice Story, speaking for the U.S. Supreme Court in *Preston's Heirs v. Bowmar*, 19 U.S. 580 (1821); also *Camping Comm. Of P.N.W Conf. of Methodist Church v. Ocean View Land*, 70 Wn.2d 12, 15, 421 P.2d 1021 (1966) (an object is the “best evidence” of intent).

The reason “[t]here is an intrinsic justice and propriety in this rule” is that a landowner does not need to be a surveyor to locate property lines set a clear distance from a visible object, like 7.5 feet from Reinertsens’ house, whereas with “courses and distances” the “unskilled are unable to detect them, and the learned surveyor often much confused.”⁹⁴

The monument of Reinertsens’ house is an object “by which the land can at all times be easily found and identified.” Because it is “found and established” at 7.5 feet from the property line, “there can be little or no room for controversy about the boundaries of the land.” *Id.* at 266.

3. Reinertsens Put The Line 7.5 Feet From Their House; “Their Own Construction of the Deed Would Determine Their Rights.”

Proof of the reason for the universal rule is that Reinertsens used their house to detect the property line. “Their own construction of the deed would determine their rights.”⁹⁵ Relying on the 1966 McCurdy Survey, Mr. Reinertsen interpreted the line to be “7 feet 6 inches” from his house on building permits to show his new deck “satisfied the requisite setback requirement.” (CP 254, 300-01, 320; permits: Ex 24 and CP 434).⁹⁶

⁹⁴ *Stafford v. King*, 30 Tex. 257, 267, 94 Am.Dec. 304 (1867). (Even “with the aid of the best scientific skill mistakes and errors are often committed in respect to the calls for course and distance... course and distance are regarded as the most unreliable, and generally distance more than course, for the reason that the chain-carriers may miscount and report distances inaccurately.”).

⁹⁵ *Davies*, at 159 citing with approval 2 Devlin, *Deeds* (2d ed.), § 1042; 13 Cyc. 627.

⁹⁶ *Hanson v. Estell*, 100 Wn.App. 281, 283, 288, 997 P.2d 426 (2000) (locating a property line during the permitting process so new construction “satisfied the requisite setback requirement” is one’s “own interpretation of... the property line.”).

4. “The Fundamental Principle in All Cases is to Ascertain Where the Survey Was Actually Made Upon the Ground”; The 1966 McCurdy Survey Controls Grantor’s Intent Over Later Deeds.

“The intent of the original grantor, as manifested by the original survey, dominates the determination of property grant boundaries. The survey made at the time of the grant controls if it can be found.”⁹⁷ “The fundamental principle in all cases is to ascertain where the survey was actually made upon the ground.”⁹⁸ The prior opinion erred in putting added weight on the errors in the description being repeated in the Deeds.

A description is not the thing itself, but rather an attempt at “picturing in words” what was done.⁹⁹ Here, the description is flawed. What it tried to do was say in surveying terms how to “accomplish the intent of maintaining the common boundary line 7½ feet from the house” as Reinertsens admit at p. 6 of their prior *Brief of Respondent*. The defective legal description was written by McCurdy to describe what was done physically on the ground, he “tried to calculate --- calculated the line to be 7 ½ feet from the house.” (Downing at CP 231-32). “The McCurdy survey... is the origin of the metes and bounds legal description... it would be a means of testing one of these resolutions.” (Krell at CP 103).

⁹⁷ (citations omitted) *Kennedy Memorial Foundation v. Dewhurst*, 994 S.W.2d 285, 292 (Tex.App 1999); *Camping*, at 14 “the intention of the dedicators, as adduced from the plat itself, controls... as that furnishes the best evidence thereof.”

⁹⁸ *Fagan v. Stone*, 3 S.W. 44 , 45, 67 Tex. 286 (1887).

⁹⁹ Webster’s NewWord Dictionary, 2nd College Ed., at 381.

5. On a “Doubtful” Description, Law Is “Not to Press the Broadest Construction Against [Rygg] Who Is Now In Actual Possession.”

Ms. Rygg has been in actual, physical possession of the land since 1976. Reinertsens’ only claim is the ambiguous paper title, unlike Ms. Rygg who has both the same doubtful paper title and is in actual possession of the land. As held by the United States Supreme Court, where a description is “doubtful” because it is “susceptible of two constructions” the court is “not to press the broadest construction against a party who is now in actual possession... That possession ought not be ousted without a clear title in the other party.” *Preston’s Heirs*, at 3.

Holding 7.5 feet from Reinertsens’ house to resolve the doubtful description “actually gives Reinertsen the least amount of land.” (Downing, at CP 232). A line 7.5 feet from the Reinertsens’ house runs through the center of the Ryggs’ fence-line (CP 162, 609, and Ex 34).¹⁰⁰

6. Any Interpretation “Should Be Resolved Most Strongly Against” Reinertsens as Successors to Howards, Dedicators of the Deeds.

In the interpretation of maps and plats all doubts as to the intention of the owner should be resolved most strongly against him... any conflict on its face will be construed most strongly against the dedicator.¹⁰¹

Reinertsens are the successors of Howards, the dedicators.

¹⁰⁰ At trial, Reinertsens falsely asserted that all elements of the Ryggs’ fence-line “lie on the Plaintiffs’ property under any survey or construction thereof” but Downing’s second survey, using 7.5 feet places the majority of the split-rail fence entirely to Ryggs’ side of the property line, see Ex 9. This false statement was exposed by the Ryggs at CP 616.

¹⁰¹ *Matthew v. Parker*, 163 Wash. 10, 17 (1931); *Gwinn v. Gwinn*, 56 Wn.2d 612 (1960).

7. The Intent Was to Place the Line So that Howard's House Would No Longer Straddle It; The House Is Thus the Reason for the 1966 McCurdy Survey and at the Heart of Howard's Intent.

The intent of Howard was to “eliminate the encroachment” of his house “straddling the boundary between the lots.” (Prior Opinion, at 1). The only evidence of this intent is the 1966 McCurdy Survey that shows the Howard/Reinertsen house straddling the original line and then the variance to put the line 7.5 feet from the house. Only Downing's testimony to use the ascertained object of the Reinertsens' house considered this intent of Howard “in light of the surrounding facts and circumstances” at the time the conveyances were made.¹⁰²

Because Downing rejected his first survey map, and because his first map was not made “in light of the surrounding facts and circumstances” of the original conveyance, there is no substantial evidence to support using Downing's rejected survey. Saying not to do something does not support doing it. The truth of Downing's declared premise is that it is wrong to follow his first map. While a Court may reject or accept an expert witness's testimony based on persuasiveness, there is no case that uses what an expert says not to do as reason to do it. Findings have to be made explaining why an expert's opinion is not persuasive.¹⁰³

¹⁰² *Stafford v. King*, at 9, *Leighton v. Leonard*, 22 Wn.App. 136, 141 (1978).

¹⁰³ *Brewer v. Copeland*, 86 Wn.2d 58, 74, 542 P.2d 445 (1975) (without findings “why the opinion was not persuasive” a court acts “arbitrarily.”).

8. The Judgment Fails to Mention the 7.5 Feet Measurement, or the 1966 McCurdy Survey, or the Reason for the 1966 Survey.

The “monument as established on the ground must control... First, the court must determine [what] was the monument... Second the court must determine the location of the monument as intended... from which the... boundary can be ascertained.” *DD&L*, at 336. The judgment makes no findings or conclusions at all of the 1966 McCurdy Survey, the reason why Howards hired McCurdy, or the Reinertsens’ own placement of the line 7.5 feet from their house both before and during this action.

The only time a monument is rejected in favor of lesser calls is upon findings it was not placed “somewhere near where it really exists,”

The fraudulent character of the survey, the nonexistence of the lake within at least half a mile of the point indicated on the plat, the excessive amount of land claimed as compared with that which was described... all go to show that the lake ought not to be regarded as a natural monument within the cases, or within the principle upon which the rule is founded.¹⁰⁴

L. ERRS IN DENIAL OF RELIEF WHERE ASSUALT FOUND.

There is no evidence to support the finding of mutual combat. It is not Dilworth’s ongoing fear that is the standard but that experienced at the time of the assault.¹⁰⁵ Also, no “specific, cogent reasons” support the adverse credibility finding, which requires reversal.¹⁰⁶

¹⁰⁴ *Security Land and Exploration Company v. Burns*, 193 U.S. 167, 179-81 (1904).

¹⁰⁵ *Brower v. Ackerley*, 88 Wn. App. 87, 92-93, 943 P.2d 1141 (1997)

¹⁰⁶ *Taylor v. Maddox*, 366 F.3d 992, 1008 (9th Cir. 2004).

M. NO EVIDENCE SHOWS REINERTSENS EVER CAME TO RYGGS' SIDE OF THE ENTIRE FENCE-LINE.

Mr. Reinertsen admitted he did not come to Ryggs' side of the pyramidalis because he did not prune around them on all sides (CP 341). The railroad ties do not extend east of the board fence. Reinertsens occupied their land only up to, and not east, of the entire fence-line; "the used line is the true boundary."¹⁰⁷ It was err to deny mutual acquiescence.

N. PYRAMIDALIS AND BEDS MAINTAINED BY RYGGS.

Ryggs' had the pyramidalis sprayed professionally beginning in 1977 which has continued without interruption, including during Ms. Ryggs' divorce, to the present. The finding that it was "off" is not supported by the record. The judgment does not say what element is not met, and is no better the prior lack of findings. The finding that spraying continued over the objection of Mrs. Reinertsen "does not detract but instead supports the [adverse possession] case."¹⁰⁸ McCartys letter is that he "planted birch trees, pine trees, and maple trees on my side of the pyramidalis hedge." Reinertsens admit it was the Ryggs who maintained the beds the hedge is in, using pine needles as ground cover instead of bark. The court does not engage in endorsing one type of ground-cover over another. Reinertsens disapproval of how Ryggs treated it, shows it is not Reinertsens' land.

¹⁰⁷ *Lamm v. McTighe*, 72 Wn.2d 587, 592, 434 P.2d 565 (1967).

¹⁰⁸ *Lee v. Lozier*, 88 Wn. App. 176, 186, 945 P.2d 214 (1997).

O. BOARD FENCE: NO FINDINGS ON NEVER-PLED REVOCABLE LICENSE; INJUNCTION NEVER SOUGHT.

Reinertsens never pled a revocable license. Reinertsens never sought an injunction to force the Ryggs to remove the board fence that this Court found encloses the Ryggs' side yard.¹⁰⁹ There are no findings that the board fence was "a temporary fence."¹¹⁰ There is no evidence that Mr. Reinertsen helped pay for construction of the board fence, showing a permanent grant even if the "complete misrepresentation" is believed.¹¹¹

P. MANDATE FOUND SPLIT-RAIL FENCE EXISTED EVEN WHEN A PORTION HAD FALLEN DOWN; FINDING OF "NO EVIDENCE" IS ERR WHEN THERE IS EVIDENCE.

This Court already found the Reinertsens, by their own admission, used the split-rail fence as "a defined line to maintain to" even after a portion collapsed (Ex 44). Finding it ceased to exist in 1995 is contrary to the Mandate. Finding there "was no evidence before the court" where McCarty put the fence is err when there is evidence (See App. 2, p. 17-24).¹¹² Testimony that the posts "were still in their same post holes" (CP 362-3), is sufficient to locate where McCarty put it.¹¹³

¹⁰⁹ *Abbott Corp. Ltd. v. Warren*, 56 Wn.2d 606, 354 P.2d 926 (1960). (Judgment may not exceed the demand of the complaint).

¹¹⁰ *Beck v. Loveland*, 37 Wn.2d 249, 253-55, 222 P.2d 1066 (1950), overturned by *Chaplin v. Sanders*, 100 Wn.2d 853, 676 P.2d 431 (1984) (intent no longer matters).

¹¹¹ *Washburn v. Esser*, 9 Wn. App. 169, 172-3, 511 P.2d 1387 (1973).

¹¹² *Hagan v. Andrus*, 651 F.2d 622, 627 (9th Cir. 1981).

¹¹³ *Timberlane Homeowners Assoc., Inc. v. Brame*, 79 Wn.App. 303, 310, 901 P.2d 1074 (1995). (even a different kind of fence placed "for the most part" in "many of the same post holes" is sufficient to locate the original fence of different material).

Q. A BOUNDARY FENCE MARKS THE LIMITS OF THE GROUND MAINTAINED TO, THE “FACTS” FOUND PROVE A BOUNDARY LINE FENCE.

As a matter of law, the “facts” based on the admitted “complete misrepresentation” as found prove a boundary line fence used to define the limits of the land Reinertsens maintained. The conclusion of a barrier or convenience fence is an error of law under the “facts” as found. The Reinertsens’ claimed purpose for the placement of the fence was to “eliminate” land so they would not have to maintain that land. The fence set the limit of the land they cultivated. This is the *definition* of a boundary fence: a fence that acts as the “defining point of cultivation.”¹¹⁴

In contrast, a barrier or convenience fence is a fence to control the pasturage of livestock.¹¹⁵ *Wood v. Nelson*¹¹⁶ defines the difference between a “random” fence “for the purpose of confining stock” versus a “line” fence that “is effective in excluding an abutting owner... it constitutes prima facie evidence of hostile possession up to the fence.” “A fence is the usual means relied upon to exclude strangers and establish the dominion and control characteristic of ownership.” *Id.* at 540.

¹¹⁴ *Merriman v. Cokeley*, 168 Wn.2d 627, 632, 239 P.2d 162 (2010);; *Skoog v. Seymour*, 29 Wn.2d 355, 365, 187 P.2d 304 (1947) (“the adverse holding will extend to the limits of the ground so cultivated as effectually as it would to a fence.”).

¹¹⁵ *Young v. Newbro*, 32 Wn.2d 141, 143, 200 P.2d 975 (1948) (a fence “for pasturage, would not militate against a claim of adverse holding” if the use shows ownership).

¹¹⁶ 57 Wn.2d 539, 540-41, 358 P.2d 312 (1961).

R. GIBBS MOVED TO EXCLUDE THE 1989 ANDERSON HUNTER APPRAISAL AS “NEW EVIDENCE... FOR THE UNDERLYING BOUNDARY DISPUTE”; THE CASES ARE SUBSTANTIALLY RELATED.

Mr. Gibbs moved to exclude the 1989 Anderson Hunter Appraisal done during their representation of Ms. Rygg as “new evidence that was not introduced at trial, for the underlying boundary dispute and counterclaims.” (CP 1420). Because this prior work product is relevant to this action, and disproves Reinetsens’ claims, the two representations are substantially related and the firm has side-switched.¹¹⁷

S. OTHER RECUSAL ISSUES NOT MENTIONED ABOVE.

Because Pro Tem Judge Hulbert claimed attorney-client privilege regarding his employment by Mr. Gibbs, and the findings are not accurate in regards to payment, not all the facts are known. However, a judicial officer merely having a pending job application is enough to violate the appearance standard.¹¹⁸ Bias towards Gibbs’ Bar title, negative citing of Dilworth’s voting rights actions not before him, and attacks on undersigned’s parents, show bias from an extra-judicial source. Working with Reinertsens against the Ryggs, in the Writ and at the Court of Appeals (where he was not a party), creates “the reality, of partiality.”¹¹⁹

¹¹⁷ *Trone v. Smith*, 621 F.2d 994, 999 (9th Cir. 1980).

¹¹⁸ *Chicago, Milwaukee, St. Paul, and Pacific Railroad Company v. Washington State Human Rights Commission*, 87 Wn.2d 802, 557 P.2d 307 (1976).

¹¹⁹ *In re Sperline*, 2004 WL 5633483 (Commission on Judicial Conduct); *State v. Dugan*, 96 Wn. App. 346, 354-55, 979 P.2d 885 (1999) (cited by *Sperline*).



MARJA STARCZEWSKI, WSBA # 26111
Attorney for Defendants

DECLARATION OF MAILING

I, Marja Starczewski, hereby certify that on this September 29, 2010, I had served a copy of this Declaration, upon counsel for the Respondents herein, as follows;

- Delivery via messenger
- US Mail, postage prepaid
- Electronic (email) copies
- Fax

Certified, this September 29, 2010, 2010


MARJA STARCZEWSKI

Appendix

“Final” orders and supplemental Findings, with Errors Underlined and Numbered.	1.
Table of Errors in Supplemental Findings, with citations to Record and Authorities.	2.
Appraisal for Anderson Hunter law firm, with photos and drawings of Rygg fences, 1986. – CP 1581 - 1594.	3.
Aerial Photo – historic – Original Howard/Reinertsen home and pathways. – Ex. 33.	4.
Aerial Photo – clear fenceline - Ex 34.	5.
Aerial Photos – for comparison, Ex. 33 and Ex. 34.	6.
Original Survey of Howard property, for new property line, 1966 – Ex. 1.	7.
Original Survey – detail – Ex. 1.	8.
1969 photo of Pyramidalis newly planted on both sides of Rygg home – CP 436.	9.
Photos showing split-rail fence, and white laurel bush, in 1980 and 2004 – CP 438, Ex. 28.	10.
Photo showing “leaning” split-rail fence, 2003, Ex. 44.	11.
Photo of Rygg side-yard, enclosed by 6-foot board fence – Ex. 46.	12.
Photo of Reinertsen new deck, showing notching to fit with Rygg fence – Ex. 38.	13.
Permits taken out by Reinertsen, showing his side yard as 7’ 6” – Ex. 24, dated 6-3-2003, and CP 434, dated 9-20-2004.	14.

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SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

Larry W. & Kaaren Reinertsen,

Plaintiffs,

vs.

Carolyn Rygg & Craig Dilworth,

Defendants.

No. 04 2 08016 7

**ORDER RE:
MOTION TO CLARIFY AND AMEND LEGAL
DESCRIPTIONS**

This matter having come before the Court upon Plaintiffs' Motion to Clarify and Amend Legal Descriptions, the Court having considered argument from counsel for both sides and considered the records and files herein, including the declaration of David Downing, surveyor, and being fully advised on the premises: now, therefore,

IT IS HEREBY ORDERED as follows:

The Court finds that based upon its prior rulings that the distance of 164.73 feet contained in the legal descriptions of the property of both parties herein at issue will control over the "bearing" of North 8° 35' West, that the legal descriptions are affected and should be amended to read as follows:

- 1. The property owned by the Reinertsens¹ as a result of the court's rulings should be as follows:

¹ Snohomish County Assessor's property tax parcel number 00571700900902

**ORDER RE:
MOTION TO CLARIFY AND AMEND LEGAL DESCRIPTIONS**
Page - 1

ANDERSON HUNTER LAW FIRM, P.S.
2707 COLBY AVENUE, SUITE 1001, P.O. BOX 5397
EVERETT, WASHINGTON 98206-5397
TELEPHONE (425) 252-5181
FACSIMILE (425) 258-3345

1 Lot 10 and that portion of lot 9 lying Westerly of the following-described line:
2 Beginning at the southeast corner of said Lot 9, then South 68°49' West along the
3 South line of said Lot 9 for 59.80 feet to the true point of beginning; then
4 northwesterly North 8° 35' West for 164.73 feet to an intersection with the West line
5 of said Lot 9, All in Block 9, Plat of Shore Acres.

6 2. The property owned by Carolyn Rygg² as a result of the Court's rulings should read
7 as follows:

8 Lot 9, Block 9, Plat of Shore Acres, less that portion lying westerly of the following
9 described line:

10 Beginning at the southeast corner of said Lot 9, then South 68°49' West along the
11 South line of said Lot 9 for 59.80 feet to the true point of beginning; then
12 northwesterly North 8° 35' West for 164.73 feet to an intersection with the West
13 line of said Lot 9. F55, C42

14 The parties shall execute any documents, deeds or tax affidavits necessary to effectuate the
15 Court's order in this regard so that the court's orders may be appropriately enforced and both parties
16 will have clear and insurable titles. Should a party fail to execute appropriate documents, deeds or
17 tax affidavits presented to them within 10 days, the party having submitted the documents may apply
18 upon motion on the Civil Motions Calendar to require the non-responding party to execute the same
19 or have the Court or an attorney-in-fact appointed to perform this duty execute the same. Attorneys'
20 fees and costs necessitate by such a motion shall be taxed against the non-prevailing party.

21 DONE IN OPEN COURT this 15th day of December, 2009. C53

22 15/ Hulbert
23 David Hulbert, Superior Court Judge Pro Tem.

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2 Snohomish County Assessor's property tax parcel number 00571700900901

ORDER RE:
MOTION TO CLARIFY AND AMEND LEGAL DESCRIPTIONS
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Appendix - 1

ANDERSON HUNTER LAW FIRM, P.S.
2707 COLBY AVENUE, SUITE 1001, P.O. BOX 5387
EVERETT, WASHINGTON 98206-5387
TELEPHONE (425) 252-6181
FACSIMILE (425) 258-3345

New CP Vol 1105

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Presented by:
ANDERSON HUNTER LAW FIRM P.S.

By _____
G. Geoffrey Gibbs, WSBA No. 6146
Attorneys for Plaintiffs

Approved as to form;
Notice of presentation waived.

LAW OFFICES OF MARJA STARCZEWSKI

By _____
Marja Starczewski, WSBA No. 26111
Attorneys for Defendants

ORDER RE:
MOTION TO CLARIFY AND AMEND LEGAL DESCRIPTIONS
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Appendix - 1

New CP Vol 11 106

ANDERSON HUNTER LAW FIRM, P.S.
2707 COLBY AVENUE, SUITE 1001, P.O. BOX 5397
EVERETT, WASHINGTON 98206-5397
TELEPHONE (425) 252-5181
FACSIMILE (425) 258-3345

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DEC 15 2009

SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

Larry W. & Kaaren Reinertsen,

Plaintiffs,

No. 04 2 08016 7

vs.

SUPPLEMENTAL FINDINGS

Carolyn Rygg & Craig Dilworth,

RE: COUNTERCLAIMS,

JUDGMENT & DECREE AND ORDERS ON MOTIONS

Defendants.

This matter comes before the Court and undersigned judge upon "remand" from the Court of Appeals decision in this matter. The Court has had the benefit of hearing oral argument from counsel for both parties and has considered the transcript of the trial and additional proceedings before this Court, the exhibits admitted at trial and the various memorandum and pleadings filed in this cause subsequent to trial.

1. REAL PROPERTY JUDGMENT SUMMARY

The Court's orders herein directly affect the boundary and title of the following:
Snohomish County Assessor's property tax parcel number 00571700900902; and
Snohomish County Assessor's property tax parcel number 00571700900901.

2. FINDINGS OF FACT

The Court adopts by reference as if fully included herein the Findings of Fact, Conclusions of Law & Judgment adopted after the prior trial on Feb. 4, 2005 (to the extent not inconsistent herewith). A copy has been appended as Exhibit A hereto.

**SUPPLEMENTAL FINDINGS RE: COUNTERCLAIMS,
JUDGMENT & DECREE AND ORDERS ON MOTIONS**
Page - 1

ANDERSON HUNTER LAW FIRM, P.S.
2707 COLBY AVENUE, SUITE 1001, P.O. BOX 5397
EVERETT, WASHINGTON 98208-5397
TELEPHONE (425) 252-5181
FACSIMILE (425) 258-3345

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Appendix **ORIGINAL** New CP Vol 1 1107

1 The Court makes the following additional and supplemental findings with respect to counter-
2 claims by the Defendants of "adverse possession", "mutual recognition and acquiescence" and
3 "assault".

4 **A. Assault**

5 The Court finds that although the parties engaged in mutual combat in anger, they did
6 not do so with deadly weapons or force. Under the reasoning of the decision by the Court of
7 Appeals, that they engaged in mutual combat does not defeat a claim for civil assault brought by
8 Defendant Dilworth. The court does find that Plaintiff Larry Reinertsen did strike a blow that made
9 incidental contact with the eyeglasses worn by Defendant Dilworth. As a result, the Court will now
10 find under the law as expressed by the Court of Appeals that an assault did occur. While the Court
11 does not necessarily believe actual or demonstrated damages need by proven in a case of civil
12 assault, there is no evidence of any quantifiable monetary damages incurred by Defendant Dilworth.
13 Further, his assertion in testimony, when viewed in light of his presence, demeanor and testimony,
14 that the result of the confrontation in question was that he and his mother were in ongoing fear of
15 Larry Reinertsen is not accepted or given credibility by the Court. Therefore, the Court will find an
16 assault occurred but declines to award any damages to Defendant Dilworth.

17 **B. Adverse Possession**

18 Defendant Rygg has asserted a counter-claim with regard to the disputed area of
19 property based upon adverse possession. Both in discussing this counter-claim and the subsequent
20 discussion regarding "mutual acquiescence and recognition", the Court will discuss these theories
21 with respect to 3 sections of the common boundary of the properties described as follows:

- 22 i. *Line of Pyramidalis* – on the southerly portion of the boundary, there
23 lies a line of pyramidalis trees or bushes;
- 24 ii. *Board Fence* – this refers to a 6 foot board fence erected originally
25 upon railroad ties and later cement block; and
- 26 iii. *Split Rail Cedar Fence* – this refers to a split rail fence running toward
the bluff.

1 With respect to the area of the boundary encompassing the line of pyramidalis, the Court
2 specifically finds the testimony of Plaintiff Reinertsen that he planted these bushes credible and
3 supported by the letter from Dr. McCarty admitted as Exhibit 8. The court further finds that the
4 pyramidalis are wholly within the property of the Plaintiff as shown on the Downing survey
5 admitted as Exhibit 3. The only evidence which really supports a claim of adverse possession put
6 forward by the Defendants is that they had a "spraying service" engaged for a period of time which
7 may have sprayed the pyramidalis over the objection at one time of the Plaintiffs. This incidental
8 spraying is not sufficient to find that the defendants' possession was "actual and uninterrupted, open
9 and notorious, hostile and exclusive for than 10 years". While the spraying may have been
10 occurring on and off over a 10-year period, the action does not rise to the level of meeting the
11 previously cited definition. Other evidence including putting down pine needles in the area of the
12 pyramidalis, or trimming or pruning efforts, if any, were insufficient to support a claim of adverse
13 possession.

14 With respect to the area of the "board fence", sometimes referred to as a "6 foot board
15 fence", the Court finds that the Reinertsens originally laid down a line of used railroad ties as a
16 retaining wall, not necessarily on the surveyed boundary but close to the actual line. The court
17 further finds that the predecessor to the defendants conferred with the Plaintiffs and wanting to erect
18 a barrier fence, with the agreement of the Plaintiffs, did so placing its base upon the railroad ties
19 belonging to the Plaintiffs for "mutual convenience" so that weed would not grow in the minimal
20 area between the railroad ties and his fence if placed on the actual boundary line. The line ascribed
21 by the actual fence is not on or in the ground but rather on top of the railroad ties put in place by the
22 Plaintiffs (now replaced with concrete blocks). Thereafter, it was the Plaintiffs who on a number of
23 occasions took action to replace the railroad ties and later substitute concrete blocks. The Plaintiffs
24 placed ornamentation upon their side of the fence. The actions of these defendants were generally
25 limited with regard to the fence. The surveys vary somewhat but appear to indicate that the fence
26 sits between .9 foot to 1.68 feet west of the actual property line (per metes and bounds). The

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continued actions of the Plaintiff in replacing the railroad ties or concrete base defeat the claim of
the Defendants that their possession of all east of the fence was exclusive and hostile. Essentially
the Plaintiffs continued to exercise dominion and control over the area in which the railroad ties or
concrete blocks were located. It was never made clear to the Court by either party the actual
location of the original line of railroad ties or even the current line of cement blocks. Pictures
admitted showing the fence would appear to indicate that the cement blocks are likely between a few
inches and a foot wide under the fence line. This was insufficient for the Court to make a specific
finding of the location of a boundary by adverse possession had the Court so found.

With regard to the "split rail fence" and a claim of adverse possession, the Court finds that
"a" split rail fence was erected by Dr. McCarty probably sometime in 1969 or the early 70's. See
Exhibit 8. There was no evidence before the Court as to exactly where Dr. McCarty located the
split rail fence. However, the testimony was clear to the Court that the split rail fence deteriorated
and fell down sometime in the past. The "survey" admitted as Exhibit 2, dated May 29, 1995,
shows a "split rail fence" on the eastern boundary of the Rygg property (that boundary not involved
in this suit) but does not show any split rail fence on the west toward the Reinertsens. The court
must then presume from this evidence that the fence no longer existed as of 1995. The defendants
then, at some time, resurrected the fence after 1995 (not within the 10 year period for adverse
possession). But in doing so, they could not prove to the Court's satisfaction that it was erected
exactly in the place or on the line set by the former split rail fence, nor can they show with any
certainty where the former split rail fence was located. As a result, the court is unable to find that a
specific boundary was established by a fence that existed for longer than the required 10-year period
to sustain a claim for adverse possession in this portion of the boundary. The testimony of the
defendants in regard to where they erected the new split rail fence was not of sufficient weight or
specificity to establish their burden of proof in this regard.

F31, F33,
F34
C12,
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C15
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F46
C22



1 C. Mutual Acquiescence and Recognition

2 Again dealing with the first portion of the contested boundary and with regard to "mutual
3 acquiescence and recognition", the evidence at trial was that the Plaintiffs planted the line of
4 pyramidalis inside their property line (not intending the vegetation to be the property line) and F47
5 maintained, trimmed and topped the trees sometimes from either their side or the side adjoining the F48
6 property owned by the Defendants. These facts do not support a claim that both property owners F49
7 mutual acquiesced in the line of pyramidalis constituting the true property line. The testimony C23
8 would indicate that they constituted more of a barrier (and not a complete one at that) rather than an F50
9 agreed boundary. C24

10 With regard to the second portion of the boundary in dispute, the "board fence", the issue is
11 also clear. The letter admitted as Exhibit 8 clearly indicates that when Dr. McCarty and the
12 Reinertsens established the fence, they did not do so to establish the boundary line. The located it F51
13 upon the railroad tie retaining wall established by the Reinertsens solely as a convenience to prevent
14 weeds from growing in the a gap had they established it on the line. As Dr. McCarty stated in his F52
15 letter, "it eliminated the small portion of ground that would have been left between my new fence and F52
16 his railroad ties, which would have just filled in with weeds." There was no recognition by Dr. C25
17 McCarty or the Plaintiffs that this fence represented the actual "boundary". C26, C27

18 Further, subsequent to Dr. McCarty, the evidence did not show any agreement between these F53
19 parties that the fence constituted the true boundary line and mere acquiescence in its existence is not
20 sufficient to establish a claim of title to the disputed area. The Plaintiffs continually replaced the C28
21 railroad ties and concrete blocks underneath the fence as well and hung decorations upon the fence, F32-36
22 treating it as, at least in part, their own. The Defendants made no improvements or changes of note F28
23 other than perhaps applying some preservative that would indicate their intention to treat this as a C29
24 true boundary line. The fence was a convenient barrier but not an agreed upon boundary. C30 C31

1 Finally, with respect to the split rail fence, the line was at one time well established (when
2 Dr. McCarty built the fence) but its actual location at the time was not proven at trial. The location
3 at the time of trial was known through surveys but it had previously fallen down and the evidence
4 was not sufficient to show that it existed prior to the survey of May 29, 1995 (Exhibit 2) and
5 therefore lacked the 10 years requisite period. For these and other reasons, the Court does not
6 believe the Defendants have met their burden in showing mutual acquiescence and recognition with
7 respect to this or the other portions of the disputed boundary.

C32
F29

F30

C33 C34

C35

8 **3. JUDGMENT & DECREE**

9 The Court therefore grants judgment in favor of the plaintiffs and against the Defendants
10 with respect to the counter-claims of defendants for adverse possession and mutual acquiescence and
11 recognition in regard to the contested boundary.

12 The Court revises its prior ruling and finds that a civil assault was committed by the Plaintiff
13 Larry Reinertsen but does not award damages in that regard.

14 The Court of Appeals, in its decision, "vacated" the order quieting title to the Reinertsens.
15 However, this Court believes the higher court was doing so only to preserve the status quo pending
16 the resolution of issues remanded to this Court. But to ensure that the matter is resolved within the
17 confines of this order, the Court reiterates its finding and order that title be quieted to the property
18 owned by the Plaintiffs' Reinertsens consistent with their legal description with the caveat that the
19 inconsistency in that legal description between the bearing (North 8° 35' West) and the distance of
20 164.73 feet is resolved by this Court to favor and decree that the distance measurement controls.

C36

C37

21 Counsel for the Plaintiffs invited the Court to issue revised legal descriptions for both parcels
22 in accordance with this ruling. Defendants object that his proposed legal description is not supported
23 by evidence from a surveyor or other expert confirming the accuracy of his proposal. The Court
24 agrees with the defendants in this respect but at the same time does not wish to create a situation
25 where the Court's orders create a cloud on the title of either property or are sufficiently unclear on
26 the record so as to create further litigation on this point.

F54

C38

1 Therefore, the court will reiterate its prior ruling with regard to distance controlling over the
2 compass direction in the legal descriptions of both properties. The Plaintiffs have filed a
3 Declaration of their surveyor that an appropriate amendment to the legal descriptions of both
4 properties would be as set forth below. Absent expert testimony via written declaration from the
5 Defendants that this would not be the property legal descriptions flowing from my decision, the
6 Court will adopt the same. (See 4 other " on Pg 13) JTH

7 The Court therefore finds and decrees that the title and legal description to the property
8 owned by the Reinertsens¹ should be without regard to the bearing in question in this case (stricken
9 through in the following):

10 Lot 10 and that portion of lot 9 lying Westerly of the following-described line: Beginning at
11 the southeast corner of said Lot 9, then South 68°49' West along the South line of said Lot 9
12 for 59.80 feet to the true point of beginning; then northwesterly North 8° 35' West for 164.73
feet to an intersection with the West line of said Lot 9, All in Block 9, Plat of Shore Acres.

13 The Court similarly finds and decrees that the title and legal description to the property
14 owned by Carolyn Rygg² should be without regard to the bearing in question in this case (stricken
15 through in the following):

16 Lot 9, Block 9, Plat of Shore Acres, less that portion lying westerly of the following described
17 line:

18 Lot 10 and that portion of lot 9 lying Westerly of the following-described line:
19 Beginning at the southeast corner of said Lot 9, then South 68°49' West along the
20 South line of said Lot 9 for 59.80 feet to the true point of beginning; then
northwesterly North 8° 35' West for 164.73 feet to an intersection with the West line
of said Lot 9, All in Block 9, Plat of Shore Acres.

21 The Court believes the foregoing is consistent with the prior ruling of the Court on Feb. 4,
22 2005 and by making this additional ruling, all matters may be better resolved and additional
23 litigation forestalled.

F55, C42, C43,
ON ORDER AT CP 1105

24
25
26 ¹ Snohomish County Assessor's property tax parcel number 00571700900902
² Snohomish County Assessor's property tax parcel number 00571700900901

1 **MOTIONS THAT MAY BE PENDING BEFORE THE COURT.**

2 On a number of occasions, the defendants through counsel have submitted "Proposed"
3 motions. The consequence of denominating the same as "proposed" but the Court desires to resolve
4 as many of the issues as possible and will thus treat the same as motions, whether or not they were
5 procedurally properly before the Court. C44

6 **1. Proposed Motion to Strike "Response" of Reinertsens (9/4/2009)**

7 This motion is denied. While it may have been preferable that counsel submitted
8 proposed orders with his earlier submissions, his failure to do so is not a fatal flaw and does not
9 serve to justify "striking" his material.

10 **2. Proposed Motion to Amend Answer of Defendants (9/4/2009)**

11 This motion is denied. The time for amendment of an answer fell sometime prior to C45
12 trial. Bringing such a motion some five years later is tantamount to requesting a new trial. That C46, C47
13 request has been denied at a number of levels and a number of times previously. C48
F55

14 **3. Proposed Motion for Disqualification of Judge Hulbert (9/4/2009)**

15 This motion is denied. The Defendants herein have repeatedly alleged "bias" of the
16 undersigned based upon (1) my adherence to certain findings related to their counter-claims of
17 adverse possession and mutual acquiescence and recognition and (2) my relationship with the
18 Anderson Hunter Law Firm and G. Geoffrey Gibbs, attorney for the plaintiffs. F56

19 The undersigned was the trial judge on the case and made certain findings and rulings F57
20 rejecting counter-claims based on adverse possession and mutual acquiescence and recognition.

21 On remand, I am but following the mandate from the Court of Appeals to expand, supplement
22 and add to the basis for these findings. That I adhere to my original positions in this regard
23 should come as no surprise to the Defendants since they were denied a new trial and I have not
24 changed my mind in regard to their counter-claims (save the one on assault dealt with below).

25 That I do so now is no indication of bias or pre-judging the defendants case; I have already
26 rendered judgment in that regard after trial and denying reconsideration.

1 Further, so far as I know, almost all judges in Snohomish County have a level of
2 familiarity, if not friendship, with attorney G. Geoffrey Gibbs but such friendship is no
3 indication of bias or prejudice in favor of his clients. At the time this matter was originally
4 assigned to me for trial, defendants' attorney, Brian McLean, and Mr. Gibbs met with me in
5 chambers. I indicated to Mr. McLean that I was a friend of Mr. Gibbs, seeing him on occasion
6 and irregularly socially, but felt then, as I do now, that my friendship would have no impact on
7 my decision in this case. Mr. McLean questioned me about past cases I had handled that
8 involved Mr. Gibbs as an attorney and my rulings in those cases (at least some of which were
9 against Mr. Gibbs and his clients). Mr. McLean discussed this matter with his clients and they
10 waived any objection to my sitting on this matter.

11 Since trial was concluded and the various appellate proceedings undertaken, my contact
12 with Mr. Gibbs has been minimal. I have served as mediator on a few cases in which he has
13 been involved and on occasion utilized, in the normal course or any mediation, conference rooms
14 in the Anderson Hunter offices for this purpose. Such use of conference rooms was limited to
15 the duration of the mediations. I have never had any financial relationship with the Anderson
16 Hunter Law Firm save only receiving compensation from their clients (generally shared with the
17 other party(ies)) for my services as a mediator.

18 With regard to claims of "ex parte" contact between myself and Mr. Gibbs, I can only
19 surmise that the definition of *ex parte* contact under which the Defendants are operating is not
20 the same as mine. The only contact in relation to this case that I have had with Mr. Gibbs has
21 been through written communication (generally e-mail, letter or pleadings) and it is my belief
22 that the attorney for the Defendants, Ms. Starczewski, has been copied on every one of those.
23 She has used these same methods to contact me. This does not amount to prohibited "ex parte"
24 contact and both counsel have addressed those communications to me at the address I have
25 provided to them. The use of this method was confirmed by prior orders of Judge McKeeman
26 and myself.

1 As a result, I do not believe I have any actual bias nor created the appearance of bias and
2 decline to recuse myself and force the parties to endure an entirely new trial after five years.

3 **4. Proposed Motion to Disqualify Counsel for Reinertsens (9/14/2009)**

4 This motion is denied. The Defendants cite purported "new law" within the Rules of
5 Professional Conduct. The reference to RPC (C)(2) was not clear as it is an incorrect or
6 incomplete citation. Later in the pleadings, the defendants refer to RPC 1.9. In general, the
7 "conflict of issue" and duty to former clients is contained in RPC 1.8 and 1.9. The addition of
8 "comments" to the rules and the changes thereto since this matter was tried in 2004 and 2005 do
9 not appear to have changed the rules to any degree germane to this case. The appellate courts
10 have dealt with this issue previously and their rulings denying similar motions are of record and
11 known to this court. F65 F66

12 **5. Motion for Dismissal or Default for Discovery Violation (10/5/2009)**

13 This motion is denied. The only new factor put into the mix by the Defendants has been
14 their noting that attorney Gibbs lives on the same street. The court does not find this factor
15 creates a conflict of interest in any way.

16 The only other new allegation raised in this regard is that Mr. Gibbs at one time contact
17 attorney Gary Brandstetter who was counsel for the neighbor whose property lies on the other
18 side of that of the Defendants (to the east), there evidently being legal issues between the
19 Defendants and that neighbor. This Court fails to see any discovery violation that would
20 warrant setting aside the trial and five years of litigation in this regard and does not view the
21 facts in Declaration of Craig Dilworth as "smoking guns" or material in any respect. C51

22 **6. Motion to Strike "Testimony" of G. Geoffrey Gibbs (11/12/2009).**

23 This motion is denied. The substance of the motion is to strike a portion of a
24 memorandum submitted by attorney Gibbs noting that his information concerning the martial
25 arts training of Defendant Dilworth (that relates to the claim of assault) was derived from his
26 client, not another attorney in Anderson Hunter.

1 The Court, had this been important and relevant, may have stricken that portion of the
2 memorandum or provided attorney Gibbs an opportunity to submit declaratory evidence (Mr.
3 Dilworth has been submitting multiple declarations throughout the "remand" process).
4 However, as noted above, the Court is revising its finding in favor of Mr. Dilworth and finding
5 an assault did occur. Therefore, the source of the information is irrelevant except for a claim that
6 Mr. Gibbs should be disqualified as counsel. That issue has been dealt with by this Court, the
7 Court of Appeals and Supreme Court on multiple occasions.

8 **7. Notice of Voiding Consent, etc. (9/4/2009)**

DP - DUE
PROCESS
ERROR

9 This "notice" was not denominated as a motion and contained no request for relief. It is
10 therefore uncertain what, if any, action is requested of the Court. Therefore, none is taken.

11 **8. Third Motion for Disqualification of Judge Hulbert (12/7/2009)**

12 The Defendants bring yet another motion for disqualification of the undersigned. That
13 motion is denied.

14 The motion is not accompanied by any new evidence and is solely argument. A portion
15 of the motion appears to assert that the undersigned "pre-judged" the case when it was
16 reassigned to him on remand. This assertion ignores the underlying fact that the case was
17 remanded for additional findings; it was not reversed nor was a new trial granted. This process
18 on remand is not involving additional testimony although limited declarations have been
19 submitted. This does not amount to a judge having a bias prior to hearing the matter on trial but
20 rather a judge having formed opinions and made findings which are now being supplemented,
21 not reversed (except as it relates to the civil assault issue).

F67

C52

22 **9. Motion to Clarify Legal Descriptions in light of Rulings (12/7/2009)**

23 The Plaintiffs, on remand, originally sought additional rulings with respect to the legal
24 descriptions and appropriate amendment of the same in light of this Court's ruling that the
25 "distance" would control over the "direction" in the descriptions. Originally the undersigned

26 indicated an intent to limit the matters on remand only to the additional factual findings needed

received - See "other" pg 13

DFH

reserved
Judge's authority of order

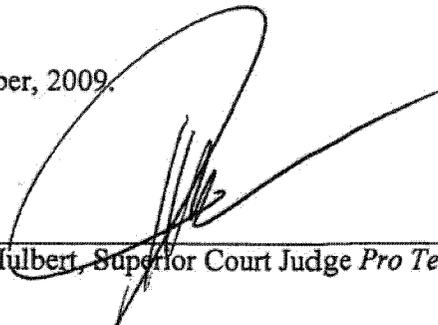
However, the state of the record including the appeals during this process to the Court of Appeals and the Supreme Court, as well as the numerous additional motions filed in this Superior Court action on remand clearly denominate an intent by the Defendant to drag this litigation out as much as possible. They have also indicated that the failure at trial to accomplish a revision of the formal legal descriptions of the two property may call into question the ability to enforce this court's orders in that regard. In light of this clear intent, it is not appropriate for this Court to leave an issue pending that is clearly apparent that may "invite" further appeal and legal process, particularly when it is so central to ultimate resolution of the boundary in question.

Therefore, the Court will grant the Plaintiffs Motion to Clarify and Amend Legal Descriptions in light of the court's rulings herein. The Declaration of David Downing (surveyor who testified at trial) filed in conjunction and in support of Plaintiffs' motion regarding the appropriate method of doing so in light of this Court's earlier rulings at trial (and maintained on remand as set forth above) appears to be consistent with the clear effect of the ruling on the legal descriptions on record. See relevant descriptions as set forth in Paragraph 3 above.

The Plaintiffs may, upon motion to the Civil Motions Calendar, present for adoption appropriate Quit Claim Deeds or other documentation that may be necessary, if any, to assure that the legal descriptions of both properties are clarified, enforceable and insurable. The parties shall cooperate in this regard. If the Court finds that one party has refused to sign documentation appropriate to carry out this Court's findings, attorneys' fees and costs may be awarded.

C53
See CP 1105

DONE IN OPEN COURT this 15th day of December, 2009.


David Hulbert, Superior Court Judge Pro Tem.

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Presented by:

ANDERSON HUNTER LAW FIRM P.S.

By G. Geoffrey Gibbs
G. Geoffrey Gibbs, WSBA No. 6146
Attorneys for Plaintiffs

Approved as to form;
Notice of presentation waived.

LAW OFFICES OF MARJA STARCZEWSKI

By Marja Starczewski 26111
Marja Starczewski, WSBA No. 26111
Attorneys for Defendants

Other: without further oral argument,
the court will allow counsel for defendants
until noon on Friday, Dec. 18, 2009, to
submit additional material as pertaining
to the proper form of legal description
in light of the court's rulings. ^{supplemental} If
a response is filed and served in a
timely fashion, plaintiffs may
file a response by Monday, Dec. 21, 2009.
If no response is filed, the "Order
Re: Motion to Clarify and Amend
Legal Descriptions" will be court
effective on Dec. 22, 2009 as proposed
by plaintiffs and signed by the court today.
If a response is filed, the order signed

SUPPLEMENTAL FINDINGS RE: COUNTERCLAIMS,
JUDGMENT & DECREE AND ORDERS ON MOTIONS
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ANDERSON HUNTER LAW FIRM, P.S.
2707 COLBY AVENUE, SUITE 1001, P.O. BOX 5397
EVERETT, WASHINGTON 98206-5397
TELEPHONE (425) 253-5100
FACSIMILE (425) 253-5443

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Appendix - 1

New CP Vol 1119

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FEB 4 2005

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SNOHOMISH COUNTY CLERK
EX-DEPUTY CLERK OF COURT

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SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

Larry W. & Kaaren A. Reinertsen,,

Plaintiffs,

vs.

Carolyn Rygg, a single woman, and Craig
Delworth, a single man,,

Defendants.

No. 04-2-08016-7

FINDINGS OF FACT, CONCLUSIONS OF LAW
& JUDGMENT

JUDGMENT SUMMARY

1.1 REAL PROPERTY JUDGMENT SUMMARY:

Real Property Judgment Summary is set forth below:

Assessor's property tax parcel or account number: 00571700900901

1.2 MONEY JUDGMENT SUMMARY:

Judgment Summary is set forth below:

A.	Judgment Creditor	Larry W. Reinertsen
B.	Judgment Debtor	Carolyn Rygg
C.	Principal judgment amount	\$ 750.00
D.	Interest to date of Judgment	\$ n/a
E.	Attorney's fees	\$ n/a
F.	Costs	\$ n/a
G.	Other recovery amount	\$ n/a
H.	Principal judgment shall bear interest at 12 % per annum.	
I.	Attorney's fees, costs & other recovery amounts shall bear interest at 12 % per annum.	
J.	Attorney for Judgment Creditor	G. Geoffrey Gibbs
K.	Attorney for Judgment Debtor	Pro Se
L.	Other:	n/a

FINDINGS OF FACT, CONCLUSIONS OF LAW &
JUDGMENT

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Appendix - 1
ORIGINAL

ANDERSON HUNTER LAW FIRM, P.S.
2707 COLBY AVENUE, SUITE 1001, P.O. BOX 5397
EVERETT, WASHINGTON 98206-5397
TELEPHONE (425) 252-5181
FACSIMILE (425) 258-3345



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II. BASIS

This matter has been tried before the undersigned judge. The Court has considered the testimony of the parties and all witnesses, the various exhibits introduced at trial, and numerous versions of closing arguments, some submitted by the attorney for the Defendants prior to the Court allowing his withdrawal, the arguments put forward by the Defendants "pro se" as well as those filed by the Plaintiffs. Specifically, the Court has, in addition to the evidence at trial, considered the following (check all that are appropriate- line out others):

- Plaintiffs' Closing Argument
- Defendants' Closing Argument
- Plaintiffs' Argument in Reply
- Plaintiffs' Objection to Withdrawal of Attorney & Objection to Additional Closing Argument
- Notice of Errata in Defendants' Closing Argument
- Defendants' First Amended Closing Argument
- Defendants' Rebuttal to Plaintiffs' Argument in Reply (incl. declaration)
- Defendant's Supplement to Rebuttal;
- Plaintiffs' Final Argument in Reply
- Objection to Plaintiffs' Final Argument in Reply
- Request that Opposing Counsel be Dismissed (incl. Declaration of Dilworth);
- Plaintiffs' Response to "Request that Opposing Counsel be Dismissed";
- Motion for Recusal (by Defendants);
- Plaintiffs Memorandum in Response to Motion for Recusal

The Court has fully considered all the evidence presented and makes the following Findings of Fact, Conclusions of Law and enters Judgment and orders as appropriate to this case.

III. FINDINGS OF FACT

The Court finds that the Plaintiffs have established legal title to their property by virtue of the legal description contained in their deed. With respect to any inconsistencies in that deed based upon the distances stated therein versus compass bearings, the Court finds, based upon all

FINDINGS OF FACT, CONCLUSIONS OF LAW & JUDGMENT

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Appendix - 1

ANDERSON HUNTER LAW FIRM, P.S.
2707 COLBY AVENUE, SUITE 1001, P.O. BOX 5397
EVERETT, WASHINGTON 98206-5397
TELEPHONE (425) 252-5181
FACSIMILE (425) 258-3345



1 the evidence, that the Grantor's intent was more probably based upon the distances and will
2 therefore find that the distances stated in such legal description control over the compass bearing
3 where a discrepancy exists. The Court finds that the Plaintiffs' title should be quieted based upon
4 this findings with respect to any claims by the Defendants.

5
6 The Court finds, with respect to the various equitable claims, including but not limited to
7 adverse possession and mutual recognition & acquiescence, put forward by the Defendants, that
8 they have failed to meet their burden with respect to such claims and the same should therefore be
9 denied.

10
11 The Court finds that the claim of Defendant Dilworth for assault is not well founded and
12 should be denied. To the extent that there was any physical altercation between Defendant
13 Dilworth and Plaintiff Reinertsen, the actions of said Defendant were at least as provocative as
14 those of the Plaintiff and the facts presented equally support a situation of mutual combat or
15 Defendant taking action that might have incited the Plaintiffs' response.

16
17 The Court finds that the actions of the Defendants "pro se" in dismissing their attorney in
18 the midst of presenting closing arguments caused additional delay in finalizing this matter and
19 required the Plaintiffs to expend additional time and effort in drafting additional closing argument
20 in response. The Court finds that it is reasonable to award terms under these circumstances and
21 grants judgment in favor of the Plaintiffs in the amount of \$750, as reflected in the Judgment
22 Summary above, and that this amount is reasonable in light of all circumstances.

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FINDINGS OF FACT, CONCLUSIONS OF LAW &
JUDGMENT

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Appendix - 1

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ANDERSON HUNTER LAW FIRM, P.S.
2707 COLBY AVENUE, SUITE 1001, P.O. BOX 5397
EVERETT, WASHINGTON 98206-5397
TELEPHONE (425) 252-5181
FACSIMILE (425) 258-3545

New CP Vol 11-122

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IV. CONCLUSIONS OF LAW

Based upon the evidence considered, arguments submitted and the foregoing Findings, the Court makes the following conclusions of law:

A. Plaintiffs' request to quiet title to their property based upon their legal description [REDACTED] should be granted in full. Any inconsistency in such legal description (or the corresponding legal description of Defendant's property) arising from the distance measurement and the compass bearing for such line shall, as to these two [REDACTED] properties, be resolved in favor of holding to the distances stated in such legal descriptions.

B. Defendants' equitable claims, including but not limited to, adverse possession and mutual recognition and acquiescence have not been sustained by the evidence and [REDACTED] are therefore denied.

C. Defendant Dilworth's claim of assault is not well founded and is therefore denied based upon the reasons set forth in the Court's Memorandum Decision.

D. With respect to the recently filed "Request" that Plaintiffs' counsel be dismissed, the same does not appear to be procedurally well placed before the Court. The [REDACTED] "Request" does not appear to warrant or justify any action by the Court to summarily remove counsel for the Plaintiffs.

E. With respect to the Defendants' recently filed "Motion for Recusal", the undersigned Judge does not find, based upon the evidence in the motion or his knowledge of the case, that recusal is warranted or justified. Nor does the undersigned judge believe or find that actual bias on his part has been shown

1 before, during or after trial. The Court finds that the issue of a friendship between
2 the undersigned Judge and the counsel for the Plaintiffs was fully explored with
3 Defendants' counsel and the defendants at the time the trial in this matter was
4 assigned to him. The undersigned recalls offering to recuse himself at that time if
5 the Defendants felt any concerns and that, after questions to the undersigned and
6 consideration, the Defendants and their counsel waived any issue in that regard.
7 The undersigned judge does not feel that any friendship he may have with the
8 undersigned counsel in any way prejudiced him against either the Defendants, their
9 attorneys or their case nor does he believe his rulings were in any way affected by
10 his friendship with Plaintiffs' counsel. The motion is untimely, trial in this matter
11 having already been concluded before the same was filed. The undersigned judge
12 further finds that to recuse himself at this juncture, would essentially force a
13 mistrial to be declared with substantial harm resulting to the Plaintiffs.
14
15
16

17 V. JUDGMENT & ORDER

18 The Court grants judgment in favor of the Plaintiffs and quiets title to their property as
19 based upon their legal description and the survey by David Downing dated April 7, 2004. Implicit
20 in this ruling is the fact that this Court is resolving any conflict or inconsistencies in the legal
21 descriptions by utilizing "distances" as opposed to "bearings". A copy of this judgment shall be
22 filed with the appropriate county officials to be placed on record with respect to the properties
23 involved; to wit, the Reinertsen parcel (Snohomish County Parcel No. 00571700900902) and the
24 Rygg parcel (Snohomish County Parcel No. 00571700900901).
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FINDINGS OF FACT, CONCLUSIONS OF LAW &
JUDGMENT

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Appendix - 1

ANDERSON HUNTER LAW FIRM, P.S.
2707 COLBY AVENUE, SUITE 1001, P.O. BOX 5397
EVERETT, WASHINGTON 98206-5397
TELEPHONE (425) 252-5161
FACSIMILE (425) 258-3345



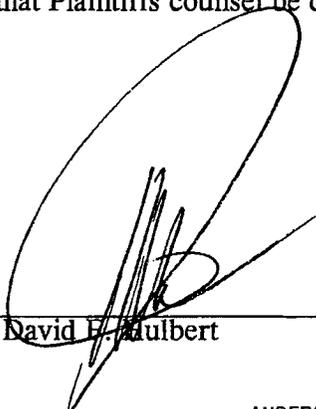
1 The Plaintiffs shall be free hereafter to deal with their property without interference or
2 [REDACTED]
3 trespassing upon their property by the Defendants. The Plaintiffs shall be entitled to replace or
4 [REDACTED]
5 erect a new fence on the boundary now adjudicated and otherwise deal and enjoy the use of their
6 [REDACTED]
7 property. Any prior restraints on such actions are hereby dismissed, specifically those contained
8 in the Court's Order of March 8, 2004. Should there be interference with a party's quiet
9 enjoyment and use of their property subsequent to this order, nothing herein shall preclude a court
10 of competent jurisdiction from entering appropriate restraining orders.

11 The Court denies the equitable claims to any portion of the Plaintiffs' property put forward
12 by the Defendants. The Court further denies the claim by Defendant Dilworth for assault and
13 [REDACTED]
14 denies any claim for damages based thereon. Any other claims put forward by the Defendants in
15 various pleadings are also denied if not previously disposed of by the Court's rulings during trial.

16 The Court awards "terms" and attorney's fees against the Defendant Rygg and in favor of
17 the Plaintiffs in the amount of \$750 as a result of the actions of the Defendants "pro se" in
18 dismissing their attorney in the midst of presenting closing arguments which caused additional
19 delay in finalizing this matter and required the Plaintiffs to expend additional time and effort in
20 drafting additional closing argument in response.

21 The Court denies the Defendants' request that Plaintiffs counsel be dismissed and denies
22 the Defendants' Motion for Recusal.

23 Dated this 4 day of Feb, 2005.

24
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26


Judge David H. Paulbert

FINDINGS OF FACT, CONCLUSIONS OF LAW &
JUDGMENT

Page - 6

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Appendix - 1

ANDERSON HUNTER LAW FIRM, P.S.
2707 COLBY AVENUE, SUITE 1001, P.O. BOX 5387
EVERETT, WASHINGTON 98206-5387
TELEPHONE (425) 252-5181
FACSIMILE (425) 258-3345

New CR Vol 11/25

FILED

DEC 29 2004

PAM L. DANIELS
SNOHOMISH COUNTY CLERK
EX - OFFICIO CLERK OF COURT

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH**

LARRY W. AND KAAREN A.
REINERTSEN

Plaintiffs,

vs.

CAROLYN RYGG, a single woman,
CRAIG DELWORTH, a single man,

Defendants.

No. 04-2-08016-7

COURT'S MEMORANDUM
DECISION

After full consideration of the arguments advanced by the parties, and after having heard the trial of this case over several days, this Court finds as follows:

DECISION

1. Attorney's fees are awarded to the Plaintiff as and for terms occasioned by the delay and additional effort caused by the defendants discharging their attorney and providing the Court with extra arguments. The fees awarded total \$750.

2. Defendant's claim for assault is denied. To the extent that there was a physical altercation, the actions of the defendant were at least as provocative as those of the Plaintiff and/or the facts equally support a situation of mutual combat.

3. The Defendant's failed to establish evidence that supports their claim for equitable relief regarding claims to any portion of the Plaintiff's property and any such claims are denied.

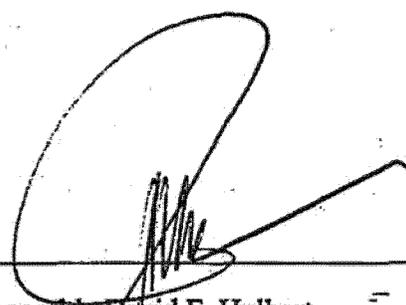
4. Title to the property in question is hereby quieted in the Plaintiffs based upon the Downing survey of April 7, 2004.

5. Implicit in the ruling is the fact that this Court is resolving any conflict or inconsistencies in the legal descriptions by utilizing "distances" as opposed to "bearings."

6. The Defendant's are entitled to complete/create any fence work now existing or in the future given the fact that any such work be done entirely on their own property as now determined in this decision.

Counsel are directed to prepare final orders consistent with this decision and to contact Snohomish County Court Presiding Judge to arrange for a date for presentation.

DATED this 29 day of December.


Honorable David F. Hulbert

CP 1005

FILED

APR 15 2005

PAM L. DANIELS
SNOHOMISH COUNTY CLERK
EX - DEPUTY CLERK OF COURT

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SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

Larry W. & Kaaren A. Reinertsen,
Plaintiffs,
vs.
Carolyn Rygg & Craig Dilworth,
Defendants.

No. 04 2 08016 7

Order on Reconsideration; Order Re: Stay &
Order on Motion for CR 11 Sanctions

The undersigned, trial judge on this matter, having reviewed the Defendants' Motion to Stay Execution/Enforcement . . . and Motion for Reconsideration . . ., and having reviewed the Plaintiffs' Response to Motion for Reconsideration . . ., and Defendants most recently filed motion, Motion for CR 11 Sanctions and Supplemental Authorities for Disqualification of Attorney . . . as well as other documents subsequently filed prior to the hearing on this day and further having considered all the pleadings and files herein including numerous post-trial pleadings and issues, being fully informed on the premises, now, therefore, makes the following findings, rulings, judgments and orders:

I. JUDGMENT/ORDER SUMMARIES

1.1 REAL PROPERTY JUDGMENT SUMMARY:

Real Property Judgment Summary is set forth below:

*not
to apply*

Assessor's property tax parcel or account number: 00571700900901

or

ORDER ON RECONSIDERATION; ORDER RE: STAY
& ORDER ON MOTION FOR CR 11 SANCTIONS

Page - 1

Appendix - 1

1
2 Legal description of the property awarded (including lot, block, plat, or section, township, range, county and state):

3 Lot 9, Block 9, Shore Acres Addition to Everett, Washington, according to the plat
4 thereof recorded in Volume 8 of Plats, page 82, records of the Auditor of the County
5 of Snohomish State of Washington.
6 EXCEPT that portion thereof lying Westery of the following described line:
Beginning at the Southeast corner of Lot 9 for 53.80 feet to the true point of
beginning thence North 83.5 West 164.7 feet to an intersection with the West line
of said Lot 9.

7
8 1.3 MONEY JUDGMENT SUMMARY:

Does apply

9 [X] Judgment Summary is set forth below:

- 10 A. Judgment Creditor Larry W. & Kaaren A. Reinertsen
- 11 B. Judgment Debtor: Carolyn Rygg & Craig Dilworth
- 12 C. Principal judgment amount
- 13 D. Interest to date of Judgment
- 14 E. Attorney's fees \$ 4,250.00
- 15 F. Costs
- 16 G. Other recovery amount
- 17 H. Principal Judgment shall bear interest at 12% per annum.
- 18 I. Attorney's fees, costs and other recovery amounts shall bear interest at 12% per annum.
- 19 J. Attorney for Judgment Creditor G. GEOFFREY GIBBS
- 20 K. Attorney for Judgment Debtor N/A Debtors' Pro Se
- 21 L. Other:

22 II. ORDERS

23 A. ORDER ON RECONSIDERATION

24 Having carefully reviewed the lengthy Motion for Reconsideration . . . brought by
25 Defendants, the Court cannot find any legal or factual basis therein which would justify
26 reconsideration and certainly not a new trial on the issues. The Defendants have failed
to file any new or relevant evidence which controverts that received at trial and the
Defendants have failed to show any basis, under CR 59, which would justify the Court
reconsidering its prior rulings.

The Court's findings regarding the various sections of CR 59 are reflected in its oral decision (4/15/05) incorporated by reference

ORDER ON RECONSIDERATION; ORDER RE: STAY & ORDER ON MOTION FOR CR 11 SANCTIONS

ANDERSON HUNTER LAW FIRM, P.S.
2707 COLBY AVENUE, SUITE 1001, P.O. BOX 5397
EVERETT, WASHINGTON 98206-5397
TELEPHONE (425) 253-5161
FACSIMILE (425) 254-3345

New CP Vol II 129

C. ORDER RE: IMPOSITION OF SANCTIONS UNDER CR 11

~~The Motion for Reconsideration, when taken in context with the earlier motions seeking a forced recusal of the trial judge and seeking to force the removal of the attorney for the Plaintiffs have offered absolutely no new basis for any of the relief sought. The materials are devoid of any relevant evidence and are further bereft of any reason why such evidence could not have been produced at trial or was not so produced. The allegations regarding the alleged misconduct of the Plaintiffs attorney are without legal foundation, are without factual basis and are offensive to the Court which had the benefit of extremely professional representation of both parties at trial (up and until the Defendants dismissed their attorney).~~

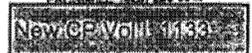
In totality, the only possible justification that the Court can see for any of the post-trial motions, including the Motion for Reconsideration . . . is to accomplish one or more of the following goals of the Defendants; (1) to further harass the Plaintiffs and their attorney; (2) to increase the legal costs to the Plaintiffs since the Defendants are proceeding to represent themselves at no cost; or (3) to delay the implantation of this Court's rulings. The Court cannot glean any other basis for these motions. That the Defendants intend to use various motions and legal tactics solely in an effort to delay entry of final orders in this matter is buttressed by their most recent filings, including their Motion for CR 11 Sanctions. As a result, the Court finds that the Defendants' Motion to Stay Execution/Enforcement . . .; Motion for Reconsideration . . ., Motion for Recusal . . .; Request that Opposing Counsel be Dismissed and Motion for CR 11 Sanctions were signed and put forward by the Defendants for improper purposes and are sanctionable under CR 11.

See Court Order



1 all its members, should be disqualified from representing the Reinertsens in this matter.
2 The court has previously heard argument on this matter and finds the following salient
3 facts in that regard:

- 4 A. The dissolution (Snohomish County Cause No. 89-3-00933-3) was
5 finalized over 15 years ago.
- 6 B. The dissolution was evidently finalized by "agreement of the parties",
7 no trial having been heard on the matter.
- 8 C. There is no evidence that a client file even existed in the Anderson
9 Hunter Law Firm as of January 1, 2005, when attorney Gibbs joined
10 that firm.
- 11 D. Trial in this matter was held and concluded during 2004 and attorney
12 Gibbs did not join the Anderson Hunter Law Firm until the beginning
13 of 2005. It is noted that efforts to finalize the court's ruling and enter
14 final orders did not occur until 2005 but that does not affect the court's
15 findings herein.
- 16 E. The Defendants, at the hearing on Feb. 4, 2005, specifically requested
17 that this court make a substantive ruling on this issue and appear to be
18 asking the court to "reconsider" its ruling on that day.
- 19 F. The Court specifically finds that the dissolution is unrelated to the
20 boundary dispute between the Reinertsens and Ms. Rygg and her son
21 and that no evidence of any substance relating to her dissolution was
22 brought forward during the trial in this matter. Therefore, the Court
23 finds that the two matters are not "substantially related" and that no

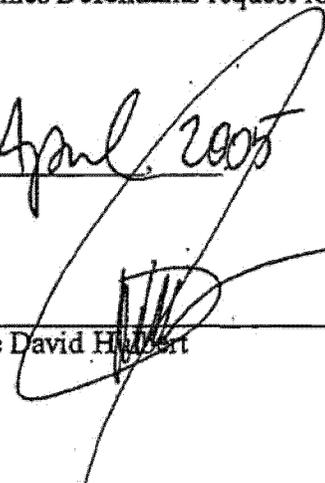


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"confidences or secrets" relating to Ms. Rygg were brought forward to
her disadvantage during the course of this litigation. The case put
forward by the defendants, *Sanders v. Woods et al.*, 121 Wn.App. 593
(2004), does stand for the proposition that, indeed, the Court does
have the authority to disqualify a counsel in civil litigation but is
otherwise inapplicable.

G. Based upon the submissions prior to the Feb. 4th hearing, oral
argument then, the further submissions of defendants prior to this
hearing and argument, the Court finds that no conflict of interest exists
in the representation of the Plaintiffs herein by members of the
Anderson Hunter Law Firm, that no violation of RPC 1.9 is apparent
and the court therefore denies Defendants request for reconsideration
in this regard.

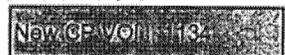
DONE IN OPEN COURT this 15 day of April, 2005



Judge David H. Hunt

Presented by:
ANDERSON HUNTER LAW FIRM, P.S.

By G. Geoffrey Gibbs
G. Geoffrey Gibbs, WSBA No. 6146
Attorneys for Plaintiffs Reinertsen



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6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
7 IN AND FOR THE COUNTY OF SNOHOMISH
8

9 Reinertsen, et al.
10 Plaintiff,
11 vs.
12 Rygg, et al,
13 Defendant.

Case No.: 04-2-08016-7
ORDER OF ASSIGNMENT
(CLERK'S ACTION REQUIRED)

14 THIS MATTER, having come before the Court on remand from the Court of Appeals, and the
15 Court having reviewed the records and files herein, and deeming itself fully advised in the premises; now,
16 therefore, it is hereby
17

18 ORDERED that consistent with the decision of the Court of Appeals, retired Judge David Hulbert
19 is appointed to serve as judge pro tempore for the purpose of entering new findings on Defendant's
20 counterclaims of adverse possession, mutual acquiescence, and assault.
21
22
23

24 DATED: 10/07/08

25 
26 Judge Larry E. McKeeman
27
28
29
30

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

Reinertsen

PLAINTIFF / PETITIONER

and
Rygg and Dilworth
DEFENDANT / RESPONDENT

NO. 04-2-08016-7

ORDER

IT IS HEREBY ORDERED:

The Court denies defendant's Motion for reconsideration and directs that trial in this matter shall be held before Judge Hulbert (ret.), the trial judge. A courtroom will be made available for this purpose.

DONE IN OPEN COURT this date: 10/31/08

Presented By:

Geoffrey Libbs
W/SBA 6146

St. Keenan
JUDGE / COURT COMMISSIONER

Copy Received:

[Signature] 26111

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF SNOHOMISH

APPOINTMENT OF
JUDGE PRO TEMPORE

ORDER

IT APPEARING that the business of the above Court Required appointment of a Judge Pro Tempore, Now Therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that David Hulbert, a person competent to act as a Judge Pro Tempore, and in all ways qualified to act as a Judge Pro Tempore, be and he is hereby appointed Judge Pro Tempore to exercise all the powers granted Judge Pro Tempore under RCW 2.08.180. Said Judge shall be appointed for entry of Findings in the case of Reinertsen, et al., vs. Rygg, et al., Snohomish County Superior Court Cause No. 04-2-08016-7.

DONE IN OPEN COURT this 8 day of October, 2008.

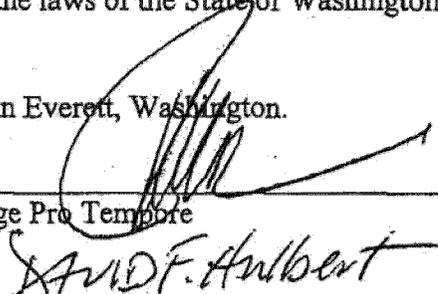

JUDGE

OATH AND CERTIFICATION OF
JUDGE PRO TEMPORE

I, David Hulbert, do solemnly swear or affirm, that I will support the Constitution of the United States and the Constitution of the State of Washington, and that I will faithfully discharge the duties of the office of Judge Pro Tempore fairly and impartially according to the best of my ability.

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

DATED on this 10 day of October, 2008, in Everett, Washington.


Judge Pro Tempore

Appendix - 1

New CP Vol 1170

FILED

SEP 13 2008

SONYA KHAKKI
COUNTY CLERK
SNOHOMISH CO. WASH.

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH**

Larry + Kaaren Reinertsen
PLAINTIFF / PETITIONER

Carolyn^{and} Rygg + Craig Dilworth
DEFENDANT / RESPONDENT

NO. 04-2-08016-7

ORDER Page 1 of 2

IT IS HEREBY ORDERED: *To the extent Judge Hubbert holds proceedings in this matter for argument or testimony (if such are involved) or if Judge Hubbert elects to orally announce his rulings or orders, the same shall be done in open court in the Snohomish County Courthouse. The Court does not interject itself into the issue of*

DONE IN OPEN COURT this date: _____

Presented By: _____

JUDGE / COURT COMMISSIONER

Copy Received: _____



Case Name Reinertsen v Rygg Case No. 04-2-08016-7

correspondence with Judge Hulbert and should the Judge desire correspondence to be directed to him at his residence or elsewhere, he may do so. Requests for terms are denied.

DONE IN OPEN COURT this date: 6/2/09

Presented By:

Geoffrey Gibbs
WSBA 6146

[Signature]
JUDGE / COURT COMMISSIONER

Copy Received:

[Signature] WSBA 26111



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SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

Larry W. & Kaaren A. Reinertsen,)
)
 Plaintiffs,)
)
 vs.)
)
 Carolyn Rygg & Craig Dilworth,)
)
 Defendants.)

No. 04 2 08016 7
ORDER RE: ADDITIONAL TESTIMONY & WITNESSES
Pg 1 of 3

This matter coming before the Court, in part, upon Plaintiffs' *Motion Re: Hearing on Remand and for Other Relief*, the Court having heard argument from counsel and considered the submission of the Defendants entitled "*Defendants' Preliminary Partial Disclosure of Witnesses*" as well as the Plaintiffs' responsive "*Memorandum and Objection to Witnesses on Remand*", as well as other pleadings, records and files herein; the Court having also reviewed the decision of the Court of Appeals in this matter that does not call for a new trial in this cause but rather that the undersigned, [REDACTED] the trial judge, make more specific and additional findings with respect to certain counterclaims asserted by the Defendants at trial; ~~and no motion having been set by the Defendants with respect to the issue of re-opening the record for additional testimony, now, therefore,~~

now
~~The court also made~~ The court also made certain oral findings today on the record. [REDACTED] JH

ORDER RE: ADDITIONAL TESTIMONY & WITNESSES
Page - 1

ANDERSON HUNTER LAW FIRM, P.S.
2707 COLBY AVENUE, SUITE 1001, P.O. BOX 5397
EVERETT, WASHINGTON 98208-5397
TELEPHONE (425) 252-5161
FACSIMILE (425) 258-3345

Appendix - 1



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IT IS HEREBY ORDERED as follows:

The court does not find that there is justification for either a new trial or additional witness testimony in this cause and the Court will proceed "on remand" to hear oral argument and consider memorandum of counsel and proposed additional findings and orders on the limited issues identified in the opinion of the Court of Appeals and make additional findings as called for therein. ~~The briefing schedule set forth in the court's letter of June 15, 2009 to counsel on file in this cause (adopted by reference), in light of the delay in hearing the issue now before the Court, is amended to add two additional weeks on to the deadlines otherwise set in ¶ C of that letter and shall control absent further order of the Court. Counsel will be notified by Superior Court Administration or the undersigned judge as to the date and time set for argument based upon availability of a courtroom for this purpose.~~

See attached.

Dated this 17th day of July, 2009.

501 p. 3

David F. Hulbert, Judge Pro Tem

Proposed by:

G. Geoffrey Gibbs, WSBA No. 6146
Attorney for the Plaintiffs

Approved as to form; Notice of Presentation Waived:

Marja Starczewski, WSBA No. 26111
Attorney for the Defendants

ORDER RE: ADDITIONAL TESTIMONY & WITNESSES
Page - 2

ANDERSON HUNTER LAW FIRM, P.S.
2707 COLBY AVENUE, SUITE 1001, P.O. BOX 5397
EVERETT, WASHINGTON 98206-5397
TELEPHONE (425) 252-9161
FACSIMILE (425) 258-3945

Appendix - 1



DFH

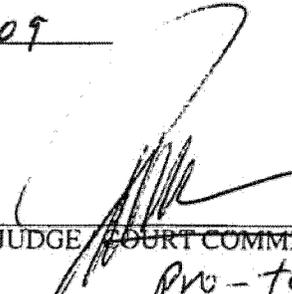
Case Name Reinertsons v Rygg et al Case No. 04-2-08016-7

The issues to be taken up on remand are limited to those specified in the final paragraph of the Court of Appeals decision (55842-1-I; 56240-1-I) to wit; entry of new and supplemental findings on Rygg's counterclaims of adverse possession, mutual acquiescence and assault.

Oral argument is set for Sept. 15, 2009 at 9:00 a.m. Both counsel will be given the opportunity to submit proposed additional findings and proposed orders, citations to the record on such issues and argument on or before Aug 12, 2009 (5:00 pm). Both counsel may then submit responsive material and argument on or before August 26, 2009 (5:00 pm) and any reply due by Sept. 2, 2009 (5:00 pm). Service by email or fax authorized with originals to be mailed and filed.

DONE IN OPEN COURT this date: 7/17/2009

Presented By:
Geoffrey Gibbs
WSBA 6146


JUDGE / COURT COMMISSIONER
Pro-tem

Copy Received:
[Signature] at 3:01
DOR RYGG S



Marja Starczewski <marjalaw@gmail.com>

RE: Rygg matter

1 message

david hulbert <judgehulbertadr@hotmail.com>

Thu, Oct 15, 2009 at 11:56 AM

To: tseder@co.snohomish.wa.us, geoff gibbs <ggibbs@andersonhunterlaw.com>, marjalaw@gmail.com

Thanks. I think I can quickly clear this up. I have NO motions properly set before me. Until I get such motions I am working with the understanding that there is nothing pending before me at this time except my final decision on the merits following the hearing we had on Sept. 15th. Intervening activities have precluded me from making that final decision although I did procure the exhibits and have begun to look at all of them in light of the arguments made by counsel on the 15th.

When I have concluded that work I will make a final ruling and notify counsel at that time. I also will ask that counsel agree on a date for presentation of the final orders. After which the case will be concluded at the trial level.

I hope that this clarifies MY understanding of the matter as it is currently postured.

Finally, I agree- I am not represented by counsel in this Superior Court matter- I am not a party to this action- I am the judicial officer assigned to this matter and, as such, I am the person to whom counsel must direct all requests for motions, etc.

Thank you, David Hulbert Judge Pro-Tem

From: tseder@co.snohomish.wa.us

To: judgehulbertadr@hotmail.com

CC: Larry.McKeeman@co.snohomish.wa.us; pfowler@co.snohomish.wa.us

Date: Thu, 15 Oct 2009 10:44:08 -0700

Subject: Rygg matter

Judge:

Just got a fax from Geoff Gibbs. He attached some emails with Ms. Starczewski and one from you of 10/14. There appear to be two areas of confusion:

1) He is trying to ascertain what motions, if any, are currently pending in the superior court case. She thinks she has asked for hearing dates, he wants to make sure no hearing have been set. I thought you addressed that very clearly in your email discussing how anyone could note up a motion if they wanted to do so. Since the case is preassigned, they need to contact you to get an available hearing date. No one has done that yet.

2) Ms. Starczewski continues to take the position that she can't contact you because I represent you. This is incorrect, as I made clear in a letter to her date September 30, 2009 (attached). I don't represent you in the Superior Court matter, and her repeating it over and over again doesn't make it so

I know you are busy right now, but please give me a call so we can try to clarify the status of the case in the minds of the parties. I'll have my legal assistant scan the letter in and send it to you both so you can follow along. Thanks.

Tad

Tad Seder, Assistant Chief

Civil Division/Sno. Co. Prosecutor's

3000 Rockefeller, M/S 504, Everett, WA 98201-4046

(425) 388-6340, (425) 388-6333 Fax

tseder@co.snohomish.wa.us

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DAVID F. HULBERT
16533 61ST AVE S.E.
SNOHOMISH, WA 98296
425-750-7254
judgehulbetadr@hotmail.com

REINERTSEN V. RYGG, ET AL
Snohomish County Superior Court Case # 04-2-08016-7

November 24, 2009

**Trial Court's Order Adopting Plaintiff's Proposed
Supplemental Findings re: Counterclaims, Judgment and
Decree. Additionally, Trial Court Directs that a Hearing be
Scheduled for Formal Presentation of Final Orders Herein.**

Comes now the undersigned trial court, to wit, Judge Pro tem
David F. Hulbert and hereby adopts the Plaintiff's proposed
supplemental Findings. [REDACTED]

[REDACTED]
In addition, this court hereby directs that a hearing be set for final
presentation of said orders.

This court, upon order of remand from the Washington State Court
of Appeals Div.1 dated July 9, 2007, was directed to enter,..”new
findings on Rygg’s counterclaims of adverse possession, mutual
acquiescence, and assault.”

Following remand, and following voluminous submissions of
materials, and at least 2 different intervening actions in appellate
courts, a final hearing was held on September 15, 2009.
Subsequent to that date at the direction of the trial judge, the
parties submitted proposed final orders (findings).

After extensive review of the entire record and files herein to include a complete review of all of the trial exhibits and pleadings, as well as a complete review of the proposed findings submitted by each party, the trial court rules as follows:

- 1) The proposed Supplemental Findings submitted by the Plaintiff's herein are deemed to be accurate and complete. As such they are adopted by this court in their entirety without modification or alteration. The proposed findings submitted by the Defendants are almost entirely inapposite and fail in all material aspects to accurately or credibly reflect the facts or the law in this case- therefore they must be and are rejected in their entirety.
- 2) Counsels for the parties are directed to draft final orders in conformity with this decision. Further, counsel are directed to note a hearing for final presentation of all applicable orders. This will, of necessity, require additional co-ordination with the trial judge pro tem as well as the Superior Court Administration.

(ss)

David F. Hulbert
Snohomish County Superior Court Judge Pro Tem

new CP Vol 1165



Marja Starczewski <marjalaw@gmail.com>

Reinertsen v Rygg, et al

8 messages

david hulbert <judgehulbertadr@hotmail.com>

Tue, Nov 24, 2009 at 10:26 AM

To: marjalaw@gmail.com, geoff gibbs <ggibbs@andersonhunterlaw.com>, david hulbert <judgehulbertadr@hotmail.com>

Counsel, please find my decision in this case. I have drafted it as a word document and attached it to this email. I am asking that counsel make arrangements for presentation of final orders. Please contact me to confirm receipt of this email. If you have any questions or comments please feel free to contact me. Thank you, David Hulbert Judge Pro tem

Windows 7: I wanted simpler, now it's simpler. I'm a rock star.

 DAVID F7.doc
28K

Geoff Gibbs <ggibbs@andersonhunterlaw.com>

Tue, Nov 24, 2009 at 10:41 AM

To: david hulbert <judgehulbertadr@hotmail.com>, "marjalaw@gmail.com" <marjalaw@gmail.com>

Judge Hulbert (and Ms. Starczewski):

My schedule would permit "presentation" to occur in Court on any day during the week of December 7 (except Friday 12/11) or any day of the following week, the week of 12/14/09 (again except Friday, 12/18/09). Should schedules permit, I could also appear earlier on either Monday, 11/30/2009, Tuesday 12/1/09 or Wednesday, 12/2/09.

I assume Judge Hulbert will contact Court Administration to reserve a courtroom and reporter for the presentation once Ms. Starczewski provides her conflict dates in the next 3 weeks.

Respectfully,

G. Geoffrey Gibbs

From: david hulbert [mailto:judgehulbertadr@hotmail.com]

Sent: Tuesday, November 24, 2009 10:26 AM

To: marjalaw@gmail.com; Geoff Gibbs; david hulbert

Subject: Reinertsen v Rygg, et al

Counsel, please find my decision in this case. I have drafted it as a word document and attached it to this email. I am asking that counsel make arrangements for presentation of final orders. Please contact me to confirm receipt of this email. If you have any questions or comments please feel free to contact me. Thank you, David Hulbert Judge Pro tem

2009 “Supplemental Findings”

*Only numbering the findings of fact contested or inconsistent with each other:
 F= Finding of Fact C= Conclusion of Law

FINDINGS TO WHICH ERROR IS ASSIGNED	CITATIONS TO RECORD AND LAW
<p>CP 1107 I. 23-26</p> <p>The Court <u>adopts by reference as if fully included herein the Findings of Fact, conclusions of Law & Judgment adopted after the prior trial on Feb 4, 2005¹ (to the extent not <u>inconsistent</u>² herewith).</u></p>	<p>ERROR 1: Law; Court of Appeals’ Mandate reversed/vacated the erroneous 2005 Judgment, including errors of law in the burden of proof that has shifted to the Reinertsens. Court’s mandate in <i>Reinertsen v. Rygg I, #55842-1-I (2007)</i>.</p> <p>ERROR 2: Law; Findings and conclusions cannot be inconsistent. <i>Turner v. Creech</i>, 58 Wash. 439, 442, 108 P. 1084 (1910) (“Proper practice demands that findings of fact and conclusions of law come to us in some concrete form. This court cannot, and it should not, be put to the burden of winnowing out, recasting, or rewriting the findings of trial courts in order to harmonize them.”).</p> <p>The Findings of Feb 4,2005 further incorporated a prior Memorandum Decision, which had further inconsistencies.</p>
<p>CP 1108, I.5-9</p> <p>The Court finds that although <u>the parties engaged in mutual combat in anger,^{F1} they did not do so with deadly weapons^{F2} or force.^{F3}</u></p> <p>Under the reasoning of the decision by the Court of Appeals, that <u>they engaged in mutual combat^{F1}</u> does not defeat a claim for civil assault brought by Defendant Dilworth.</p>	<p>Facts re F1; Larry Reinertsen admits only Larry Reinertsen took swings at Craig Dilworth, “emphasizing my anger” as at CP 277 (also CP 316, 284-85).</p> <p>“Q: Craig never took a swing at you? A (Reinertsen): No, he didn’t.” (CP 306).</p> <p>“Q: During that 29 years has [Craig] ever hit you, done anything? A(Reinertsen): No. No, he's never hit me.” (CP 714).</p> <p>Facts re F2; Mr. Reinertsen “reached behind him and grabbed a metal chair” of substantial “weight” and twice swung it at</p>

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	<p>Craig, "You try to talk to [Larry] and he will hit you. He [Larry] will also grab a weapon." (CP 154-55, 201).</p> <p>Facts re F3: Ex 15 shows the bent frames of Craig's glasses; Ex 45 shows wounds to Craig's face from the assault.</p> <p>Craig "<i>was able to move [his] head... to avoid the main brunt</i>" of Mr. Reinertsen's strike to Craig's eyes. (CP 154).</p> <p>Law; This Court of Appeals' prior decision eliminates the issue of "mutual combat", which is not the law in Washington.</p>
<p>CP 1108 1.8-9</p> <p>The court does find that Plaintiff Larry Reinertsen did strike a blow that made <u>incidental contact with the eyeglasses worn by Defendant Dilworth.</u>^{F4}</p>	<p>Facts, as Shown in the Record; Ex 45, shows contact was made with Craig Dilworth's face, leaving wounds above and below his left eye. (CP 188).</p> <p>A His right hand came up and out in sort of a claw and hit me around my left eye. Q Your left eye? Did he come in contact with your skin? A Yes, he did... I think [if] my glasses weren't there, it would have gone into my eye." (CP 153)</p> <p>Larry Reinertsen admits at CP 316:</p> <p>Q You hit Craig's glasses on February 22nd? A (Reinertsen) Yes... Q It's possible you hit him in the face? A (Reinertsen) It's possible.</p> <p>Ex 15 shows the bent frame of Craig's glasses caused by the assault, showing more than incidental contact.</p>
<p>CP 1108, 1.11-12</p> <p>While the Court does not necessarily believe <u>actual or</u></p>	<p>Law re C1 and F5:</p>

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<p><u>demonstrated damages need be proven in a case of civil assault,^{C1} there is no evidence of any quantifiable monetary damages incurred by Defendant Dilworth.^{F5}</u></p>	<p>Law; Monetary damages are not a requirement for recovery: “Restatement (Second) of Torts § 905 (1965), which provides that compensatory damages for nonpecuniary harm may be awarded for emotional distress. Comment c to § 905 explains that “[w]hether there can be action merely for harm to the feelings presents a question of the existence of the cause of action and is not a problem of the amount of the damages.”” (emphasis added) <i>Nord v. Shoreline Savings Assoc.</i>, 116 Wn.2d 477, 485, 805 P.2d 800 (1991).</p>
<p>CP 1108, I.13-17</p> <p>Further, his assertion in testimony, when <u>viewed in light of his presence, demeanor and testimony,^{F6} that the result of the confrontation in question was that he and his mother were in ongoing fear of Larry Reinertsen is not accepted or given credibility by the Court.^{C2} Therefore, the Court will find an assault occurred but <u>declines to award any damages to Defendant Dilworth.^{C3}</u></u></p>	<p>Law re F6: (see CP 28) Dilworth’s characteristics are not a factor for liability <i>Cagle v. Burns</i>, 106 Wn.2d 911, 920, 726 P.2d 434 (1986) (Even in negligent infliction cases, “the plaintiff’s mental distress must be the reaction of a normally constituted person absent defendant’s knowledge of some peculiar characteristic or condition of plaintiff. In other words, was plaintiff’s reaction that of a reasonable man?”).</p> <p>Law re C2: “Ongoing fear” is not the standard for an award of damages for an assault. <i>Brower v. Ackerley</i>, 88 Wn. App. 87, 92-93, 943 P.2d 1141 (1997) (“upon proof of an intentional tort such as assault... there is no requirement that emotional distress be severe or manifested by physical symptoms in order to be compensable as an element of damages.”)</p> <p>C3: In conflict with C1.</p>
<p>CP 1108, I. 18</p> <p><u>Defendant Rygg has asserted a counter-claim...^{F7}</u></p>	<p>Facts re F7: Other Claims, not Disposed in Findings; Rygg claimed title under her deed description (CP 955)</p>

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	<p>Rygg asserted deeds defective due to internal inconsistency (CP 955), Rygg asserted Reinertsens' Complaint defective RCW 7.28.120 (CP 616, CP 1706-7);</p> <p>Rygg asserted trespass; Reinertsens' encroaching deck and theft of some railroad ties under her board fence, which Mr. Reinertsens removed to put in concrete blocks as a foundation for his newly encroaching deck (CP 958);</p> <p>Rygg asserted breach of the mutual restraining order by Mr. Reinertsen (CP 957).</p>
<p>CP 1108, I. 21</p> <p>...with respect to <u>3 sections</u>^{F8} of the <u>common boundary of the properties</u>^{C4}</p>	<p>Facts re F8: The three sections form a straight line (Ex 46).; sections start and stop in relation to the Ryggs' house and garage (Ex 46).;</p> <p>Law re C4: This conclusion supports the Ryggs' claims of adverse possession.</p> <p>Inconsistent Conclusions; conflicts with conclusions that the fence-line is only a "barrier" or "convenience fence", C11</p>
<p>CP 1108 I. 24</p> <p>ii. <u>Board Fence</u> – this refers to a 6 foot board fence <u>erected originally upon railroad ties and later cement block.</u>^{F9}</p>	<p>Facts re F9: The cement blocks are part of the support /foundation for Reinertsens' deck constructed in 2003 (Ex 39, photo of deck support, CP 151, CP 185) The cement blocks do not run the entire length of the board fence; original railroad ties still exist under the fence (see photo of railroad tie, Ex 40). The Reinertsens' new decking material from 2003 cuts into the corrugation of the board fence. (Ex 38)</p>
<p>CP 1109 I. 1-3</p>	<p>Facts re F10: Reinertsens admitted this claim is false; "<i>it is a complete misrepresentation that the Plaintiffs at all times, knew the exact location of the property line.</i>" (CP 1091).</p> <p>CP 436 is a 1969 photo taken during the</p>

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<p>With respect to the area of the boundary encompassing the line of pyramidalis, <u>the Court specifically finds the testimony of Plaintiff Reinertsen that he planted these bushes credible^{F10} and supported by the letter from Dr. McCarty admitted as Exhibit 8.^{F11}</u></p>	<p>development of the Rygg property by Dr. McCarty, it shows the pyramidalis on both sides of the Rygg property were planted at the same time as part of the development of the Rygg property; the west line of pyramidalis stops at the south face of the Ryggs' garage.</p> <p>Facts re F11: McCarty letter does <i>not</i> say the Reinertsens planted the pyramidalis, or that the trees were pre-existing the development of the Rygg property; the timing in the letter of when the eastern line of pyramidalis was claimed to be planted by Dr. McCarty (<u>after</u> the board fence was built) is contradicted by the 1969 photo showing both sides were planted <u>before</u> the board fences were built (CP 436); In 2008, The McCartys themselves admit the letter is false evidence (CP 1708,) McCarty Answer, at CP 1714, state "7.5 At the time Dr. McCARTY built a fence, the property was not surveyed. He neither knew that the fence was nor was not on the property line." (CP 1714).</p> <p>Reinertsens have asserted the statute of frauds in regards to the false evidence of the McCarty letter. (CP 1498)</p> <p>The Reinertsens have procured inconsistent claims, from the Ryggs' other neighbors, (CP 1529, 1536)</p> <p>Facts re F10; Reinertsens admitted they did <u>not</u> trim the pyramidalis and admitting the trees are around 7 feet tall when they alleged to have topped them at 2 feet tall (CP 341)</p> <p>--- none of the Reinertsens' actions occurred prior to 1989 or 1990 Reinertsens never put the Ryggs on notice that the Reinertsens claimed the land as owners, as admitted by the Anderson Hunter Law Firm, who knew from their</p>

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	<p>representation of Ms. Rygg during her divorce that:</p> <p>“There is no evidence that there was any knowledge even of the claims of the Reinertsens by Ms. Rygg in 1989 or 1990.”</p> <p>(Reinertsens’ counsel, (Partner of Ms. Ryggs’ former counsel,) at RP of October 7, 2005, p. 10, l. 19-20).</p>
<p>CP 1109, l. 3-5</p> <p>The court further finds that <u>the pyramidalis are wholly within the property of the plaintiff as shown on the Downing survey admitted as Exhibit 3.</u>^{F12}</p>	<p>Facts re F12: This survey, Ex 3, does not show the pyramidalis at all, nor do any of Downing’s surveys.</p> <p>Q Does either one of your surveys show where the pyramidalis is? A No, it doesn’t. (Surveyor Downing’s testimony, CP 241).</p> <p>Q It’s not marked on here, but can you recall or do you have information as to the line of pyramidalis shrubs? A I don’t have information on that. (CP 236).</p>
<p>CP 1109, l. 5-7</p> <p>The <u>only evidence</u>^{F13} which really <u>supports a claim of adverse possession</u>^{C5} put forward by the Defendants is that they had a “spraying service” engaged <u>for a period of time</u>^{F14} which <u>may have sprayed the pyramidalis over the objection at one time of the Plaintiffs.</u>^{C6}</p>	<p>Inconsistent Findings; F13: Contradicted by finding F17 of other evidence.</p> <p>Law re C5: Standard is: “the character of the land must be considered...”The necessary use and occupancy need only be of the character that a true owner would assert <i>in view of its nature and location.</i>” <i>Chaplin v. Sanders</i>, 100 Wn.2d 853, 863, 676 P.2d 431 (1984); “maintenance of a row of shrubs and plants meets this requirement.” <i>Reitz v. Knight</i>, 62 Wn. App. 575, 583, 814 P.2d 1212 (1991).</p> <p>Facts re F14: Spraying of the pyramidalis started in 1977 and has continued, uninterrupted, to the present (CP 351), including during Ms. Ryggs’ divorce when she was represented</p>

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	<p>by the Anderson Hunter Law Firm that reviewed this living expense as part of the divorce (CP 1587, see exhibit, billing for itemizing expenses, CP 1595 - 1597).</p> <p>Law re C6: Spraying “over the objection... of the Plaintiffs” makes the act all the more hostile and “does not detract but instead supports the [adverse possession] case.” <i>Lee v. Lozier</i>, 88 Wn. App. 176, 186, 945 P.2d 214 (1997), <i>Stokes v. Kummer</i>, 85 Wn. App. 682, 692, 936 P.2d 4 (1997).</p>
<p>CP 1109, I. 7-11</p> <p>This <u>incidental</u>^{F15} spraying is not sufficient to find that the <u>defendants’ possession</u>^{C7} was “<u>actual and uninterrupted, open and notorious, hostile and exclusive for more than 10 years</u>”.^{C8}</p>	<p>Facts re F15: Since 1977 to the present, Ms. Rygg was “on a continuing service with” the tree spraying service that sprayed the pyramidalis “on a regular basis.” (CP 351). Spraying occurred some 5 times a year, every year, since 1977. (checks to service at CP 440, CP 351). ERROR: Finding not supported by the evidence.</p> <p>Inconsistent Conclusions; C7: Concludes possession of the pyramidalis by the Ryggs. Contradicts C8. Contradicts CP 1109 I.7, C6: Spraying “over the objection... of the Plaintiffs”</p> <p>Law; <i>Lee v. Lozier</i>, 88 Wn. App. 176, 186, 945 P.2d 214 (1997), <i>Stokes v. Kummer</i>, 85 Wn. App. 682, 692, 936 P.2d 4 (1997).</p>
<p>CP 1109, I. 7-11</p> <p>While the spraying may have been occurring on and off^{F16} over a 10-year period, <u>the action does not rise to the level of meeting the previously cited definition.</u>^{C8}</p>	<p>Facts re F16: There is no evidence that the tree spraying service was ever “off.” As with F15, the service was continuous since 1977 to the present. (CP 351). Spraying continued “over the objection at one time of the Plaintiffs” see C6. CP 1109 I.7,</p>
<p>CP 1109, I. 11-13</p>	<p>F17: In conflict with F13.</p>

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<p><u>Other evidence including putting down pine needles in the area of the pyramidalis,^{F17} or trimming or pruning efforts, if any, were insufficient to support a claim of adverse possession.</u>^{C9, C10}</p>	<p>Facts re F17; Ms. Rygg weeded all around the trunks of the pyramidalis, including to the western/Reinertsen side (CP 350-51). Use of pine needles as ground cover in gardening beds serves the same purpose as using bark, as Mr. Dilworth, a B.S. in Botany (CP 141), testified,</p> <p>Q Craig, what's the purpose of spreading pine needles as ground cover? A The same purpose you would have for spreading bark in your flower bed. Basically, to keep the weeds down. It also won't [allow the air to] dry all the soil. (CP 207-08).</p> <p>Q ...you used pine needles as ground cover. A That is correct. They are like -- you can use bark as well. Pine needles, we have them, a lot of them, because of our pine trees.</p> <p>Q Hold on. So basically, you just don't clean up the pine needles? A That's incorrect. We actually collect them from underneath the trees where they are and we spread them on the beds. They are a naturally acidic – (CP 198-199).</p> <p>Mr. Reinertsen testified he had notice of the Ryggs' use of pine needles for maintenance of the beds under and around the pyramidalis in a manner "They believe that maintenance is." (CP 258-59).</p> <p>The pyramidalis hedge is in a planting bed that extends to the Ryggs side bordered with railroad ties before the gravel of the Ryggs' driveway and parking area; this planting bed has been maintained exclusively by the Ryggs where Ms. Rygg planted a pear tree given her by her mother. (CP 350, also CP 386).</p> <p>Ryggs' predecessors-in-interest, the</p>

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	<p>McCartys, created this planting bed and “planted birch trees, pine trees, and maple trees on my side of the existing evergreen pyramidalis hedge extending to the road.” (Ex 18).</p> <p>Law re C10: Standard is use as an owner, incidental use cannot stop adverse possession. <i>Bryant v. Palmer Coking Coal Co.</i>, 86 Wn. App. 204, 216-17, 936 P.2d 1163 (1997); <i>Crites v. Koch</i>, 49 Wn.App. 171, 175, 741 P.2d 1005 (1987).</p>
<p>CP 1109, I.14-16</p> <p>With respect to the area of the "board fence", sometimes referred to as a "6 foot board fence", <u>the Court finds that the Reinertsens originally laid down a line of used railroad ties as a retaining wall,^{F18} not necessarily on the surveyed boundary but close to the actual line.^{F19}</u></p>	<p>Violation of this Court’s mandate in <i>Reinertsen v. Rygg I</i>, #55842-1-I at 9 (2007): that the Ryggs met all the elements of adverse possession, causing the burden of proof shifted to the Reinertsens to show permissive use / revocable license <i>Hovila v. Bartek</i>, 48 Wn.2d 238, 241, 292 P.2d 877 (1956)</p> <p>Facts re F18: A line of railroad ties only one tie in height on the ground is not a “retaining wall.” No finding on what this one tie high line of railroad ties was supposed to retain. The aerial photo (Ex 33) taken prior to the development of the Rygg property show paths in the area where the board fence now exists, photos of the board fence</p> <p>Facts re F19: Reinertsens’ have admitted “it is a complete misrepresentation that the Plaintiffs at all times, knew the exact location of the property line.” (CP 1091).</p>
<p>CP 1109, I. 16-20</p> <p>The court further finds that the predecessor to the</p>	<p>Facts re C11: Reinertsens’ have admitted “it is a complete misrepresentation that the Plaintiffs at all times, knew the exact location of the property line.” (CP 1091).</p>

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<p>defendants conferred with the Plaintiffs and wanting to erect a <u>barrier fence</u>,^{C11} with the agreement of the Plaintiffs, did so placing <u>its base</u>^{F20} upon the railroad ties belonging to the Plaintiffs for "mutual convenience" so that weed would not grow in the minimal area between the railroad ties and <u>his fence</u>^{F21} if placed on <u>the actual boundary line</u>.^{F22}</p>	<p>McCarty letter states McCarty built the board fence on the property line: "I put a solid cedar fence from the house <u>to the west property line</u>." (emphasis added). (Ex.8)</p> <p>Law re C11; A barrier or convenience fence is a fence to control the pasturage of livestock. <i>Young v. Newbro</i>, 32 Wn.2d 141, 143, 200 P.2d 975 (1948) (even a fence erected to control pasturage "would not militate against a claim of adverse holding"), as opposed to one that sets the limits of cultivation of the land itself. "[I]f land is cultivated... to a boundary well marked by cultivation, the adverse holding will extend to the limits of the ground so cultivated as effectually as it would to a fence." <i>Skoog v. Seymour</i>, 29 Wn.2d 355, 365, 187 P.2d 304 (1947)</p> <p>A boundary or line fence is a fence that terminates where the land is maintained or cultivated to. <i>Id.</i>, also <i>Scott v. Slater</i>, 42 Wn.2d 366, 368, 255 P.2d 377 (1953); <i>Wood v. Nelson</i>, 57 Wn.2d 539, 540-41, 358 P.2d 312 (1961) (defining the difference between a "random" fence "for the purpose of confining stock" versus a "line" fence that "is effective in excluding an abutting owner from the unused part of a tract otherwise generally in use."</p> <p>A fence that is the "defining point of cultivation" of the land is a boundary line fence. <i>Merriman v. Cokeley</i>, ---Wn.2d ---, --- P.2d --- (No. 83700-7, April 8, 2010). <i>Skoog</i>, at 357-358 "The respondents take the position that this was intended as a retaining wall and not a boundary wall. The only attempted explanation of the fact that the builder erected the wall more than three feet south of his north lot line is the suggestion in the brief that he left that</p>

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	<p>much clearance for the purpose of inspection and repair. There is no evidence that the respondents or any of their predecessors in interest have ever used the strip north of the wall, for the purpose of inspection and repair or for any other purpose. The trial court's finding that the stone wall "was not intended to constitute a boundary line" is without evidence to support it."</p> <p>Fact; Mr. Reinertsen: "He and I both agreed that would be a lower maintenance issue for both of us." (CP 270).</p> <p>Law; An "express agreement establishing the designated line as the boundary line" proves mutual acquiescence. <i>Lilly v. Lynch</i>, 88 Wn. App. 306, 316-17, 945 P.2d 727 (1997). ("the parties must agree or acquiesce in the boundary, either expressly or by implication.").</p> <p>F20: Ex 46 shows the "base" of the fence consists of vertical support beams for the board fence in the ground additionally anchored in the ground with metal stakes nailed to beams. The railroad ties do not extend under these support posts, and stop at the "fascia boards"; "The posts were put at my side of the railroad ties." (Ex 18).</p> <p>Facts re F21: Finds the fence was the property of the Ryggs' predecessor in interest; which is not consistent with any conclusions that the Reinertsens can tear it down, nor does it address Mr. Reinertsens' false statements under oath claiming the board fence coincided with his deck and not the Ryggs' garage and house. (Ex 16). Inconsistent with C29.</p> <p>F22: Reinertsens' have admitted this claim is false when faced with CR 11 sanctions, admitting "<i>it is a complete</i></p>

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	<p><i>misrepresentation that the Plaintiffs at all times, knew the exact location of the property line.” (CP 1091).</i></p> <p>The McCartys have also admitted in 2008 that this fable is false, admitting that they did not know the location of the property line McCarty Answer, at New CP Vol IV, 1714, states;</p> <p>“7.5 At the time Dr. McCARTY built a fence, the property was not surveyed. He neither knew that the fence was nor was not on the property line.”</p>
<p>CP 1109, l. 20-22</p> <p>The line ascribed by the actual fence is not on or in the ground^{F23} but rather on top of the railroad ties put in place by the plaintiffs^{F24} (now replaced with concrete blocks^{F25}).</p>	<p>Facts re F23, F243, F25: Ex 46 shows vertical support posts for the board fence in the ground, which are additionally anchored in the ground with metal stakes nailed to beams. The support “posts” for the board fence are on the Ryggs’ “side of the railroad ties”; only the “fascia boards” extend over the railroad ties. (Ex 18). Support posts for of the board fence are also embedded in the concrete foundation of the Ryggs’ residence. (Ex 42, CP 573).</p> <p>“Q Does the board fence use wooden posts? A Yes. It has wooden posts behind it and some metal brackets that are nailed into those and sunk in the ground. Q Is there cement foundation underneath? A The part that makes a rectangle. And there is a door that leads into it from our garage and the patio of our garage and the house. And that whole area is cemented. There is also the stairs that go down the side of our house which is all cemented. And the wood part of that section of the board fence that's all attached is sunk into the concrete.” (CP 257).</p> <p>Ex 40 shows original railroad tie still in existence under fence. The concrete blocks do not run the entire length of the board fence (Ex 39 and 40), and were only put in</p>

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	<p>place as a support/foundation for Reinertsen's new deck.</p> <p>Mr. Reinertsen testified the concrete blocks went with his new deck: "concrete blocks that were put there by myself knowing that the deck would stand a long time." (CP 269).</p> <p>"I thought if this deck is going to stand, I need something with more permanence." (CP 271)</p> <p>The removal of some of the railroad ties and encroachment of the cement bricks as support for the Reinertsen's new deck are part of the Rygg's claim of trespass and encroachment: "6.5 Plaintiffs removed railroad ties under defendant RYGG's board fence and replaced them with cement bricks intended to support the offending deck structure." (CP 958).</p> <p>"Q: ...did you receive any objection from your neighbor? A I believe I heard about the concrete blocks when I started building the deck. They mentioned the blocks. Q In what manner? A They believed I was encroaching on their property with those blocks. Q And when did you start your deck, so that we can time when this -- let me ask it directly: About when did you replace the ties with concrete blocks? A It would be around May of 2003. It was one of the first steps before I started building the deck was to replace -- install the concrete blocks." (CP 272-73).</p>
<p>CP 1109, l. 22-24</p> <p>Thereafter, it was the Plaintiffs who on a number of occasions took action to</p>	<p>Facts re F26: Ex 40 photo shows original railroad tie still in place.</p> <p>Mrs. Reinertsen testified she could only remember putting in the concrete blocks in 2003, "I just remember this last time when he put the cement blocks under there." (CP</p>

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<p>replace the railroad ties^{F26} and later substitute concrete blocks.^{F27}</p>	<p>818).</p> <p>F27: See F25.</p> <p>Reinertsens allege only doing so two times somewhere between 1969 and 2003, which does not interrupt any 10 year period for adverse possession or mutual acquiescence</p>
<p>CP 1109, I. 24</p> <p>The Plaintiffs placed ornamentation upon their side of the fence.^{F28}</p>	<p>Facts re F28: The majority of the length of the fence is covered with ivy (Ex 46). Any “ornamentation” does not expend the full length of the fence.</p>
<p>CP 1109, I. 24-25</p> <p>The actions of these defendants were generally limited with regard to the fence.^{F29}</p>	<p>Facts re F29: Ryggs cut ivy from both sides of the fence multiple times a year (CP 164); Mrs. Reinertsen admitted notice of these actions “they cut out the ivy all they wanted,” with no objections (CP 550). Ex 46 shows the ivy in the process of being cut from the board fence, with some stacks of cut ivy awaiting removal. Ms. Rygg also sweeps pine needles off both sides of the fence and has put “wood life” on the support posts. (CP 360, 386-87)</p>
<p>CP 1109, I. 25-26</p> <p>The surveys vary somewhat but appear to indicate that the fence sits between <u>.9 foot to 1.68 feet</u>^{F30} west of the actual property line (per metes and bounds).^{F31}</p>	<p>Facts re F30: No survey shows the board fence as .9 foot or 1.68 feet west of the property line.</p> <p>None of Downing’s survey maps indicate what part, middle, east, or west edge, of the fences the measures are taken from. The 1.68 measure is for the south end of the split-rail fence (4 foot fence) from Downing’s first survey Ex 3, which also shows this fence is only 0.68 foot west of the line closer to the bluff.</p> <p>Downing’s second map, holding 7.5 feet from the monument of the Reinertsens’ house, puts the north end of the board fence at 0.5 foot west of the property line, again without specifying from what part of the fence this measure was</p>

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	<p>taken, and the south end of the split rail fence as 0.7 foot west. Both maps show the split-rail fence extending in a straight line from the line created by the board fence.</p> <p>When asked whether he located the fences with any certainty in any of his surveys, Mr. Downing testified:</p> <p>Q neither one of these surveys show where the board fence is or shows where the split rail fence is; is that correct? A (Downing) Not in detail. (CP 240-41).</p>
<p>CP 1110, I. 1-2</p> <p>The <u>continued actions</u>^{F32} of the Plaintiff in replacing the railroad ties or <u>concrete base</u>^{F33} defeat the claim of the Defendants that there (sic) possession of all <u>east of the fence</u>^{F34} was <u>exclusive</u>^{C12} and <u>hostile</u>^{C13}.</p>	<p>Facts re F32: No evidence of continuation of action, see F25, F26 and F27.</p> <p>Facts re F33: Concrete blocks were put in for base of Reinertsens' deck, and do not run length of the fence. See F25.</p> <p>Facts re F34: Railroad ties do not extend east of fence, they extend west of fence. See Ex 40 photo taken from east side and Ex 39 photo taken from west side.</p> <p>Facts re C12: See photographs of Ex 40 and Ex 39, Reinertsen alleged 2 times between 1969 and 2003 (CP 539).</p> <p>Inconsistent Findings; Contradicted by F35, which finds the railroad ties were never located; contrary to C15.</p>
<p>CP 1110, I. 2-4</p> <p>Essentially the Plaintiffs continued to exercise dominion and control over the area in which the railroad ties or concrete blocks were</p>	<p>Inconsistent Findings; See C12. Contradicted by F34. which finds the railroad ties were never located; contrary to C15.</p>

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FINDINGS TO WHICH ERROR IS ASSIGNED	CITATIONS TO RECORD AND LAW
located. ^{C14}	
<p>CP 1110, I. 4-5</p> <p>It was never made clear to the Court by either party the actual location of the original line of railroad ties or even the current line of cement blocks.^{F35}</p>	<p>Inconsistent Findings; F35: Contradicts C12, C13, and C14.</p>
<p>CP 1110, I. 6-7</p> <p>Pictures admitted showing the fence would appear to indicate that the cement blocks are likely between a few inches and a foot wide under the fence line.^{F36}</p>	<p>Facts re F36: see F34, re Railroad ties “east” of fence”</p> <p>photo Ex 40 shows railroad ties do not extend east of fence and photo Ex 39 shows they instead extend west of fence.</p>
<p>CP 1110, I. 7-8</p> <p>This was insufficient for the Court to make a specific finding of the location of a boundary by adverse possession had the Court so found.^{C15}</p>	<p>C15: Contrary to pleadings; It was the Reinertsens who claimed adverse possession to the location of the railroad ties, <u>not</u> the Ryggs. CP 539: “...the Court could and should find the Plaintiffs have adversely possessed to that line [of railroad ties].” Also CP 651.</p> <p>Law re C15;</p> <p>"It is elementary that where the title has become fully vested by disseizin so long continued as to bar an action, it cannot be divested... by any other act short of what would be required in a case where his title was by deed." <i>Mugaas v. Smith</i>, 33 Wn.2d 429, 431, 206 P.2d 332 (1949).</p>
<p>CP 1110, I. 9-11</p> <p>With regard to the "split rail fence" and a claim of adverse possession, the</p>	<p>Facts re F37: There is only one split rail fence, which is the same fence made of the same materials that has existed from 1969 to the present. Mr. Reinertsen admitted that “No new materials except some pieces of iron” were used by the Ryggs to support</p>

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FINDINGS TO WHICH ERROR IS ASSIGNED	CITATIONS TO RECORD AND LAW
<p>Court finds that "<u>a</u>" split rail fence^{F37} was erected by Dr. McCarty^{F38} probably sometime in 1969 or the early 70's. See Exhibit 8.</p>	<p>the existing split rail fence in 2003. (CP 704).</p>
<p>CP 1110, I. 11-12</p> <p>There was no evidence before the Court as to exactly where Dr. McCarty located the split rail fence.^{F39}</p>	<p>Facts re F39: Evidence showing the exact location of the split rail fence as extending in a straight line the line of pyramidalis and board fence (as asserted at CP 605) include:</p> <p>Ex 34: A 1976 aerial photo showing the split rail fence continuing the straight line of pyramidalis hedge and board fence, creating one continuous fence-line from the street to the bluff.</p> 

FINDINGS TO WHICH ERROR IS ASSIGNED	CITATIONS TO RECORD AND LAW
	<p data-bbox="820 331 1344 741">“The pyramidalis, board fence, and split-rail fence form a straight line between the two properties. Ex 34, an aerial photograph showing a clear demarcation between the two parcels, best illustrates the well-defined nature of the boundary. The line is so clearly designated upon the ground that a straight edge can be placed on the aerial photo such that it runs down the centerline of each element the full combined length of the boundary.” (CP 609)</p> <p data-bbox="820 779 1344 982">CP 438: A 1980s photo showing the split rail fence extending into the white laurel bush at the end of the bluff. Compare with Ex 28, a 2004 photo after repairs by the Ryggs from same angle showing the fence in exactly the same place.</p>  <p data-bbox="820 1661 906 1690">CP 438</p>

FINDINGS TO WHICH ERROR IS ASSIGNED	CITATIONS TO RECORD AND LAW
	<div data-bbox="824 296 1362 840" data-label="Image"> </div> <p data-bbox="824 842 893 871">Ex 28</p> <p data-bbox="824 911 1331 1081">Ex 44: (below) A 2003 photo taken from the east side showing the location of the fence extending into the white laurel bush prior to repairs made by the Ryggs; fence leaning in-line north/south.</p> <div data-bbox="675 1083 1377 1564" data-label="Image"> </div> <p data-bbox="824 1602 1347 1806">CP 1581-94: (next page) Anderson Hunter cover letter, and enclosed sketch of fence-line and photos of split rail fence from 1989 Anderson Hunter Law Firm Appraisal of Rygg property made during their representation of Ms. Rygg.</p>

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**FINDINGS TO WHICH
ERROR IS ASSIGNED**

CITATIONS TO RECORD AND LAW

The Office of
ANDERSON HUNTER
A Professional Service Corporation
1778 SHORE AVENUE
EVARETT, MASSACHUSETTS 01930
TELEPHONE 753-1111
FACSIMILE 753-1111

VICKIE K. WOODRUFF
VIRGINIA C. WOODRUFF
JENNIFER M. WOODRUFF
TODD M. WOODRUFF
KATHLEEN E. WOODRUFF
JULIE M. WOODRUFF

November 9, 1989

Ms. Carolyn Dilworth
3225 Shore Avenue
Everett, MA 01930

Re: Dissolution

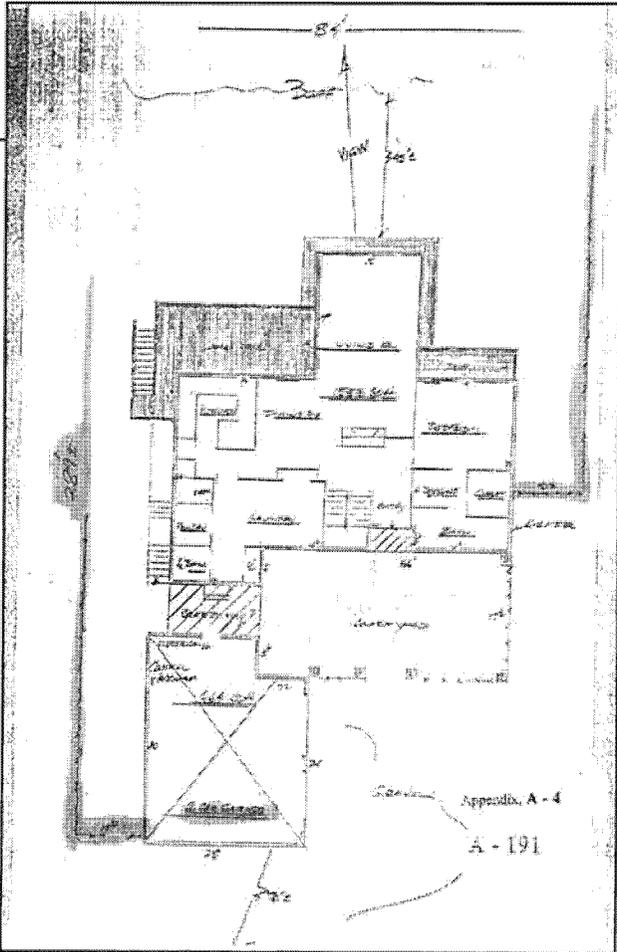
Dear Carolyn:

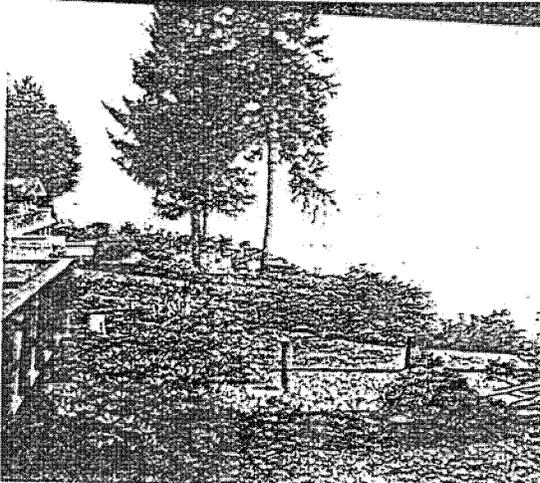
I am enclosing a copy of the real estate appraisal, which ~~is~~ finally received from Mr. Mettley. I am also enclosing the drawings that you apparently provided to Mr. Mettley and he has asked that we return them to you.

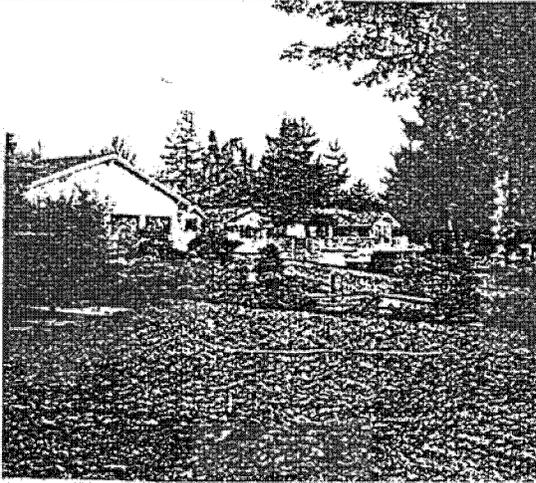
Vickie is on vacation this week but she wanted me to mail a copy of the appraisal to you as soon as it arrived. Would you please give me a call once you've had an opportunity to review the appraisal so that I can schedule a time for you to meet with Vickie. If possible, she would like to meet with you sometime during the week of November 13.

Very truly yours,
ANDERSON HUNTER LAW FIRM
Taric Holte
Taric A. Holte, Paralegal

TAH:vc
Shole.



FINDINGS TO WHICH ERROR IS ASSIGNED	CITATIONS TO RECORD AND LAW
	<p data-bbox="820 331 1344 810">CP 1581-94: (Previous page) 1989 sketch from the appraisal obtained by the Anderson Hunter Law Firm represents the board and split rail fence as one continuous fence-line extending straight "289'+/-" to the bluff from the right angle section of the board fence attaching to the south side of Ryggs' garage. The other side of the Rygg property with matching board fence and split rail fence is also depicted as one, continuous straight fence-line extending to the bluff from where the board fence makes a right angle to attach to the Ryggs' house.</p>  <p data-bbox="820 1346 1344 1514">CP 1581-94: A-13 (above) and A-15 (next page) Photos of split-rail fence from 1989 appraisal obtained by Anderson Hunter Law Firm during their representation of Ms. Rygg.</p>

FINDINGS TO WHICH ERROR IS ASSIGNED	CITATIONS TO RECORD AND LAW
	 <p data-bbox="824 821 1057 848">CP 1581-94: A-15</p> <p data-bbox="824 890 1321 1024">Mrs. Reinertsen testified the pyramidalis, board fence, and split rail fence formed a straight line, “he wanted a straight shot.” (CP 809).</p> <p data-bbox="824 1066 1338 1201">Mr. Reinertsen also testified the fence extended straight, “The original fence was built by a guy that knew how to use a level and a string.” (CP 705).</p> <p data-bbox="824 1243 1338 1474">Dr. McCarty’s letter links the pyramidalis hedge, board fence built “to the west property line,” and split rail fence “up the... west side,” to form a straight line with each other, “The southwest corner of the fence tied in with the hedgerow of pyramidalis.” (Ex 18).</p> <p data-bbox="824 1516 1321 1684">“the pyramidalis hedge that was in line with and extended the line of the fences enclosing my property and attached to my house and garage.” Declaration of Dr. John A. Dilworth (CP 431).</p> <p data-bbox="824 1726 1321 1852">(CP 1610); “At the time of my purchase and sale, the whole property was enclosed by a series of connecting fences and hedges/trees. A split-rail fence ran across</p>

FINDINGS TO WHICH ERROR IS ASSIGNED	CITATIONS TO RECORD AND LAW
	<p>the North bluff and up both East and West sides, met with a 6-foot Board Fence that attached to the house on the East side and the garage on the West side, which in turn met with a row of trees (pyramidalis) creating a hedge on both East and West sides that ended at the street (South).” Declaration of Mitlon T. Slater. (CP 1610);</p> <p>Ex. 8 Dr. McCarty’s letter, dated March 4, 2004, dated after the Ryggs made repairs to the split-rail fence Labor Day weekend in 2003 (CP 703), and after coming twice to the Reinertsens’ home and walking the “property line” with Mr. Reinertsen and “have a discussion” about the “pyramidalis, the board fence, and the split rail fence” to “refresh” Dr. McCarty’s “memory.” (CP 692-93). Dr. McCarty’s letter, after viewing the repaired split-rail fence, does not say the fence has been moved from where he built it up the “west side” of his property. (Ex 8).</p> <p>“The split-rail fence makes a straight line running north/sought that continues the line of the board fence, as seen in any of the survey maps by either Downing or by Krell.” (CP 605).</p> <p>Surveyor Krell testified that the three portions of the fence-line all link together to form a continuous fence-line:</p> <p>Q the pyramidales, the board fence and the split rail fence... do they overlap at any point, intersect at any point? A (Krell) With each other, the fence versus the pyramidalis versus the – (CP 102).</p> <p>The split rail fence still “attaches to the board fence.” (CP 158).</p> <p>“Larry had stacked a wood pile right against it,” which was one cause why the</p>

FINDINGS TO WHICH ERROR IS ASSIGNED	CITATIONS TO RECORD AND LAW
	<p>split rail fence fell down in its line. (CP 157). There is no evidence that this woodpile has been moved from where Mr. Reinertsen stacked it abutting against the split rail fence.</p> <p>Ex 10, “K” and “I” show this woodpile and the repaired fence abutting the woodpile.</p> <p>Ex 35 “woodpile” shows the gap between the woodpile and plants that lines up directly with the north-to-south face of the board fence in the background, and shows the original and current location of the split-rail fence. (CP 605).</p> <p>Ex 37 shows “a grass trace of where [the rails of the split rail fence] had been moved from, where it had been laying and then moved over.” (CP 185). This “grass trace” showing a straight line of bare ground with green grass on either side lines up directly with the north-to-south line established by the board fence seen in the background of Ex 37.</p> <p>“I have visited the property located at 3225 Shore Avenue in 2005 and the remaining fences and hedges are in the same location I remember them to be in at the times I sold the property in the 1970s and showed the property in the 1990s” Declaration of Dan Bovey, realtor. (CP 430).</p> <p>“I have recently visited the property in 2005 2/07/2005 and the fences on both sides between the neighbors and 3225 Shore Avenue are in the same locations they were in when I lived there between 1976 and 1988 and in the early 1990s when the property was up for sale.” Declaration of Dr. John A. Dilworth. (CP 431).</p>
CP 1110, I. 12-13	<p>Facts re F40: Reinertsens admitted “No new materials</p>

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FINDINGS TO WHICH ERROR IS ASSIGNED	CITATIONS TO RECORD AND LAW
<p>However, the testimony was clear to the Court that the split rail fence <u>deteriorated</u>^{F40} and <u>fell down</u>^{F41} <u>sometime in the past.</u>^{F42}</p>	<p>except some pieces of iron” were used by the Ryggs to support the existing split rail fence in 2003. (CP 704). Also Mrs. Reinertsen, “Q Was it built with all new materials? A No.” (CP 808).</p> <p>Mrs. Reinertsen agreed the split rail fence did not fall down east or west of where it stood, but “Sort of collapsed in... on itself.” (CP 819)</p> <p>“Q Do you know what caused it to fall down? A I believe the main cause was Larry had stacked a wood pile right against it. As the wood settled, it began to push it. That's I believe the main cause. Also, you know, it's -- it was older. I believe Kaaren has mentioned how Larry would use a Weed Eater and come by and on some of the parts would cut into the support. So I think some of that had deteriorated somewhat.” (CP 157-58).</p> <p>Mr. Reinertsens admits the timbers “Remained on the ground” which he used as “a defined line for me to maintain to.” (CP 261-62).</p> <p>Facts re F41: Some sections of the fence have always remained standing, and did not fall down. Ex 44, a 2003 photo, shows sections of split rail fence upright, though leaning, to where it is fully standing in the white laurel bush. (CP 604).</p> <p>“The part towards the bluff was always standing.” (CP 157).</p> <p>This Court’s Opinion in <i>Reinertsen v. Rygg I</i>, #55842-1-I at 9 (2007): The Court of Appeals has already determined that only a “portion” of the split rail fence “collapsed,” which was still used “as a boundary.” (Opinion in #55842-1-I at 9).</p>

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FINDINGS TO WHICH ERROR IS ASSIGNED	CITATIONS TO RECORD AND LAW
	<p>“the section that is currently standing most to the north, which is in the white laurel, is exactly where it's always been, and we didn't even put any supporting green stakes there. It's just -- it was still up. It's not moved. It's exactly where it's always been.” Ms. Rygg at CP 363.</p> <p>Law re F42; “When the law is properly applied to focus on the first ten years, the Defendants have met their burden by 1979 through tacking back to the McCartys (Ex 21), by 1973 by tacking to the Slaters (Ex 20), or by 1986 by their possession alone (Ex 19).” (CP 1072, Ryggs’ <i>Motion for CR 11 Sanctions</i>).</p> <p>The Anderson Hunter Law Firm knows the fence was standing fully upright in 1989, as seen in sketches and photos from the appraisal of the Rygg property during their representation of Ms. Rygg during her divorce. (CP 1584 and 1594).</p> <p>As a direct result of the divorce, the Rygg property was in show condition and on the market in 1993 (see also Declaration of Dan Bovey, realtor), so was standing fully upright in “’93. Our house was on the market after my parents' divorce and before my mom bought it from my father. So we had it in show condition.” (CP 156).</p>
<p>CP 1110, l. 12-16</p> <p>The “survey” admitted as Exhibit 2, dated May 29, 1995, <u>shows a “split rail fence” on the eastern boundary of the Rygg property^{F43} (that boundary not involved in this suit^{C16})</u></p>	<p>F43: Finds the split rail fence on the eastern side is <u>the Ryggs’</u> property.</p> <p>Facts re C16: The Reinertsens have procured inconsistent claims, from the Ryggs’ other neighbors, (CP 1529, 1536)</p> <p>C17: Contradicted by Ex 44, a 2003 photograph showing the split rail fence in existence.</p>

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FINDINGS TO WHICH ERROR IS ASSIGNED	CITATIONS TO RECORD AND LAW
<p><u>but does not show any split rail fence on the west toward the Reinertsens.</u> The court must then presume from this evidence that the fence no longer existed as of 1995.^{C17}</p>	<p>Survey maps are not proof of the non-existence of objects; e.g. pyramidalis do not appear on either of Downing’s surveys (Ex 3 nor Ex 9). See F11. See also Mr. Krell’s two surveys (Ex 5 and Ex 11),</p> <p>Q Does either one of your surveys show where the pyramidales is? A No, it doesn't. (Surveyor Downing at CP 241).</p> <p>“I agree there were some things that we hadn't mapped that we should have.” (Surveyor Krell at CP 111).</p> <p>Contradicted by admissions by the Reinertsens that even the collapsed portions “remained on the ground” (CP 261).</p> <p>Q (By Mr. McLean) Do you recall whether back in 1995 the split rail fence was still standing between your property and the Reinertsens' property? A Yes, it was.</p> <p>Q The 1995 Continental survey show that split rail fence there? A No, it didn't.</p> <p>Q So is the Continental survey inaccurate, in your opinion? A In my opinion, it's inaccurate also because it exactly overlays a prior survey with different numbers on it. And the stakes -- it has a number of issues that lead me to think that it was inaccurate, yes.</p> <p>Q Did you ask Continental Survey to survey the western side of your property and put the board fence and the split rail fence on it? A Actually, I was concerned with the east line of the property at that time. And I didn't. I wasn't all that concerned with the west side because the reason why I had that survey done in the first place was to help</p>

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FINDINGS TO WHICH ERROR IS ASSIGNED	CITATIONS TO RECORD AND LAW
	<p>resolve an issue that was going on with the other side. (Ms. Rygg at CP 391-92).</p> <p>Q Without going into a whole lot of detail, what was the purpose in your obtaining a survey in 1995? A We were having an issue on the other side with the neighbors who were re-angling their driveway and were paving it. Where it says "asphalt driveway." Because it crossed over our property line and we were having, after many discussions with them, I decided I needed to clarify that line so that we could -- because I didn't want them to be pouring their driveway on my property.</p> <p>Q So the purpose of that survey had to do with a dispute on that side of your property, not on the same side of your property as the Reinertsens? A That's right. (CP 388).</p> <p>C17; this Court's Opinion in <i>Reinertsen v. Rygg I</i>, #55842-1-1 at 9 (2007): "evidence that the parties regarded the line represented by a collapsed portion of the split rail fence as a boundary." --- the fence existed even after portions fell down.</p>
<p>CP 1110, I. 16-18</p> <p>The defendants then, <u>at some time</u>^{F44}, resurrected the fence after 1995 (not within the 10 year period for adverse possession).^{C18}</p>	<p>Facts re F44: Those portions of the split rail fence that fell down and were used "as a boundary" were re-stood over Labor Day weekend in 2003, August 30 and 31. (CP 158).</p> <p>C18: 1995 is not within the relevant 10 year period for the Ryggs' adverse possession claim. (The Ryggs' claim commenced in the 1970's). Inconsistent with C21 that finds 1995 was within the relevant 10 year time period for the Ryggs' adverse possession claim.</p>
<p>CP 1110, I. 18-20</p> <p>But in doing so, they could</p>	<p>C19: See F44 and F38. Does not find that the fence has been moved from its original line.</p>

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FINDINGS TO WHICH ERROR IS ASSIGNED	CITATIONS TO RECORD AND LAW
<p>not prove to the Court's satisfaction that it was erected exactly in the place or on the line set by the former split rail fence,^{C19} nor can they show with any certainty where the former split rail fence was located.^{C20}</p>	<p>C20: See F38.</p> <p>This Court's Opinion in <i>Reinertsen v. Rygg I, #55842-1-I at 9 (2007)</i>: trial court was specifically instructed the trial court to consider the evidence submitted by both parties, after finding the 2005 judgment did not reflect the evidence presented..</p>
<p>CP 1110, l. 20-22</p> <p>As a result, the court is unable to find that a specific boundary was established by a fence that existed for longer than the required 10-year period to sustain a claim for adverse possession in this portion of the boundary.^{C21}</p>	<p>C21: Inconsistent with C18 that 1995 is not within the relevant 10 year period for the Ryggs' adverse possession claim.</p> <p>There is no evidence that the split rail fence did not exist for a period of 10 years. All evidence is that the fence existed for more than 10 years, including admissions by Mr. Reinertsen that it was standing full upright in 1990 (CP 302).</p> <p>"When the law is properly applied to focus on the first ten years, the Defendants have met their burden by 1979 through tacking back to the McCartys (Ex 21), by 1973 by tacking to the Slaters (Ex 20), or by 1986 by their possession alone (Ex 19)." (CP 1072, Ryggs' <i>Motion for CR 11 Sanctions</i>).</p> <p>"Plaintiff's themselves admit the split rail fence was built in 1970 as does Dr. McCarty who built the fence (Ex 8) and Mr. Reinertsen himself admits it may have been standing fully erect until at least 1990 and not have begun leaning until sometime after 1990. 1970 to 1990 is 20 years. 20 years is more than 10 years. The split rail fence has existed continuously for an uninterrupted period of 10 years." (CP 1073, Rygg's <i>Motion for CR 11 Sanctions</i>).</p> <p>"the fence which between 1910 and 1928 clearly marked the boundary line for which respondent contends, disappeared by a process of disintegration in the years which followed, and, when appellants purchased</p>

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FINDINGS TO WHICH ERROR IS ASSIGNED	CITATIONS TO RECORD AND LAW
	<p>the property in 1941 by a legal description and with a record title which included the disputed strip, there was no fence and nothing to mark the dividing line between the property of appellants and respondent, or to indicate to the appellants that the respondent was claiming title to the strip in question.</p> <p>We have on several occasions approved a statement which appears in <i>Towles v. Hamilton, 94 Neb. 588, 143 N. W. 935</i>, that:</p> <p>"It is elementary that where the title has become fully vested by disseizin so long continued as to bar an action, it cannot be divested by parol abandonment or relinquishment or by verbal declarations of the disseizor, nor by any other act short of what would be required in a case where his title was by deed." <i>Mugaas v. Smith, 33 Wn.2d 429, 431, 206 P.2d 332 (1949)</i>.</p>
<p>CP 1110, I. 22-24</p> <p><u>The testimony of the defendants in regard to where they erected^{F45} the new split rail fence^{F46} was not of sufficient weight or specificity to establish their burden of proof in this regard.</u>^{C22}</p>	<p>F45: Does not find where the testimony states the still existing portions of the split rail fence were re-stood, which is in "exactly" the same location. Also does not address that some sections always remained standing (Ex 44):</p> <p>"And the majority of it, the vertical parts, the ladder parts, were still in their same post holes, I guess you would call it. They just kind of leaned. And so we just stood them back up as best we could and put some green steaks in and nailed the post to the stakes.</p> <p>Q Did you and Craig dig new post holes for the split rail fence 15 to 18 inches further west onto the Reinertsen's property? A No. In fact, the section that is currently standing most to the north, which is in the white laurel, is exactly where it's always been, and we didn't even put any supporting green stakes there. It's just -- it</p>

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FINDINGS TO WHICH ERROR IS ASSIGNED	CITATIONS TO RECORD AND LAW
	<p>was still up. It's not moved. It's exactly where it's always been." (Ms. Rygg at CP 362-3).</p> <p>"The part towards the bluff was always standing, kind of leaning. The parts as you got closer to the street had fallen down in line kind of like dominoes.</p> <p>Q When you say "like dominoes," were they leaning toward the Reinertsens' side?</p> <p>A No, they pretty much fell down in line where the line of where the fence had been.</p> <p>Q After the parts of this fence fell down... did those parts ever get moved?</p> <p>A Those parts were not moved, no.</p> <p>Q Other than putting green steaks in and uprighting the fence, did you do any other kind of repair work or effect any other repairs?</p> <p>A No.</p> <p>Q Did you dig any new holes for the support beams in the split rail fence?</p> <p>A No.</p> <p>Q Did you move the split rail fence farther west or farther east from where it was originally located?</p> <p>A No." (Mr. Dilworth at CP 157-159).</p> <p> Ignores the third party declarations of realtor Dan Bovey and Dr. John Dilworth that state the split rail fence is in the same location it has always been in. (CP 430, 431).</p> <p> Ignores that Dr. McCarty, after twice viewing the split rail fence in 2004 after it was repaired in 2003, does not state that it has been moved from where he built it in 1969. (Ex 18).</p> <p>F46: The split rail fence is not a new fence. It never ceased to exist and no new materials other than reinforcing stakes were used to repair it. See Reinertsens' admissions at CP 704 and 808. See F39.</p>

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	<p>C22: Testimony that even a new fence made with new and different materials, which “for the most part” uses “the same post holes” as the old fence, is sufficiently specific for adverse possession.</p> <p>“Brame states that he replaced the original chain link fence in 1991 with a wood fence, but "for the most part" he placed it "in exactly the same location as the chain link fence had been, using many of the same post holes."...the Brames have proved all of the elements of adverse possession for the prescribed 10-year period.”</p> <p><i>Timberlane Homeowners Assoc., Inc. v. Brame</i>, 79 Wn.App. 303, 310, 901 P.2d 1074 (1995).</p> <p>There is no finding or conclusion that the split rail fence has been moved.</p> <p>Law; Burden of proof. The split rail fence did not need to exist after the first 10 year period from when it was built in 1969, “there was no fence and nothing to mark the dividing line.” <i>Mugaas v. Smith</i>, 33 Wn.2d 429, 431, 206 P.2d 332 (1949). (Burden of proof switches after title ripens by adverse possession). Reinertsens would have to prove they “divested” the Ryggs of title that ripened in 1979 to whatever line it is the Reinertsens are claiming.</p>
<p>CP 111, I. 1-6</p> <p>Again dealing with the first portion of the contested boundary and with regard to “mutual acquiescence and recognition”, <u>the evidence at trial was that the Plaintiffs planted the line of</u></p>	<p>Facts re F47: The Reinertsens admitted this claim was a “complete misrepresentation” when faced with CR 11 sanctions in 2005 (CP 1091) for this false assertion given that Mr. Reinertsen places the line parallel to his house at 7.5 feet (Ex 24 and CP 434, CP 320), which runs down the centerline of the pyramidalis (CP 162, CP 609, Ex 34)</p>

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<p><u>pyramidalis inside their property line (not intending the vegetation to be the property line)</u>^{F47} and <u>maintained, trimmed and topped the trees sometimes from either their side or the side adjoining</u>^{F48} <u>the property owned by the Defendants.</u>^{F49}</p>	<p>Reinertsens' admission: "<i>it is a complete misrepresentation that the Plaintiffs at all times, knew the exact location of the property line.</i>" (CP 1091).</p> <p>Law; Substantial evidence must be "credible evidence" and "legitimate inferences therefrom." Cuillier v. Coffin, 57 Wn.2d 624, 628, 358 P.2d 958 (1961).</p> <p>"Q There is a number here [on Ex 24, Mr. Reinertsens' permit application] between the house and this line that is represented as north 8 degrees 35 west. Can you state out loud what that number is? A 7 feet 6 inches." (Mr. Reinertsen at 319-20).</p> <p>Q Do you know how far the board fence is from the Reinertsens' foundation? A I know the board fence, the face of it, is 7 foot 2 inches from the foundation. Q What about to the center of the board fence to the Reinertsen foundation? A Probably right about 7'6" (Mr. Dilworth's testimony, CP 162).</p> <p>Facts re F49: Mr. Reinertsen admitted he did not prune the pyramidalis around all sides.</p> <p>Q Your testimony is that you pruned the pyramidales around on the outside every two to three years; is that correct? A No. (Mr. Reinertsens' admission at CP 341).</p> <p>There is no evidence that Mr. Reinertsen ever came to the Ryggs' side of the pyramidalis to do anything to the pyramidalis.</p> <p>The admission by Mr. Reinerstsen that he did not prune the pyramidalis around the</p>

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	<p>outside matches Mr. Dilworth’s testimony, who has a B.S. in Botany (CP 141, 166), that if someone did prune around the outside it would “completely denude the vegetation on it.”</p> <p>“this type of cultivar specifically has a mature width of three feet. It’s used often for hedges. This is the very reason that it’s a successful cultivar, economically viable, is because you know how wide it’s going to be when it’s mature. And once they have reached the mature width, they do not grow in width any more... If you were to go around it and trim it back significantly every two to three years, you would completely denude the vegetation on it. It would kill it.” (CP 179).</p> <p>“There is no evidence that there was any knowledge even of the claims of the Reinertsens by Ms. Rygg in 1989 or 1990.” (Reinertsens’ counsel, (partner of Ms. Ryggs’ former counsel, at RP of October 7, 2005, p. 10, l. 19-20).</p> <p>There are no findings on the impossibility of Mr. Reinertsens’ claims to have repeatedly topped the pyramidalis at 2 feet tall, when he admits the trunks are over 7 feet tall (CP 342).</p> <p>“All conifers grow from the tips -- or shoot elongation. It’s called an apical meristem. They also have two other meristems, vascular cambium and the core cambium. The vascular cambium is responsible for its growth [in] width. The core cambium does the bark. What happens is, if you cut off the apical meristem of a shoot, that shoot will no longer grow -- in length. It will continue to grow in width. An example is if you put a nail into a tree, as that tree</p>

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	<p>grows that nail will not move up in height; it will stay where it is. And may become more embedded as the vascular cambium grows out and the tree becomes wider...</p> <p>Q If I understand your testimony, if you snip the main shoot of one of these trees, it won't grow any taller.</p> <p>A That's correct." (CP 178).</p>
<p>CP 111, l. 6-9</p> <p>These facts do not support a claim that both property owners mutual acquiesced in the line of pyramidalis constituting the true property line.^{C23}</p> <p>The testimony would indicate that they constituted more of a barrier (<u>and not a complete one at that</u>^{F50}) rather than an agreed boundary.^{C24}</p>	<p>Facts re C23: Mr. Reinertsen admitted that he did not come to the Ryggs' side of the pyramidalis (CP 341)</p> <p>Law; A claim that a physical line was placed back from the theoretical property line to allow for "clearance" for maintenance, without evidence that the claimant actually did any maintenance from the within the alleged "clearance," does not support a finding that the physical line "was not intended to constitute a boundary line."</p> <p>"The respondents take the position that this was intended as a retaining wall and not a boundary wall. The only attempted explanation of the fact that the builder erected the wall more than three feet south of his north lot line is the suggestion in the brief that he left that much clearance for the purpose of inspection and repair. There is no evidence that the respondents or any of their predecessors in interest have ever used the strip north of the wall, for the purpose of inspection and repair or for any other purpose. The trial court's finding that the stone wall "was not intended to constitute a boundary line" is without evidence to support it." <i>Skoog v. Seymour</i>, 29 Wn.2d 355, 357-358, 187 P.2d 304 (1947).</p> <p>Facts re F50: Ex 26 is a photograph showing the pyramidalis have grown together to form a hedge. Mr. Reinertsen termed the line of pyramidalis as a</p>

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	<p>“hedge.” (Ex 16).</p> <p>Dr. McCarty termed the line of pyramidalis as a “hedgerow.” (Ex 18).</p> <p>Law; “Hedge. 1. A row of closely planted shrubs, bushes, etc. forming a boundary or fence.” (Webster’s NewWorld Disctionary, Second College Edition, at 648).</p> <p>“Hedgerow. A row of shrubs, bushes, etc., forming a hedge.” (Id.).</p> <p>The only break in hedge “is a gap where there are is a gap in the pyramidales where there are some stepping-stones.” (CP 152). Ex 31 “Stepping Stones” shows the gap and shows that the stones do not extend past the trunk-line of the pyramidalis to the Ryggs’ side.</p> <p>The purpose of the stepping stones was not for purposes of the Reinertsens maintaining to the Ryggs’ side of the hedge, but was to allow the Rygg and Reinertsen children to go back and forth to play: “stepping stones in so that the kids could go back and forth. And they’re still there.” They were put down “when Carolyn [Rygg] moved in because the kids were playing.” (Mrs. Reinertsen at CP 828).</p> <p>Mr. Reinertsen admitted this gap was for the children “to get back and forth from one property to the other.” (CP 283).</p> <p>Law re C24: “The existence of an express agreement between adjoining landowners ... while often present in the establishment of boundaries by recognition and acquiescence, is not an indispensable element in the application of that doctrine. It is sufficient to bring the doctrine into</p>

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	<p>play if the adjoining parties in interest have, for the requisite period of time, actually demonstrated, by their possessory actions with regard to their properties and the asserted line of division between them, a genuine and mutual recognition and acquiescence in the given line as the mutually adopted boundary between their properties. This approach is founded upon the truism that actions are often, if not always, stronger talismans of intentions and beliefs than words.” <i>Lamm v. McTighe</i>, 72 Wn.2d 587, 593-94, 434 P.2d 565 (1967). (A party that “passively observed their neighbors' acts of dominion in relation to the now disputed strip, and made no overt claim to any property lying westerly of the fence line until an exchange of words gave rise to a dispute and the 1963 survey” cannot defeat their recognition and acquiescence in the line as the boundary line.).</p> <p>Facts re C24; Mr. Reinertsen testified he never went out and located the property line because he “had no quarrel with the neighbor” (CP 702) and did not hire a surveyor until bringing this lawsuit because Mr. Dilworth “continually attacks the deck.” (CP 747).</p> <p>“(Mr. Reinertsen) I never went out and measured it because I had no -- I had no quarrel with the neighbor. I – there was no reason. He was beautifully landscaping my right side. I had neighbors beautifully landscaping my left side of my property, and I had no problems with either.</p> <p>Q When you say right side, can you give me a compass direction? When you say you had neighbors that were landscaping your right side of the property --</p> <p>A West side and the east side.</p> <p>Q And east side. So the McCartys were landscaping the east side of your property?</p>

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	<p>A That's correct." (CP 702).</p> <p>Reinertsens made no overt claims to the land to the Ryggs' side of the hedge until actions that gave rise to this lawsuit: "There is no evidence that there was any knowledge even of the claims of the Reinertsens by Ms. Rygg in 1989 or 1990." (Reinertsens' counsel, (Partner of Ms. Ryggs' former counsel,) at RP of October 7, 2005, p. 10, l. 19-20).</p> <p>Mr. Reinertsen admits the hedge defined the boundary line by admitting that passing through the path in them "to get back and forth from one property to the other" resulted in a change of properties. (CP 283).</p> <p>Evidence of express agreement: Dr. McCarty states Mr. Reinertsen expressly agreed to McCarty building the board fence such that it "tied in with the hedgerow of evergreen pyramidalis" and that the board fence was built "to the west property line." (Ex 8).</p>
<p>CP 111, l. 10-12</p> <p>With regard to the second portion of the boundary in dispute, the "board fence", the issue is also clear. <u>The letter admitted as Exhibit 8 clearly indicates that when Dr. McCarty and the Reinertsens established the fence, they did not do so to establish the boundary line.</u>^{F51}</p>	<p>Facts re F51: Dr. McCarty's letter states the board fence was built "to the west property line": (Ex. 8).</p> <p>"To make an enclosed area to store firewood on the west side of the garage, I put a solid cedar fence from the house to the west property line..." (Ex. 8).</p>
<p>CP 111, l. 12-16</p>	<p>Law re C25: A fence that is the "defining point of cultivation" of the land is a boundary line fence. <i>Merriman v. Cokeley</i>,</p>

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<p>The located it upon the railroad tie retaining wall established by the Reinertsens solely as a convenience to <u>prevent weeds from growing</u>^{C25} in the a gap had they established it on the line.^{F52} As Dr. McCarty stated in his letter, <i>“it eliminated the small portion of ground that would have been left between my new fence and his railroad ties, which would have just filled in with weeds.”</i>^{F52, C25}</p>	<p>---Wn.2d ---, --- P.2d --- (No. 83700-7, April 8, 2010). Also <i>Skoog</i>, at 365 “a boundary well marked by cultivation, the adverse holding will extend to the limits of the ground so cultivated as effectually as it would to a fence.”</p> <p>Facts re F52: When asked by the panel of judges during the last appeal how far to the inside of the Ryggs’ fence this “gap” was, Reinertsens counsel could not say, “I can’t tell you the exact dimension.” (RP of 5-30-07, p. 14).</p> <p>Reinertsens’ have admitted <i>“it is a complete misrepresentation that the Plaintiffs at all times, knew the exact location of the property line.”</i> (CP 1091).</p> <p>Location of east edge of railroad ties is in error, see F34 and F36.</p> <p>Inconsistent with F35 that Reinertsens never located the line of railroad ties.</p> <p>Inconsistent with C15 that the failure to locate the railroad ties made finding the boundary in relation to the railroad ties impossible.</p> <p>The theoretical property line’s location on the ground by survey (Reconsideration Ex 3) was rejected in 2005 as representing the judgment. (RP of April 15, 2005, p. 46-47).</p>
<p>CP 1111, l. 16 – 17</p> <p>There was no recognition by Dr. McCarty^{C26} or the Plaintiffs^{C27} that his fence represented the actual “boundary”.</p>	<p>Facts re C26: Dr. McCarty’s letter states he built the board fence “to the west property line.” See F51. Dr. McCarty further states he completely sealed off the land with east/west sections of the board fence attaching to his house and garage “to make an enclosed area.” (Ex 8).</p> <p>Law re C26; “the yard was completely</p>

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	<p>enclosed so that it could not be entered from the outside. It was obvious that physically this enclosed yard belonged to the house and was not public property or property shared with other residents in the area or subdivision.” <i>Timberlane</i> at 310.</p> <p>Whether anyone else has “access and use” to the area is determinative in whether or not there is “neighborly accommodation.” <i>Timberlane</i> at 311.</p> <p>The fact that a fence encloses the land “is an important evidentiary fact to be weighed.” <i>Skoog</i> at 364, citing Justice Story in <i>Ellicott v. Pearl</i> 35 U.S. 271 (1836).</p> <p>If a fence “is effective in excluding an abutting owner from the unused part of a tract otherwise generally in use, it constitutes prima facie evidence of hostile possession up to the fence.” <i>Wood v. Nelson</i>, at 541.</p> <p>A fence was found to be barrier and not a boundary fence where it was “a three strand barbed wire fence and did not enclose any property” and was not a “permanent fence.” <i>Thomas v. Harlan</i>, 27 Wn.2d 512, 514-15, 178 P.2d 965 (1947) (the parties also “did not know the location of the true line between their property and that of defendant.”).</p> <p>Law re C27: The Reinertsens expressly agreed the board fence would act as “the limits of the ground” they cultivated. (See <i>Skoog</i>, <i>Supra.</i>).</p> <p>Facts re C27; Rygg side of the board fence was never accessible to the Reinertsens; the fence creates an enclosed yard by attaching to the Rygg garage and stairwell, CP 349, Ex 46, also Ex (Dr. McCarty’s letter).</p>

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<p>CP 1111, I. 18 – 20</p> <p>Further, subsequent to Dr. McCarty, the <u>evidence did not show^{F53} any agreement between these parties that the fence constituted the true boundary line and mere acquiescence in its existence is not sufficient to establish a claim of title to the disputed area.</u>^{C28}</p>	<p>Facts re F53: Evidence of the Reinertsens’ acts treating the board fence as the boundary include Mr. Reinertsen’s act of erecting a stepladder on his side of the fence in order to spray over the fence to soak the Ryggs’ firewood pile with poison, instead of coming to the Ryggs’ side of the board fence. (CP 320-21, CP 66).</p> <p>Ex 46 is a 1998 complaint the Reinertsens made to the City of Everett regarding the Ryggs’ side of the board fence. Mr. Dilworth’s email of 6/28/09 mentions concerns that any inspections were done by trespassing on the Ryggs’ property, since the area was not visible from the Reinertsen property “unless standing on stilts.” The subsequent photo of the area dated 6/30/98 was taken from the Reinertsen side of the board fence. (CP 611).</p> <p>There is no evidence of any acts by the Reinertsens that they did not recognize the board fence as the actual boundary line for a period of 10 years. Even their new deck project does not extend past the fence-line; it notches into the corrugation of the board fence’s fascia boards (Ex 38) and the support beams do not extend past the fascia boards (Ex 40).</p> <p>Law re C28: See C24. There need not be an “agreement” between the Ryggs and the Reinertsens that the fence is the boundary; the parties’ acts for a period of 10 years treating the fence as the boundary is sufficient.</p>
<p>CP 111, I. 20 - 22</p> <p>The plaintiffs continually</p>	<p>See above Citations to fact and law at F32-36 and C12-15.</p> <p>See F28.</p>

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<p>replaced the railroad ties and concrete blocks underneath the fence^{F32-36, C12-15} as well and hung decorations upon the fence,^{F28} treating it as, at least in part, their own.^{C29}</p>	<p>C29: Conflicts with the F21 that the McCartys owned the board fence. Evidence does not place the Reinertsens to the Ryggs’ side of the board fence, nor does this conclusion address any factors in mutual acquiescence to the fence as the boundary line.</p>
<p>CP 111, I. 22 - 24</p> <p>The Defendants made no improvements or changes of note other than perhaps applying some preservative that would indicate their intention to treat this as a true boundary line.^{C30}</p>	<p>Law re C30: It is not the use of the fence itself, but the use and occupation of the land to the fence that establishes the used line as the true boundary line under the doctrine of acquiescence.</p> <p>“It is a rule long since established that, if adjoining property owners occupy their respective holdings to a certain line for a long period of time, they are precluded from claiming that the line is not the true one, the theory being that the recognition and acquiescence affords a conclusive presumption that the used line is the true boundary.” <i>Lamm v. McTighe</i>, 72 Wn.2d 587, 592, 434 P.2d 565 (1967).</p>
<p>CP 1111, I. 24</p> <p>The fence was a convenient barrier but not an agreed upon boundary.^{C31}</p>	<p>Law re C31: Reinertsens’ sated reason for the fence location was to have the board fence limit the amount of land they had to maintain. This is an express agreement for the fence to be the boundary line.</p> <p>An “express agreement establishing the designated line as the boundary line” proves mutual acquiescence. <i>Lilly v. Lynch</i>, 88 Wn. App. 306, 316-17, 945 P.2d 727 (1997). (“the parties must agree or acquiesce in the boundary, either expressly or by implication.”).</p>
<p>CP 1112, I.1-2</p> <p>Finally, with respect to the split rail fence, the line was at one time well established (when Dr. McCarty built the fence) but its actual location</p>	<p>Facts re C32:</p> <p>This Court’s Opinion in <i>Reinertsen v. Rygg I</i>, #55842-1-I at 9 (2007): “evidence that the parties regarded the line represented by a collapsed portion of the split rail fence as a boundary tended to support Rygg's mutual acquiescence</p>

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<p>at the time was not proven at trial.^{C32}</p>	<p>theory.” (Court of Appeals’ Opinion, #55842-1-I, at 9). “Q Did the timbers remain on the ground or in the ground? A They remained on the ground... Some of them I left on the ground so it would help with, a defined line for me to maintain to.” (Mr. Reinertsen at CP 262-3).</p> <p>photographic evidence, of the split-rail fence’s location. See F39 and C19.</p>
<p>CP 1112, I. 2-5</p> <p><u>The location at the time of trial was known through surveys^{F29} but it had previously fallen down^{F30} and the evidence was not sufficient to show that it existed prior to the survey of May 29, 1995 (Exhibit 2) and therefore lacked the 10 years requisite period.</u>^{C33}</p>	<p>Facts re F29: No Finding that the Fence has been moved.</p> <p>Facts re F30: Evidence that some portions of the fence remained standing in 2003 (Ex 44), evidence from both parties’ testimony that the collapsed portion of the fence fell down in on itself in its original line.</p> <p>Law re C33: A fence built in 1969 is not proven to have not existed for a 10 year period by finding it did not exist in 1995. The fence existed in 2003 (Ex 44), as found by the Court of Appeals in 2007.</p> <p>The Anderson Hunter Law Firm knows the fence existed in 1989. See appraisal conducted as part of their representation of Ms. Rygg during her divorce.vv CP 1581-94, CP 20 – 22.</p> <p>Mr. Reinertsen admits the split rail fence remained standing fully in 1990. (CP 302).</p>
<p>CP 1112, I. 5-7</p> <p>For these <u>and other reasons</u>^{C34}, the Court does not believe the <u>Defendants have met their burden</u>^{C35} in</p>	<p>Law re C34: A judgment must give the reasons for the decision. A decision based on “other reasons” undisclosed is a showing that the decision was based on some reason other than evidence before the court, which creates the appearance of bias requiring recusal of the trial judge.</p>

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<p>showing mutual acquiescence and recognition with respect to this or the other portions of the disputed boundary.</p>	<p><i>Wolfkill Feed and Fertilizer Co., v. Martin</i>, 103 Wn.App. 836, 841, 14 P.3d 877 (2000).</p> <p>Law re C35: After the first 10 year period, the burden switches to the Reinertsens to divest the Ryggs' of title to the land. There is no evidence that the Reinertsens have ever possessed to whatever line they are claiming, let alone divested the Ryggs from possession of the disputed area, which is still undefined.</p>
<p>CP 1112, I. 14 – 16</p> <p>The Court of Appeals, in its decision, "vacated" the order quieting title to the Reinertsens. However, this Court believes the higher court was doing so only to preserve the status quo pending the resolution of issues remanded to this Court.^{C36}</p>	<p>Law re C36: A vacated judgment is reversed. A vacated judgment is not a stay to maintain the status quo pending entry of supplemental findings to support a judgment retained by the Court of Appeals.</p>
<p>CP 1112, I. 16 - 20</p> <p><u>But to ensure that the matter is resolved within the confines of this order</u>, the court reiterates its finding and order that title be quieted to the property owned by the Plaintiffs' Reinertsens consistent with their legal description with the caveat that the inconsistency in that legal description between the bearing (North 8°35' West) and the distance of 164.73 feet is resolved by this Court to favor and decree that the distance measurement</p>	<p>The matter was not resolved "within the confines of this order", as subsequent documents are required, undefined, to be approved by the Civil Motions Department. (CP 1105).</p> <p>Facts re C37: This is a modification of the 2005 Judgment, which did not specify <u>which</u> distance was to control over <u>which</u> bearing. The 2005 judgment referred to "distances" in the plural. This was an error assigned by the Ryggs during the appeal and motion for discretionary review to the Supreme Court during the last appellate process.</p> <p>No conclusions regarding the ascertained object of the Reinertsens' house at 7.5 feet from the property line shown on the 1966</p>

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controls. ^{C37}	<p>McCurdy Survey, or Mr. Reinertsens' construction of the deed as a parallel line 7.5 feet from his house. No substantial evidence supports this finding, where Downing testified the 7.5 measure was grantor's intent.</p> <p>Law re C37 "It may be laid down as an universal rule, that course and distance yield to natural and ascertained objects. But where these are wanting, and the course and distance cannot be reconciled, there is no universal rule that obliges us to prefer the one or the other. " ...whatever their influence may be in the absence of all other aids, they do not, by any means, have that degree of force the law gives to the rule which controls courses and distances by physical monuments upon the ground." <i>Davies v. Wickstrom</i>, 56 Wash. 154, 158, 105 P. 454 (1909), citing United States Supreme Court Justice Story in <i>Preston Heirs v. Bowmar</i>, 19 U.S. 580 (1821).</p> <p>"the applicable rule of law calls for the same result. Courses and distances yield to natural and ascertained objects." <i>Camping Com. of PNW Conference of Methodist Church v. Ocean View Land</i>, 70 Wn.2d 12, 15, 421 P.2d 1021 (1966).</p> <p>Prima facie, a fixed, visible monument can never be rejected in favor of mere course and distance...The general rule that courses and distances must yield to natural or artificial monuments or objects is upon the legal presumption that all grants and conveyances are made with reference to an actual view of the premises by the parties thereto. (citations omitted) <i>Garrard v. Silver Peak Mines</i>, 82 F. 578, 585 (1897).</p> <p>"Their own construction of the deed would</p>

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	<p>determine their rights.” <i>Davies</i>, at 159. (“It is elementary that when the language of the description renders the location of the land doubtful by insufficient or inconsistent description, the construction put upon the deed by the parties in locating the premises upon the ground... would determine their rights.”).</p> <p>“We must consider that the construction of the patent is somewhat doubtful. That it is susceptible of two constructions, each of which has some reasons to support it. If it be doubtful, it would seem reasonable not to press the broadest construction against a party who is now in actual possession under a perfectly good legal title. That possession ought not be ousted without a clear title in the other party.” <i>Preston Heirs</i>, Id.</p>
<p>CP 1112, I. 21 – 26</p> <p>Counsel for the Plaintiffs invited the Court to issue revised legal descriptions for both parcels in accordance with this ruling <u>Defendants object that his proposed legal description is not supported by evidence from a surveyor or other expert confirming the accuracy of his proposal.</u>^{F54} The Court agrees with the defendants in this respect but at the same time does not wish to create a situation where the Court’s orders create a cloud on the title of either property or are sufficiently unclear on the record so as to create further litigation on this point.^{C38}</p>	<p>Law re F54: Does not support C38 that “CR 15... does allow ongoing amendments to the pleadings to conform to the evidence.” (Pro Tem Judge Hulbert, RP of 12-15-09, p. 35). “The Court agrees with the defendants” that the “proposed legal description is not supported by evidence” at trial in 2004.</p> <p>Pro Tem Judge Hulbert’s oral reasoning was that he made this decision under “CR 15 and CR 60 – 15 primarily – does allow ongoing amendments to the pleadings to conform to the evidence.” (RP of 12-15-09, p. 35).</p> <p>CP 1225-1238: The Ryggs objected that the trial court lacks jurisdiction to alter the description discussed in this Court’s decision in <i>Reinertsen v. Rygg I</i>.</p> <p>Law re F54; The lack of a correct legal description was a fatal flaw in the Reinertsens Complaint which was a</p>

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	<p>defense to Reinertsens' action .</p> <p>C38: Self-contradicting: something not already in evidence (F54) does not support CR 15(b) "amendments to the pleadings to conform to the evidence."</p> <p>"pleadings may be amended to conform to the evidence at any stage in the action... However, amendment under CR 15(b) cannot be allowed if actual notice of the unpleaded issue is not given, if there is no adequate opportunity to cure surprise that might result from the change in the pleadings, or if the issues have not in fact been litigated with the consent of the parties." <i>Green v. Hooper</i>, 149 Wn.App. 627, 636-37, 205 P.3d 134 (2009).</p> <p>An amendment cannot be allowed where "<i>the admission of such evidence would prejudice him in maintaining his action or defense upon the merits.</i>" (emphasis added by the Court). <i>Green v. Hooper</i>, at 149.</p> <p>In 2004 at CP 616, the Ryggs raised as a defense the fatal flaw in the Reinertsens' Complaint to provide a legal description that complied with RCW 7.28.120:</p> <p>§ 7.28.120. Pleadings -- Superior title prevails The plaintiff in such action shall set forth in his complaint the nature of his estate, claim or title to the property, and the defendant may set up a legal or equitable defense to plaintiff's claims; and the superior title, whether legal or equitable, shall prevail. The property shall be described with such certainty as to enable the possession thereof to be delivered if a recovery be had.</p> <p>There has been no trial on the new legal description the Reinertsens are claiming,</p>

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	<p>where their Complaint claimed a different legal description. (CP 971-972).</p> <p>“Plots are part of the pleadings, made to elucidate conflicting locations, and by which the parties are notified of the precise grounds of adversary claims, are enabled to resist them.” <i>Medly v. Williams</i>, 7 G & J. 61 (1835).</p> <p>RCW 7.28.140 limits the trial court’s jurisdiction to award only what is “described in the complaint.”</p> <p>RCW 4.64.030 (2)(b) requires a judgment provide a complete legal description for what is awarded.</p> <p>the Court of Appeals expressly held in 2007: “Rygg next contends the court’s judgment is uncertain because no order included a legal description of the property line... Although perhaps not self-executing, the court’s judgment is sufficiently certain to fix the location of the boundary.” <i>(Reinertsen v. Rygg I)</i></p> <p>Pro Tem Judge Hulbert states his decision is based in part on CR 60. (RP of 12-15-09, p. 35).</p> <p>CR 60 “Relief from Judgment or Order” does not allow amendments to the pleadings; a trial court lacks jurisdiction to alter a Court of Appeals’ decision and reopen an issue after remand; the party wishing to alter the scope of the Mandate must request that the trial court “hold the matter in abeyance until the petitioners could make application to this court for the relief now asked for.” <i>White v. Donini</i>, 173 Wash. 34, 21 P.2d 265 (1933).</p> <p>“SUPERIOR COURT AUTHORITY ON</p>

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	<p>REMAND.</p> <p>...our use of the term "reconsider" in our previous opinion was intended to indicate that the superior court would wield some discretionary power in the act of "reconsidering" but that it must also formulate its decision within the limitations of our specific instructions on remand. <i>Harp, 50 Wn.2d at 369</i>. In other words, the remand did not open all other possible dissolution-related issues nor could the trial court ignore our specific holdings and directions on remand.”</p> <p><i>In re Marriage of McCausland</i>, 129 Wn. App. 390, 399-400, 118 P.3d 944 (2005), reversed on other grounds, 159 Wn.2d 607, 152 P.3d 1013 (2007) (remanded to different judge for failure to follow mandate).</p>
<p>CP 1113, I. 1-2</p> <p>Therefore, the court will reiterate its prior ruling with regard to distance controlling over the compass direction in the legal descriptions of both properties.^{C39}</p>	<p>Law re C39: This is not a reiteration, it is a fundamental change, not authorized by Court of Appeals’ Mandate.</p>
<p>CP 113, I. 2 – 6</p> <p>The Plaintiffs have filed a Declaration of their surveyor that an appropriate amendment to the legal descriptions of both properties would be as set forth below.^{C40} Absent expert testimony via written declaration from the Defendants that this would not be the property legal descriptions flowing from my decision, the Court will adopt the same. (See</p>	<p>Law re C40: This is an attempt to reform the description; it is not an amendment to the original legal description. This is an attempt to amend the Complaint.</p> <p>Facts re C41: This conclusion that the Ryggs would not have time or opportunity to cross examine Surveyor Downing or have another expert witness review however Downing came up with this description, which was first written by Mr. Gibbs apparently without any input from any licensed surveyor, shows the intention to simply deny the Ryggs due process.</p> <p>Law re C 40, 41; An expert must be subject to cross examination. A</p>

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<p>"other" on pg 13) (DFH).^{C41}</p>	<p>declaration is not subject to cross-examination.</p> <p>"Because the Hoopers could not conduct additional discovery or cross-examine the Greens' witnesses" amendment under CR 15 (b) was improper. <i>Green v. Hooper</i>, at 638.</p> <p>"A party has a right to be heard... he has the right to call witnesses, for the purpose of removing the impression made in the mind of the [judge]... it is against every principle of justice that that judgment should be pronounced, not only without giving the party an opportunity of adducing evidence, but without giving him <i>notice of the intention of the judge to proceed to pronounce the judgment.</i>" <i>Ware v. Phillips</i>, 77 Wn.2d 879, 8 468 P.2d 444 (1970)</p> <p>ER 705: DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION The expert may testify in terms of opinion or inference and give reasons therefor without prior disclosure of the underlying facts or data, unless the judge requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross examination.</p> <p>ER 614: CALLING AND INTERROGATION OF WITNESS (a) Calling by Court. The court may, on its own motion where necessary in the interests of justice or on motion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.</p> <p>Surveyor Downing's declaration does not meet the requirements of:</p>

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	<p>WAC 196-29-110</p> <p>(3) The monumentation, posting, and/or marking of a boundary line between two existing corner monuments involves a determination of the accuracy and validity of the existing monuments by the use of standard survey methods and professional judgment.</p> <p>(4) The monumentation, posting, and marking of a boundary line between two existing corner monuments shall require the filing of a record of survey according to chapter 58.09 RCW unless both corners satisfy one or both of the following requirements:</p> <p>(a) The corner(s) are shown as being established on a properly recorded or filed survey according to chapter 58.09 RCW and are accurately and correctly shown thereon.</p> <p>(b) The corner(s) are described correctly, accurately, and properly on a land corner record according to chapter 58.09 RCW if their establishment was by a method not requiring the filing of a record of survey.</p> <p>WAC 196-27A-020 (e) Registrants shall be objective and truthful in professional documents, reports, public and private statements and testimony; all material facts, and sufficient information to support conclusions or opinions expressed, must be included in said documents, reports, statements and testimony. Registrants shall not knowingly falsify, misrepresent or conceal a material fact in offering or providing services to a client or employer.</p> <p>WAC 196-27A-030. Explicit acts of misconduct.</p> <p>(4) Failing to provide relevant information on plans and surveys in a clear manner consistent with prudent practice. (5) Failing to comply with the provisions of the</p>

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	<p>Survey Recording Act, chapter 58.09 RCW and the survey standards, chapter 332-130 WAC.</p> <p>(7) Failing to correct engineering or land surveying documents or drawings known to contain substantive errors.</p> <p>RCW 18.43.070: Certificates and seals. ...Plans, specifications, plats and reports prepared by the registrant shall be signed, dated, and stamped with said seal or facsimile thereof. Such signature and stamping shall constitute a certification by the registrant that the same was prepared by or under his or her direct supervision and that to his or her knowledge and belief the same was prepared in accordance with the requirements of the statute.</p>
<p>CP 1113, 17 – 20 Also, CP 1104 – 1105</p> <p>The Court therefore finds and decrees that the title and legal description to the property owned by the Reinertsens [fn 1 Snohomish County Assessor’s property tax parcel number 00571700900902] should be without regard to the bearing in question in this case (stricken through in the following):</p> <p><i>Lot 10 and that portion of lot 9 lying Westerly of the following described line: Beginning at the southeast corner of said Lot 9, then South 68°49’ West along the South line of said Lot 9 for 59.80 feet to the true point of beginning; then northwesterly North 8°35’</i></p>	<p>Facts re F55: Unsupported by the testimony of Downing, who testified that holding the distance call was wrong given the ascertained object of the Reinertsens house on the original plat map:</p> <p>“I believe that the property line should actually be moved from my original survey. Which was done previously to the present survey which I amended. Based upon my meeting with Geoff Gibbs.” (Downing at CP 231).</p> <p>“I believe the intent was for the property line to be 7 ½ feet from that structure. And that is depicted on McCurdy’s survey.” (Downing at CP 236).</p> <p>Law re C42: “Northwesterly” “implies only a general direction” that does not satisfy the statute of frauds:</p> <p>“Appellants invoke the rule that a contract for the conveyance of land is void, under the statute of frauds, when such contract does not contain a description of the land</p>

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<p>West for 164.73 feet to an intersection with the West line of said Lot 9, All in Block 9, Plat of Shore Acres.</p> <p>The Court similarly finds and decrees that the title and legal description to the property owned by Carolyn Rygg [fn. 2 Snohomish County Assessor's property tax parcel number 00571700900901] should be without regard to the bearing in question in this case (stricken through in the following):</p> <p><i>Lot 9, Block 9, Plat of Shore Acres, less that portion lying westerly of the following described line: Lot 10 and that portion of lot 9 lying Westerly of the following described line: Beginning at the southeast corner of said Lot 9, then South 68°49' West along the South line of said Lot 9 for 59.80 feet to the true point of beginning; then <u>northwesterly North-8°35'</u> West for 164.73 feet to an intersection with the West line of said Lot 9, All in Block 9, Plat of Shore Acres.</i>^{F55, C42}</p>	<p>sufficiently definite to locate it without recourse to oral testimony. That the description in the agreement is insufficient to comply with the statute, is manifest. In the first course, 'thence northerly 60 feet to point of beginning' the term 'northerly' implies only a general direction. See <i>Groeneveld v. Camano Blue Point Oyster Co.</i>, 196 Wash. 54, 81 P. (2d) 826 [holding "northwesterly" is only a general direction]. There is nothing in such call to inform one whether the direction is due north or northerly along the highway boundary, or northerly any number of degrees east or west."</p> <p><i>Bonded Adjustment Company v. Edmunds</i>, 28 Wn.2d 110, 112, 182 P.2d 17 (1947).</p> <p>Facts re New Legal Desc.; Does not locate on the ground where this line is:</p> <p>"Now, your Honor, I would ask you, how far is the line that you intend to subject us to, how far is that line from the Reinertsens' house?"</p> <p>THE COURT: I'm sorry, Counsel; you are actually asking me to testify in this case?</p> <p>MS. STARCZEWSKI: Well, you are proposing to set a line. It matters where the line is.</p> <p>THE COURT: Well, that's the most absurd question any attorney has ever asked me in open court, and I'm certainly not going to answer that.</p> <p>MS. STARCZEWSKI: All right. Again, from Mr. Downing's testimony --</p> <p>THE COURT: I will sign final orders in this case that clearly reflect what it is I believe the facts warrant. Beyond that, I will not be making any statements about the ruling. You should know better than to even ask the question. But since you apparently don't, I'll just tell you, on the record, I'm not answering it. That's absurd. (RP of 12-15-09, p. 26-27).</p>

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	<p>In 2005, the Court was similarly unwilling to locate a boundary on the ground;</p> <p>MR. DILWORTH: I don't believe, Your Honor, you had a very specific distance of what your -- the distance decision would actually end up looking like as far as the distance from the house.</p> <p>THE COURT: Well, I don't know what difference that makes.</p> <p>MR. DILWORTH: What's that?</p> <p>THE COURT: I have no idea what difference that makes. That may well be the net result of a decision, but that doesn't -- that doesn't -- that's not basis for reconsideration.</p> <p>(RP of 4-15-05, p. 54).</p> <p>Now, if you look at I believe it's Exhibit 3 [to Reconsideration] which is the current judgment --</p> <p>THE COURT: Well, just for the record, it is -- it is a document purporting to accurately reflect your belief -- your view of what the current judgment is. In other words, I don't have -- I don't have some expert that's come in here and testified in front of me and saying under oath, you know, this is -- I've done a thorough analysis of your decision, and this is exactly what it looks like if your decision is imposed. This is what we have. What I'm saying for the record is you're offering this as what you believe the result of this decision would be.</p> <p>MR. DILWORTH: Yeah. If you look at the title of the exhibit, this was prepared by Mr. Krell.</p> <p>THE COURT: You stated as a fact that is what the decision would look like on the ground, if you will, and I'm just saying you're offering it as your representation that that's -- MR. DILWORTH: It's actually Mr. Krell's representation.</p>

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	<p>THE COURT: Right. I understand that. But offered for that purpose. (RP of 4-15-05, p. 46-47).</p>
<p>CP 1113, I. 21 – 23</p> <p>The Court believes the foregoing is consistent with the prior ruling of the Court on Feb. 4, 2005 and by making this additional ruling, all matters may be resolved and additional litigation forestalled.^{C43}</p>	<p>Facts/ Law re C43: Inconsistent with order that orders further litigation and proceedings, leaving the decision of what final documents may be “appropriate” to the Civil Motions Calendar judge, with only 10 days’ notice (CP 1105).</p> <p>CP 1118, I. 15-17; “The Plaintiffs may, upon motion to the Civil Motions Calendar, present for adoption appropriate Quit Claim Deeds or other documentation that may be necessary, if any, to assure that the legal descriptions of both properties are <i>clarified</i>, enforceable and insurable.”</p>
<p>CP 1114, I. 2-5</p> <p>On a number of occasions, the defendants through counsel have submitted “Proposed” motions. The consequence of denominating the same as “proposed” but the Court desires to resolve as many of the issues as possible and will thus treat the same as motions, whether or not they were procedurally properly before the Court.^{C44}</p>	<p>Facts re C44: The Ryggs’ motions were termed “proposed” to make clear that the Ryggs were not waiving objection to proceedings being held without jurisdiction due to the then-pending action for a permanent writ of prohibition before the Supreme Court.</p> <p>Jurisdictional Facts re C44; There is no formal decision on the lack of jurisdiction after “notice of the application for a permanent writ” and direction from the Supreme Court “to appear and to show cause... on the return day why a permanent writ of prohibition should not issue.” <i>State ex rel Waterman v. Superior Court for Spokane County</i>, 127 Wash. 37, 38-39, 220 P. 5 (1923). Pro Tem Judge Hulbert was served the application for the permanent writ of prohibition on July 13, 2009. (CP 1782). The Supreme Court directed Pro Tem Judge Hulbert to appear and show cause why a permanent writ of prohibition should not issue on July 24, 2009, setting</p>

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	<p>his return date as August 24, 2009. (CP 1781).</p> <p>“(Starczewski): We do have four proposed motions. We said proposed because we believe that the issues of jurisdiction and the preliminary issues do need to be addressed first.</p> <p>I would ask the Court to make a record of the fact that Your Honor's attorney, Mr. Seder, is present in the courtroom.</p> <p>THE COURT: Well, I think you just did... what do you mean exactly, what is your definition of the term proposed motion?</p> <p>MS. STARCZEWSKI: Well, we are in a very difficult position because we need to file these because of the deadline set by this Court. However -- we need to file them as motions, but if we file motions, then we waive our objections, in certain instances, to Your Honor hearing the case because first, our objections need to be heard, and then we I can file motions. If we have to file them ahead of time, you know, we don't -- we want to make it very clear and have opposing counsel understand, have the Court understand that we're not waiving our objections. And that is why --</p> <p>THE COURT: But you are seeking the Court's action with respect to the motions this morning, even with that reservation?</p> <p>MS. STARCZEWSKI: We are -- if the Court denies our objections, then, I mean, we have no other choice, that's why we're in such a difficult position.” (CP 1418 – 1419).</p>
<p>CP 1114, I. 10 – 13</p> <p><i>Proposed Motion to Amend Answer of Defendants (9/4/2009)</i> This motion is denied.^{C45*} The time for amendment of an answer fell sometime</p>	<p>Lack of Due Process re C45: Does not address the relevant criteria for amendments under CR 15 and arbitrarily denies all amendment requests of the Ryggs without findings or conclusions on each of the requested amendments.</p> <p>CP 1706, Statute of Limitations: No findings that this had already been “raised</p>

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<p>prior to trial.^{C46} Bringing such a motion some five years later^{C47} is tantamount to requesting a new trial.^{C48} That request has been denied at a number of levels and a number of times previously.^{F55}</p>	<p>at first trial” in 2004 (CP 597). No findings or conclusions of whether or not the 10 year period barring action for recovery of real property RCW 4.16.020 “is inherent in a claim of adverse possession” that involves the same 10 year period; issues of the 10 year period for both adverse possession and mutual acquiescence is found throughout the judgment.</p> <p>Titles acquired by adverse possession are “titles matured under the statute of limitations.” <i>Mugaas</i>, at 432. (If a “claimant under the statute, however he may have perfected his right, must keep his flag flying for ever, and the statute ceases to be a statute of <i>limitations</i>.”).</p> <p>Whether a claim “is contained within a pleaded cause of adverse possession” is a matter of law. <i>Green v. Hooper</i>, at 639-640.</p> <p>RCW 4.16.020: “The period prescribed for the commencement of actions shall be as follows: Within ten years: (1) For actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery unless it appears that the plaintiff, his or her ancestor, predecessor or grantor was seized or possessed of the premises in question within ten years before the commencement of the action.”</p> <p>CP 1706-7, Failure to state a claim for which relief can be granted – RCW 7.28.120. No findings or conclusions that both parties raised RCW 7.28.120 in 2004; the Ryggs at CP 616 and the Reinertsens at CP 648.</p> <p>This defense to the Reinertsens action on</p>

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	<p>its merits was taken away by C42 and C43.</p> <p>CP 1707, Frivolous Law Suit, RCW 4.84.185 and CR 11 Based on Reinertsens admissions “that they did not know where the property line was located.” Already was a basis for CR 11 in 2004, resulting in Reinertsens admitting “<i>it is a complete misrepresentation that the Plaintiffs at all times, knew the exact location of the property line.</i>” (CP 1091), and stating at oral argument:</p> <p style="padding-left: 40px;">MR. GIBBS: Certainly, Your Honor. First of all, my clients don't have to prove in any respect where they thought the line was. They just have to prove the legal description and where the line is. O.K. All this folderol about whether or not they knew exactly where the line was is immaterial as to their position. (RP of April 15, 2005, cause #04-2-0816-7, p. 52).</p> <p>CP 1707, Admission of Possession by Ryggs in Reinertsens’ Complaint seeking ejectment “---one cannot sue to “eject” a neighbor unless the plaintiff admits that the neighbor is in actual possession of the plaintiff’s property.”</p> <p>CP 1707, Judicial Estoppel. Judicial estoppels cannot be pled until an inconsistent position is taken in a different legal venue.</p> <p>CP 1708, Statute of Frauds, as claimed by the Reinertsens themselves to Dr. McCarty’s letter (Ex 8) in Snohomish County Cause #7-2-07509-5 (Reinertsens’ assertion of statute of frauds at CP 1724).</p> <p>CP 1708, Estoppel in Pais. No findings</p>

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	<p>on how it was raised during reconsideration at CP 423-426.</p> <p>Law;</p> <p>“Knight did not call any of these issues to the court's attention during trial. He did, however, make extensive arguments in support of his adverse possession theory in his motion for reconsideration. These arguments were based on evidence presented at trial. They were, therefore, properly before the trial court and were preserved for appellate review. In a nonjury trial, an issue or theory not dependent upon new facts may be raised for the first time through a motion for reconsideration and thereby be preserved for appellate review. <i>Newcomer v. Masini</i>, 45 Wn. App. 284, 287, 724 P.2d 1122 (1986).” <i>Reitz v. Knight</i>, at 581.</p> <p>The claim became available on Reinertsens’ admissions that it was “a complete misrepresentation” that they and the McCarty’s knew the location of the property line at the time the board fence was built.</p> <p>“At the time Dr. McCarty built a fence... He neither knew that the fence was nor was not on the property line.” (McCarty’s Answer, p. 4, cause # 07- 2-07509-5). (New CP, Vol IV 1714).</p> <p>The admission also supports the Ryggs’ theory of estoppel en pais, which has never been determined by any court. Where a party “did not ascertain the true dividing line until... after the valuable improvements had been placed upon the property. [The party] could not now recover the possession of this strip of land.” <i>Roe v. Walsh</i>, 76 Wash. 148, 151-</p>

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	<p>52, 135 P. 1031 (1913), see also <i>Turner v. Creech</i>, 58 Wash. 439, 443, 108 P. 1084 (1910) (where a party allowed a fence to be built, they “could not recover in ejectment... to the new line” discovered after the fence was built).” (CP 1708).</p> <p>Law re C46: Amendments to pleadings cannot be made while a case is on appeal as the trial court lacks jurisdiction.</p> <p>The decision of this court, reversing the judgment of dismissal, did not direct the entry of judgment on the pleadings in plaintiff's favor... The fact that an appeal to this court intervened, and that considerable time was necessarily consumed in such appeal, does not alter the situation, nor should defendants' rights be prejudiced thereby. Amendments to pleadings may be allowed after an appeal to this court and a remand for further proceedings, just as they may be allowed in the ordinary course of the preparation of a case for trial. <i>Interstate Savings & Loan Ass'n v. Knapp</i>, 20 Wash. 225, 55 Pac. 48, 931... we conclude that the refusal of the trial court to allow the filing of the amended answer constituted an abuse of discretion which requires the reversal of the decree entered in respondent's favor.”</p> <p><i>Johnson v. Berg</i>, 151 Wash. 363, 370-72, 275 P. 721 (1929).</p> <p>Law re F55: Denial of discretionary review is not a denial on the merits. RAP 13.5 (d); <i>Doerflinger v. New York Life Ins. Co.</i>, 88 Wn.2d 878, 883, 567 P.2d 230 (1977).</p>
<p>CP 1114, l. 14 – 18</p> <p><i>Proposed Motion for Disqualification of Judge Hulbert (9/4/2009)</i> This</p>	<p>Facts re F56: These were not the only grounds for the motions.</p> <p>Grounds for motion included the trial judge appearing as an alleged “interested party” on an</p>

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<p>motion is denied. The defendants herein have repeatedly alleged “bias” of the undersigned based upon (1) my adherence to certain findings related to their counter-claims of adverse possession and mutual acquiescence and recognition and (2) my relationship with the Anderson Hunter Law Firm and G. Geoffrey Gibbs, attorney for the plaintiffs.^{F56}</p>	<p>appeal of his own decision, advocating against the Ryggs.</p> <p>Law re F56; Such advocacy creates “the appearance, and perhaps the reality, of partiality on the part of the judge.” (emphasis added). <i>In re Sperline</i>, 2004 WL 5633483 (Commission on Judicial Conduct decision), also <i>State v. Dugan</i>, 96 Wn. App. 346, 354-55, 979 P.2d 885 (1999) (cited by <i>Sperline</i>)</p>
<p>CP 1114, I. 19 – 20</p> <p>The undersigned was the trial judge on this case^{F57} and made certain findings and rulings rejecting counter-claims based on adverse possession and mutual acquiescence and recognition.</p>	<p>Facts re F57: At the time of the decision in 2005, David F. Hulbert was neither an elected judge nor was he appointed a judge pro tempore.</p>
<p>CP 1114, I. 21 – 26</p> <p>On remand, I am but following the mandate from the Court of Appeals to expand, supplement and add to the basis for these findings. That I adhere to my original positions in this regard should come as no surprise to the Defendants since they were denied a new trial and I have not changed my mind in regard to their counter-claims (save the one on assault dealt with below). That I do so now is no indication of bias or pre-</p>	<p>Facts re C47: The 2005 judgment on these issues was vacated.</p> <p>Law re C47: “we do not believe that a “self-respecting” court of appeals would or should respond to our remand order with a “summary reissuance” of essentially the same opinion, absent the procedural default discussion. To the contrary, in light of our decision in <i>Cone</i>, we assume the court will consider, on the merits, whether petitioner’s allegations, together with the undisputed facts, warrant discovery and an evidentiary hearing.” <i>Wellons v. Hall</i>, 558 U. S. ____, 6 (2010)</p> <p>The remand was “an exercise in futility [in which] the Court is merely marching up the hill only to march right down again,” as explained by U.S. Supreme Court Justice</p>

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<p>judging the defendants case; I have already rendered judgment in that regard after trial and denying reconsideration.^{C47}</p>	<p>Blackmun of the problem in remanding to a judge who has “difficulty in putting out of his mind... previously expressed views.”</p> <p><i>U.S. v. Robin</i>, 553 F.2d 8, 11 (1977) (remand to a different a judge with an open mind).</p> <p><i>Saldivar v. Momah</i>, 145 Wn. App. 365, 186 P.3d 1117 (2008), citing <i>McSherry v. City of Long Beach</i>, 423 F.3d 1015, 1023 (9th Cir. 2005) (reassignment on remand is justified where the “original judge would reasonably be expected upon remand to have substantial difficulty in putting out of his or her mind previously-expressed views.”).</p>
<p>CP 1115, I. 1-7</p> <p>Further, so far as I know, almost all judges in Snohomish County have a level of familiarity, if not friendship, with attorney G. Geoffrey Gibbs but such friendship is no indication of bias or prejudice in favor of his clients.^{F58} At the time this matter was originally assigned to me for trial, defendants’ attorney, Brian McLean, and Mr. Gibbs met with me in chambers. I indicated to Mr. McLean that I was a friend of Mr. Gibbs, seeing him on occasion and irregularly socially, but felt then, as I do now, that my friendship would have no impact on my decision in this case.^{C48}</p>	<p>Law re F58: Testimony of Pro Tem Judge Hulbert.</p> <p>ER 605: COMPETENCY OF JUDGE AS WITNESS The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.</p> <p>Facts re C48: When Judge Hulbert discussed his friendship with Mr. Gibbs in 2004, it was not known that this case would involve issues of Mr. Gibbs’ own misconduct, including misstatements of law, fact, and discovery violations. It was not known that Mr. Gibbs owns the house just one door away from the Ryggs, with a direct view of the split-rail fence (which he is asserting did not exist in 2003 despite his direct view of the area contained in the 2003 photo, Ex 44, showing the split-rail fence in existence). This also involves Mr. Gibbs’ timing of conflicting claims with his direct neighbor, the Schindeles, to attack the Ryggs’ fences on the Ryggs’ east side of their property, using documents that are inconsistent with the Reinertsens’ claims, yet signed by</p>

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	<p>Larry Reinertsen.</p> <p><i>U.S. v. Jordan</i>, 49 F.3d 152 (1995) (holding a judge must recuse herself when her friendship with a lawyer whose reputation had been attacked by a party appearing before her created “an appearance of impropriety”).</p>
<p>CP 1115, I. 7-10</p> <p>Mr. McLean questioned me about past cases I had handled that involved Mr. Gibbs as an attorney and my rulings in those cases (at least some of which were against Mr. Gibbs and his clients). Mr. McLean discussed this matter with his clients and they waived any objection to my sitting on this matter.^{c49}</p>	<p>Law re C49: The decision not to file a statutory affidavit of prejudice does not bar a party from filing a motion to recuse for cause, nor does it give a judicial officer free reign to violate the appearance of fairness doctrine.</p> <p>Facts re C49: Other indications of conflicts of interest came to light after the initial discussions with Mr. McLean – Judge Hulbert did not disclose that he would later work for Mr. Gibbs, that his friend, Mr. Gibbs, is actually a neighbor with a direct view of the property, that he (Judge Hulbert) would rely on Mr. Gibbs’ office for services such as assisting with his correspondence to the parties in this litigation, etc.</p> <p>Presiding Judge McKeeman made no decision on these entanglements, saying that the issue is not before him; “...the issue of the mediation is not properly before this Court.” (Order on Second Motion to Enforce, 6-24-09, CP 1897).</p> <p>However, on June 26, 2009, Presiding Judge McKeeman verbally stated that both “parties don't know, or at least not both parties have the same information on” the concurrent employment or other involvement of Judge Hulbert with the Anderson Hunter Law Firm while Hulbert is acting as a judge pro tempore on the Plaintiffs’ case, in which the Anderson Hunter Law Firm is opposing counsel. (Transcript of 7-26-09, p. 14). (CP 1865-1866)</p>

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<p>CP 1115 I. 12 – 17</p> <p>Since trial was concluded and the various appellate proceedings undertaken, my contact with Mr. Gibbs has been minimal.^{F59}</p> <p>I have served as mediator on a few cases in which he has been involved and on occasion utilized, in the normal course or any mediation, conference rooms in the Anderson Hunter offices for this purpose.^{F60} Such use of conference rooms was limited to the duration of the mediations.^{F61}</p> <p>I have never had any financial relationship with the Anderson Hunter Law Firm save only receiving compensation from their clients (generally shared with the other party(ies)) for my services as a mediator.^{F62}</p>	<p>Facts re F59: Unsworn testimony. Undisclosed number of times or type of contact.</p> <p>F60: Admits Judge Hulbert used Anderson Hunter offices, while this case was pending before him. See argument, RP 9-15-2009, 39.</p> <p>Judge Pro Tem Judge Hulbert claimed attorney- client privilege from the bench due to the pending writ action to not disclose his relationship. (RP 7-17-2009, p. 25, l. 7-17 (in CP 1869 - 1883).</p> <p>F61: Unsworn testimony. No evidence in record.</p> <p>F62: False unsworn testimony. Hulbert was paid directly by the Anderson Hunter Law Firm. Ex parte letter from Mr. Gibbs to Tad Seder (Hulbert’s personal attorney) (obtained ex parte and never copied to the Ryggs at the time), states the “firm” paid Hulbert. CP 1692 – 2693. Admission by Mr. Gibbs that the money “passed through” Anderson Hunter.</p>
<p>CP 1115, I. 18 – 20</p> <p>With regard to claims of “<i>ex parte</i>” contact between myself and Mr. Gibbs, I can only surmise that the definition of <i>ex parte</i> contact under which the Defendants are operating is not the same as mine.^{C50}</p>	<p>Law re C50: State v. Moen, 129 Wn.2d 535, 541 n.3, 919 P.2d 69 (1996) (“By definition, an ex parte order is done on the application of one party .</p> <p>Black’s Law Dictionary defines “ex parte communication” as “[a] communication between counsel and the court when opposing counsel is not present.” BLACK’S LAW DICTIONARY 296 (8th ed. 2004). That definition assumes that there is a proceeding involving the court, with counsel and opposing counsel, and that the communication regards the proceeding at hand. Black’s further defines “ex parte” as something being made by one</p>

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	<p>party: "Done or made at the instance and for the benefit of one party only, and without notice to, or argument by, any person adversely interested; of or relating to court action taken by one party without notice to the other." Id. at 616; see also <i>State v. Moen</i>, 129 Wn.2d 535, 541 n.3, 919 P.2d 69 (1996) ("By definition, an ex parte order is done on the application of one party . . ."). Black's multiple definitions of "party" also assume that a cause of action exists in which the party is a participant. See BLACK'S, <i>supra</i>, at 1154." <i>State v. Watson</i>, 155 Wn.2d 574, 579-580, 122 P.3d 903 (Wash. 2005) (Dissent).</p> <p>Ex parte communications during the sentencing phase of a criminal proceeding violate the appearance of fairness doctrine and require a new sentencing hearing. <i>State v. Romano</i>, 34 Wn. App. 567, 569, 662 P.2d 406 (1983). They may also raise due process concerns since the evidence in the communication may not be verified. <i>In re Pers. Restraint of Boone</i>, 103 Wn.2d 224, 233, 691 P.2d 964 (1984)."</p> <p><i>State v. Watson</i>, 155 Wn.2d 574, 122 P.3d 903 (Wash. 2005) (Dissent by J. Sanders). A judge has a duty to promptly disclose to all parties all ex parte communications to both ensure fairness and ensure that a record is retained should latter review be necessary. <i>Rushen v. Spain</i>, 464 U.S. 114, 119 (1983), <i>State v. Bourgeois</i>, 133 Wn.2d 389, 407-408, 945 P.2d 1120 (1997) ("Furthermore, the trial court failed to promptly notify counsel of [ex parte communication]. The communication was therefore improper.").</p> <p>Facts, admission of ex parte contact; “(GIBBS): Counsel inquires and speculates as to how Judge Hulbert’s letter of June 11, 2009, was received by our office when her copy of Judge Hulbert’s</p>

FINDINGS TO WHICH ERROR IS ASSIGNED	CITATIONS TO RECORD AND LAW
	<p>letter was mailed that very same day. To solve the mystery, <u>Judge Hulbert was present in the offices of Anderson Hunter in his capacity as a mediator for a mediation that took most of the day. Judge Hulbert delivered a copy of the letter while he was in our offices.</u> (CP 1941). (Emphasis added).</p>
<p>CP 1115, I. 20 – 23</p> <p>The only contact in relation to this case that I have had with Mr. Gibbs has been through written communication (generally e-mail, letter or pleadings) and it is my belief that the attorney for the Defendants, Ms. Starczewski, has been copied on every one of those.^{F63} She has used these same methods to contact me.</p>	<p>F63: False unsworn testimony.</p> <p>In person ex parte contact on June 11, 2009 (was undisclosed by trial judge, admission at (CP 1941).</p> <p>Facts, admission of ex parte contact; “ (GIBBS): Counsel inquires and speculates as to how Judge Hulbert’s letter of June 11, 2009, was received by our office when her copy of Judge Hulbert’s letter was mailed that very same day. To solve the mystery, <u>Judge Hulbert was present in the offices of Anderson Hunter in his capacity as a mediator for a mediation that took most of the day. Judge Hulbert delivered a copy of the letter while he was in our offices.</u> (CP 1941). (Emphasis added).</p> <p>Contact began before Hulbert was appointed, before Mandate was issued. Letters sent by Mr. Gibbs to Hulbert’s private address, seeking to secure him as the trial judge on remand, creates the appearance of a “special relationship.” See Objections to Ex Parte letters and emails, CP 1954, 1891, 1849, 1783, 1748, 1516, 1389, 1382, 1338,</p> <p>Law; “In our view, this communication adds to the appearance of a special relationship that would reasonably substantiate Caleffe's fear that he may not receive a fair trial.” <i>Caleffe v. Judge Vitale</i>, 488 So. 2d 627, 629, (1986 Fla. App).</p>

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	<p>Facts: examples proving ex parte contact; Gibbs' July 20th, 2007 letter referring to some "proposed procedure" from Hulbert that the Ryggs never got... see (CP 1948-49 where it is objected to June 2, 2009 hearing enforcement motion before McKeeman)</p> <p>"I asked opposing counsel to scan it in his office..." Email from Hulbet dated June 15, 2009 at 12:37 P.M.; shows he was speaking with Mr. Gibbs (CP 1957)</p> <p>June 11, 2009 letter at CP 1963-64; this resulted from Mr. Gibbs' June 3, 2009 requesting what the June 11 letter granted, that attached ALL of his prior letters "My letters suggesting some alternatives are also appended." Including the April 7, 2009 letter that the June 11 is basically a copy of (CP 1966-1974).</p> <p>Ryggs were given no opportunity to be heard, the subsequent hearing, where Pro Tem Judge Hulbert asserted would result in the same decision his letter had granting Mr. Gibbs' requests stated, was a sham proceeding and void as it stemmed from an ex parte decision.</p> <p>Shortly prior to the November 6, 2009 hearing date, Judge Pro Tem Hulbert, by email, extended the due date for Replies from the Plaintiffs, which effectively cancelled the November 6, 2009 hearing. Attorney Gibbs indicated on November 11, 2009 that he had not received the November 5, 2009 email from Judge Pro Tem Hulbert. Not having received Judge Pro Tem Hulbert's email of November 5, 2009, Mr. Gibbs nonetheless had not shown up for the previously-set hearing date of November 6, 2009. This indicates an ex parte communication, wherein Mr. Gibbs and Judge Pro Tem Hulbert agreed or understood that there would not be a hearing on November 6, 2009, outside of the November 5, 2009 email, which Mr.</p>

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	<p>Gibbs states he had not received. The November 6, 2009 hearing dates had been electronically confirmed. Attached below are true and correct copies of the receipts from the Court clerk, indicating electronic confirmation of the November 6, 2009 hearing; (CP 1340-42).</p> <p>October 24, 2009 email from Hulbert refers to prior “earlier inquires regarding each attorney’s potion concerning the current status of this matter.” No such earlier inquiries were received by counsel for the Ryggs, and therefore any such inquiries would have been further ex parte communication between Judge Pro Tem Hulbert and Mr. Gibbs. (CP 1387-88)</p> <p>CP 1903 has list of ex parte communications.</p> <p>CP 1518 : October 15, 2009 Email from Seder speaking of “a fax from Geoff Gibbs” that we never got, wherein Gibbs “wants to make sure no hearing have been set” – resulting in a decision that no hearings were set.</p> <p>CP 1519: Tad Seder received a fax communication from Gibbs, which was not copied to the Ryggs or their counsel, which he then forwarded to his client, Hulbert, along with advice on how to proceed in this lawsuit. This is clearly an ex parte communication from Gibbs, urging Hulbert to disregard this affiant’s attempt to note a motion for disqualification of counsel and a motion regarding discovery violations of Gibbs for hearing. Seder acting as a judicial officer is not proper.</p> <p>CP 1521-22: Hulbert has already admitted that ex parte communications have taken place, by carefully limiting his denial of ex</p>

FINDINGS TO WHICH ERROR IS ASSIGNED	CITATIONS TO RECORD AND LAW
	<p>parte communications to include only “substantive” issues or communications: “2. Contrary to the assertions in Plaintiffs’ Petition, there has been no ex parte communication on any substantive issue in the underlying matter, Reinertsen v. Rygg, Snohomish County Superior Court Cause No. 04-2-09016-7, at any point in time between me and Geoffrey Gibbs. I have known Mr. Gibbs for more than 20 years and, given that the Snohomish County legal community is a small one, I see him on occasion in social contexts, in hallways of the courthouse, or on the street. I have never had a substantive communication regarding this mater without opposing counsel present.” Declaration of Hulbert, Supreme Court Case No 83302-8, pg 1, at CP 1689.</p> <p>Without disclosure of all ex parte communications on this case, it is impossible for the Ryggs or the Court of Appeals on review to determine what may fall into Judge Hulbert’s definition of “substantive” issues or communications.</p> <p>CP 1351-1353, collaboration with the Reinertsens’ counsel indicates ex parte communications, where Judge Hulbert had cited to the Reinertsens’ briefing before Reinertsens’ brief was filed.</p> <p>CP 1782-85: “test case” that caught Mr. Gibbs in ex parte communication with Hulbert regarding the writ. (“Test” was a trap which proved ex parte communication – which was never denied by either Gibbs or Hulbert).</p>
<p>CP 1115, I. 23 – 26</p> <p>This does not amount to prohibited “ex parte” contact</p>	<p>Facts re F64: Judge McKeeman did not “interject” himself, and held he did not sit in an appellate capacity over Pro Tem Judge Hulbert. CP 2037.</p>

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<p>and both counsel have addressed those communications to me at the address I have provided to them. The use of this method was confirmed by prior orders of Judge McKeeman and myself.^{F64}</p>	<p>Judge McKeeman was not told the full extent of Hulbert's employment by Gibbs. There was no evidentiary hearing before McKeeman.</p>
<p>CP 1116, l. 3 - 11</p> <p><i>Proposed Motion to Disqualify Counsel for Reinertsens (9/14/2009)</i></p> <p>This motion is denied. The Defendants cite purported "new law" within the Rules of Professional Conduct. The reference to RPC (C)(2) was not clear as it is an incorrect or incomplete citation. Later in the pleadings, the defendants refer to RPC 1.9. In general, the "conflict of issue" and duty to former clients is contained in RPC 1.8 and 1.9. The addition of "comments" to the rules and the changes thereto since this matter was tried in 2004 and 2005 do not appear to have changed the rules to any degree germane to this case.^{F65} The appellate courts have dealt with this issue previously and their rulings denying similar motions are of record and known to this court.^{F66}</p>	<p>Law re F65: RPC 1.9 (c)(2) is a new rule; it is not a comment to the rule.</p> <p>Fact re F66: The Court of Appeals' expressly did not consider the new rule:</p> <p>Fn 4: "We evaluate Rygg's arguments under the Rules of Professional Conduct in effect in 2005, when Rygg made her motion to disqualify." Court's Opinion in <i>Reinertsen v. Rygg I</i>, #55842-1-I (2007).</p> <p>No decision has been made on the admission by Mr. Gibbs that the prior representation and the current representation are substantially related due to overlapping scope of facts, where Mr. Gibbs had moved to exclude (no formal order excluding) the work product of the Anderson Hunter Law Firm such as the 1989 Appraisal that contradicts Reinertsens' claims and this judgment (especially on existence of split rail fence for more than 10 years and its location). (RP 9-15-2009, p. 7, - 11) (Appraisal at CP 1581-94,)(pg 20, above).</p> <p>The Court of Appeals did not, and could not, consider the impact of new evidence that Mr. Gibbs was in fact a neighbor, just one house away from the Ryggs, with a view of the Ryggs' split-rail fence from his back porch. In arguing that the split rail fence had disappeared, Mr. Gibbs was making statements contrary to what he could see from his back porch.</p>

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<p>CP 1116, I. 12 - 21</p> <p><i>Motion for Dismissal or Default for Discovery Violation (10/5/2009)</i></p> <p>This motion is denied. The only new factor put into the mix by the Defendants has been their noting that attorney Gibbs lives on the same street. The court does not find this factor creates a conflict of interest in any way.</p> <p>The only other new allegation raised in this regard is that Mr. Gibbs at one time contact (sic) attorney Gary Brandstetter who was counsel for the neighbor whose property lies on the other side of that of the Defendants (to the east), there evidently being legal issues between the Defendants and that neighbor. This Court fails to see any discovery violation that would warrant setting aside the trial and five years of litigation in this regard and does not view the facts in Declaration of Craig Dilworth as "smoking guns" or material in any respect.^{cs1}</p>	<p>C51: Does not address whether or not Ms. Reinertsen lied under oath to a direct question asking what neighbors she had talked to nor Mr. Gibbs' deception in keeping this knowledge from the Ryggs and the Ryggs' attorney.</p> <p>"Conflict of interest" is not a factor for discovery violation. The violation kept the Ryggs from moving to disqualify Mr. Gibbs under RPC 3.7 and having that issue determined prior to trial.</p>
<p>CP 1117, I. 8-10</p> <p><i>Notice of Voiding Consent, etc. (9/4/2009)</i></p> <p>This "notice" was not denominated as a motion and contained no request for relief. It is therefore uncertain what, if any, action is</p>	<p>Law; Due process error. Arbitrary denial. Does not address the issues, which go to basic jurisdiction.</p> <p>Hulbert was not a sitting judge nor appointed a judge pro tempore in 2005. The 2005 judgment is void.</p> <p>Consent under Washington Constitution, Amendment 80 is imputed from the</p>

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<p>requested of the Court. Therefore, none is taken.DP</p>	<p>consent in not filing an affidavit of prejudice; the Ryggs could not and did not consent to the undisclosed materials regarding Mr. Gibbs' discovery violations nor the new conflicts that have arisen since remand in a pro tem judge receiving money as a mediator from opposing counsel (sitting judges cannot act as private mediators, so the Ryggs could not have consented to this in 2004).</p> <p>Amend. 80 was not to apply to judges voted out of office, as recorded in the Senate Journal regarding Amendment 80.</p> <p>The judiciary lacks authority to not follow clear legislative intent. "First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." Chevron v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-3, 104 S. Ct. 2778; 81 L. Ed. 2d 694 (1984).</p> <p>Existing law requiring a new trial where a judge who entered inadequate filings is no longer on the bench has not been overturned. Lower courts lack jurisdiction to overturn higher courts.</p>
<p>CP 1117, I 11 – 21</p> <p><i>Third Motion for Disqualification of Judge Hulbert</i> The Defendants bring yet another motion for disqualification of the undersigned. That motion is denied.</p>	<p>F67: "This third motion is based on new evidence reflecting Pro Tem Judge Hulbert's actual bias: the public record statements made by Hulbert in his October 21, 2009 filing in Court of Appeals # 63939-1-I (Exhibit 1), his November 12, 2009 filing in Supreme Court # 83302-8 (Exhibit 2), and his November 25th filing (dated Nov. 24th) in the Supreme Court (Exhibit 3)." (CP 1350).</p>

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<p>The motion is not accompanied by any new evidence and is solely argument.^{F67} A portion of the motion appears to assert that the undersigned “pre-judged” the case when it was reassigned to him on remand. This assertion ignores the underlying fact that the case was remanded for additional findings; it was not reversed nor was a new trial granted. This process on remand is not involving additional testimony although limited declarations have been (sic) submitted. This does not amount to a judge having a bias prior to hearing the matter on trial but rather a judge having formed opinions and made findings which are now being supplemented, not reversed (except as it relates to the civil assault issue).^{C52}</p>	<p>C52: same as above. Blacks’ Law definition of reverse is vacate. This Court’s prior decision had vacated / reversed prior findings.</p>
<p>CP 1117, I. 22 - 25</p> <p>9. Motion to Clarify Legal Descriptions in light of Rulings (12/7/2009)</p> <p>The Plaintiffs, on remand, originally sought additional rulings with respect to the legal descriptions and appropriate amendment of the same in light of this Court’s ruling that the “distance” would control over the “direction” in the descriptions. Originally, the</p>	<p>C53: same as above</p> <p>Orders further proceedings showing the judgment does not end the controversy nor resolve the dispute.</p> <p>How far from the Reinertsens’ house is the line?</p> <p>Reinertsens claimed the judgment resulted in 7.5 feet during the last appeal.</p> <p>The final order allows the Civil Motions Judge to finally determine the documentation of the property line, with “appropriate documents” on 10-days’ notice.</p>

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<p>undersigned indicated an intent to limit the matters on remand only to the additional factual findings needed. However, the state of the record including the appeals during this process to the Court of Appeals and the Supreme Court, as well as the numerous additional motions filed in this Superior Court action on remand clearly denominate an intent by the Defendant to drag this litigation out as much as possible. They have also indicated that the failure at trial to accomplish a revision of the formal legal descriptions of the two property may call into question the ability to enforce this court's orders in that regard. In light of this clear intent, it is not appropriate for this Court to leave an issue pending that is clearly apparent may "invite" further appeal and legal process, particularly when it is so central to the resolution of the boundary in question.</p> <p>Therefore, this Court will grant the Plaintiffs <i>Motion to Clarify and Amend Legal Descriptions</i> in light of the court's rulings herein. The <i>Declaration of David Downing</i> (surveyor who testified at trial) filed in conjunction and in support of Plaintiffs' motion regarding the appropriate method of doing so in light of this</p>	<p>Since the final documentation is left up to the Civil Motions' Judge, the Court of Appeals' reasoning for remanding the matter specifically to Judge Hulbert has been nullified.</p> <p><i>**Conflicting holdings on Ryggs being able to maintain fences, with Reinertsens being able to remove them.</i></p> <p>Reinertsens never pled injunctive relief to remove the Ryggs' fences. A judgment may not exceed the demand of the complaint. <i>See Abbott Corp. Ltd. v. Warren, 56 Wn.2d 606, 354 P.2d 926 (1960)</i>. Also, <i>Olwell v. Nye & Nissen Co., 26 Wn.2d 282, 173 P.2d 652, 169 A.L.R. 139 (1946)</i>; <i>Belle City Mfg. Co. v. Kemp, 27 Wash. 111, 67 P. 580 (1902)</i>. "All states hold that a mandatory injunction is a proper remedy for an adjoining landowner to seek for the purpose of compelling the removal of an encroachment. Many states hold that there are circumstances in which the court can refuse to enjoin upon the theory that this extraordinary injunctive relief is equitable in nature... In prior cases the relief herein afforded has been somewhat incorrectly referred to as a "balancing of equities." This doctrine is rather the judicial recognition of a circumstance in which one party uses a legal right to gain purchase of an equitable club to be used as a weapon of oppression rather than in defense of a right. It is a contradiction of terms to adhere to a rule which requires a court of equity to act oppressively or inequitably and by rote rather than through reason." <i>Arnold v. Melani, 75 Wn.2d 143, 146-153, 449 P.2d 800 (1968)</i>. Right to possession expired before trial RCW 7.28.190 RCW 7.28.150 RCW 7.28.180</p>

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<p>Court's earlier rulings at trial (and maintained on remand as set forth above) appears to be consistent with the clear effect of the ruling on the legal descriptions on record. See relevant descriptions as set forth in Paragraph 3 above.</p> <p>The Plaintiffs may, upon motion to the Civil Motions Calendar, present for adoption appropriate Quit Claim Deeds or other documentation that may be necessary, if any, to assure that the legal descriptions of both parties are clarified, enforceable and insurable.</p> <p>The parties shall cooperate in this regard. If the Court finds that one party has refused to sign documentation appropriate to carry out this Court's findings, attorneys' fees and costs may be awarded. C53</p>	

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CP 1581-94: Anderson Hunter cover letter, and enclosed sketch of fence-line and photos of split rail fence from 1989 Anderson Hunter Law Firm Appraisal of Rygg property made during their representation of Ms. Rygg.

LAW OFFICES OF
ANDERSON HUNTER
A Professional Service Corporation
3305 BAKES AVENUE
P.O. BOX 5387
EVERETT, WASHINGTON 98208
(206) 252-3151
FACSIMILE (206) 252-3345

JULIAN C. DEWELL
WILLIAM W. BAKER
THOMAS R. COLLINS
G. DOUGLAS FERGUSON
H. SCOTT HOLTE
ROBERT B. WILLOUGHBY
GLENN PAUL CARPENTER
LEE B. TINNEY
BRADFORD N. CATTLE

VIKIE K. NORRIS
VIRGINIA CELLA ANTIPOLO

JEFFREY H. CAPELATO
TODD R. STARTZEL
AARON E. ORIENT

O. D. ANDERSON (1922-1991)
JAMES R. HUNTER (1915-1985)

November 9, 1989

Ms. Carolyn Dilworth
3225 Shore Avenue
Everett, WA 98203

Re: Dissolution

Dear Carolyn:

I am enclosing a copy of the real estate appraisal, which we finally received from Mr. Netzley. I am also enclosing the drawings that you apparently provided to Mr. Netzley and he has asked that we return them to you.

Vickie is on vacation this week but she wanted me to mail a copy of the appraisal to you as soon as it arrived. Would you please give me a call once you've had an opportunity to review the appraisal so that I can schedule a time for you to meet with Vickie. If possible, she would like to meet with you sometime during the week of November 13.

Very truly yours,

ANDERSON HUNTER LAW FIRM

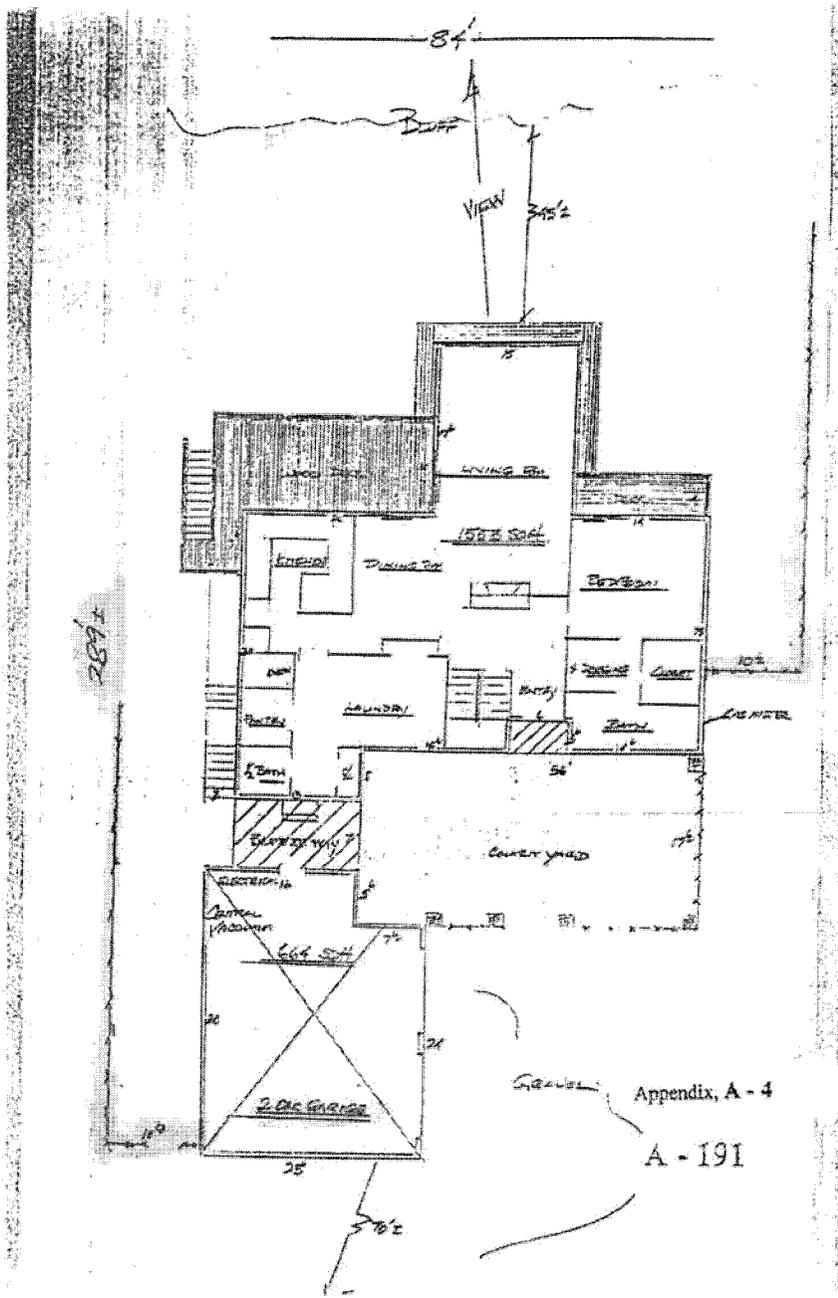


Turie A. Holte, Paralegal

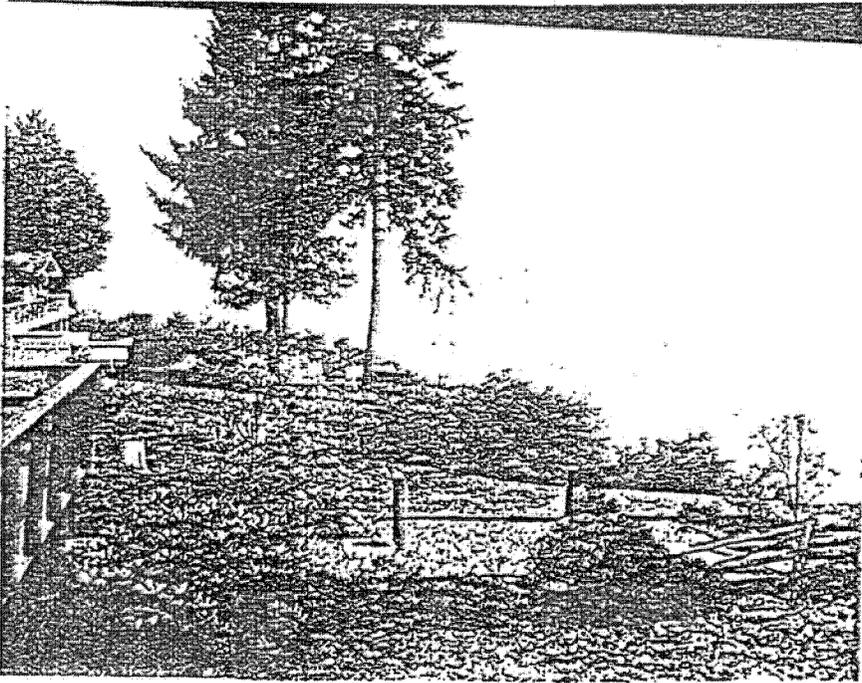
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Appendix, A - 1

A - 188

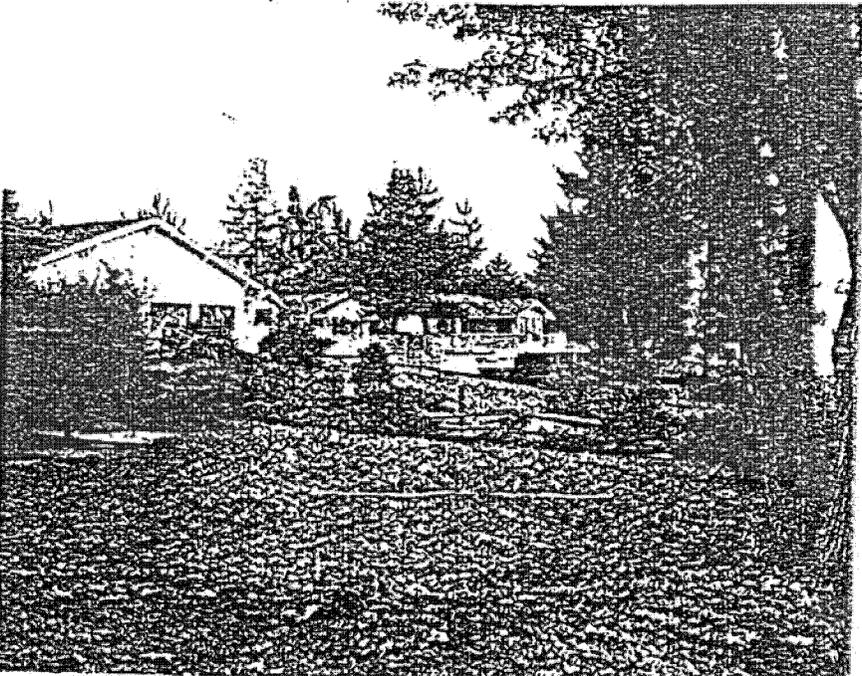


1989 sketch from the appraisal obtained by the Anderson Hunter Law Firm represents the board and split rail fence as one continuous fence-line extending straight "289'+/-" to the bluff from the right angle section of the board fence attaching to the south side of Ryggs' garage. The other side of the Rygg property with matching board fence and split rail fence is also depicted as one, continuous straight fence-line extending to the bluff from where the board fence makes a right angle to attach to the Ryggs' house.



Appendix, A - 13

A - 200



Appendix, A - 15

A - 202

A-13 and A-15: Photos of split-rail fence from 1989 appraisal obtained by Anderson Hunter Law Firm during their representation of Ms. Rygg.

Exhibit 33, an aerial photo dated April 1, 1967, cropped to show the original Howard property before construction of the Rygg house and fences.

The current Reinertsen house is in the center of the photo.



Ex 34: A 1976 aerial photo showing the split rail fence continuing the straight line of pyramidalis hedge and board fence, creating one continuous fence-line from the street to the bluff.

BLUFF
Split Rail Fence, starts at white laurel



STREET

Before and After Construction of the Rygg Home and Fences

Exhibit 33, an aerial photo (*Top*) dated April 1, 1967, cropped to show the original Howard property before erection of the Rygg house and fences.

The Howard/Reinertsen house is in the center of the photo (*Arrow*).

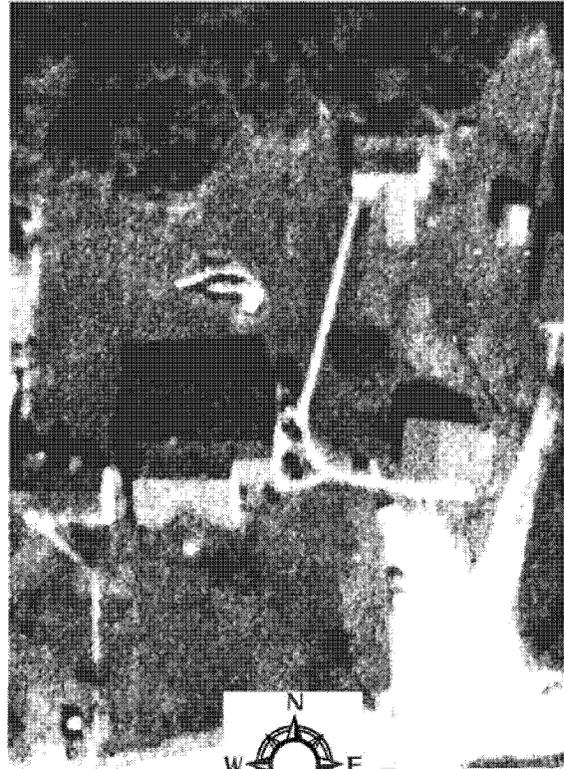
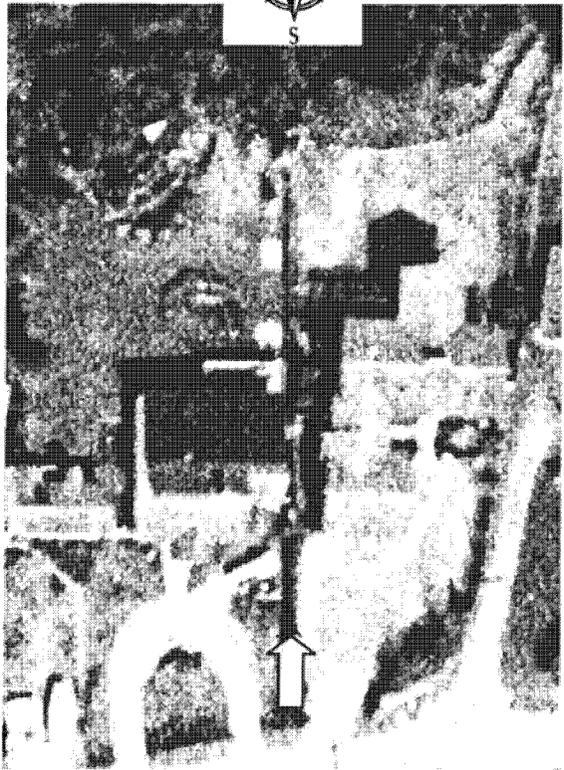


Exhibit 34, an aerial photo (*Bottom*) dated April 2, 1976, showing the straight line of fences dividing the two properties (*Arrow*) and enclosing the Rygg parcel (*on Right*).



1966 McCurdy Survey with Defective Legal Description, Errors as to North, and Measurements of the Property Line from the Monument of the Howard house of 7 1/2 feet and 7 foot 'Something' Inches

DEFENDANT'S EXHIBIT
NO. 1

SKETCH OF SUBDIVISION OF
LOTS 9 & 10 BLOCK 9, PLAT OF SHORE ACRES
SURVEYED BY FRED HOWARD BY
L.F. McCURDY, REG. PROF. LAND SURVEYOR

March 5, 1966

Scale: 1 inch = 150 feet



X" Lot 10 and that portion of Lot 9 lying westward of the following described line: Begin at the southeast corner of said Lot 9 thence S 68° 49' W along the south line of said Lot 9 for 59.80 feet to the true P.O.C. of Lot 9 for 59.80 feet to the true P.O.C. of Lot 9 beginning; thence S 82° 35' W for 164.73 feet to intersection with the west line of said Lot 9, All in Block 9, Plat of Shore Acres

Y" Lot 9, Block 9, Plat of Shore Acres Less that portion lying westward of the following described line: (same point at beginning and duplicate line description as above)

Identical Pyramidalis Hedges on Both Sides of the Rygg Home



CP 436, taken in 1969 *viewing northwest*, shows identical pyramidalis trees on both sides of the McCarty/Rygg parcel, prior to completion of the board fences by Dr. McCarty, which attach to both sides of the Rygg house/garage since 1970 to the present.

The east side of the Reinertsen house is visible *at far Left*.

CP 438: A 1980s photo showing the split rail fence extending into the white laurel bush at the end of the bluff. Compare with **Ex 28**, a 2004 photo after repairs by the Ryggs from same angle showing the fence in exactly the same place.



CP 438



Ex 28

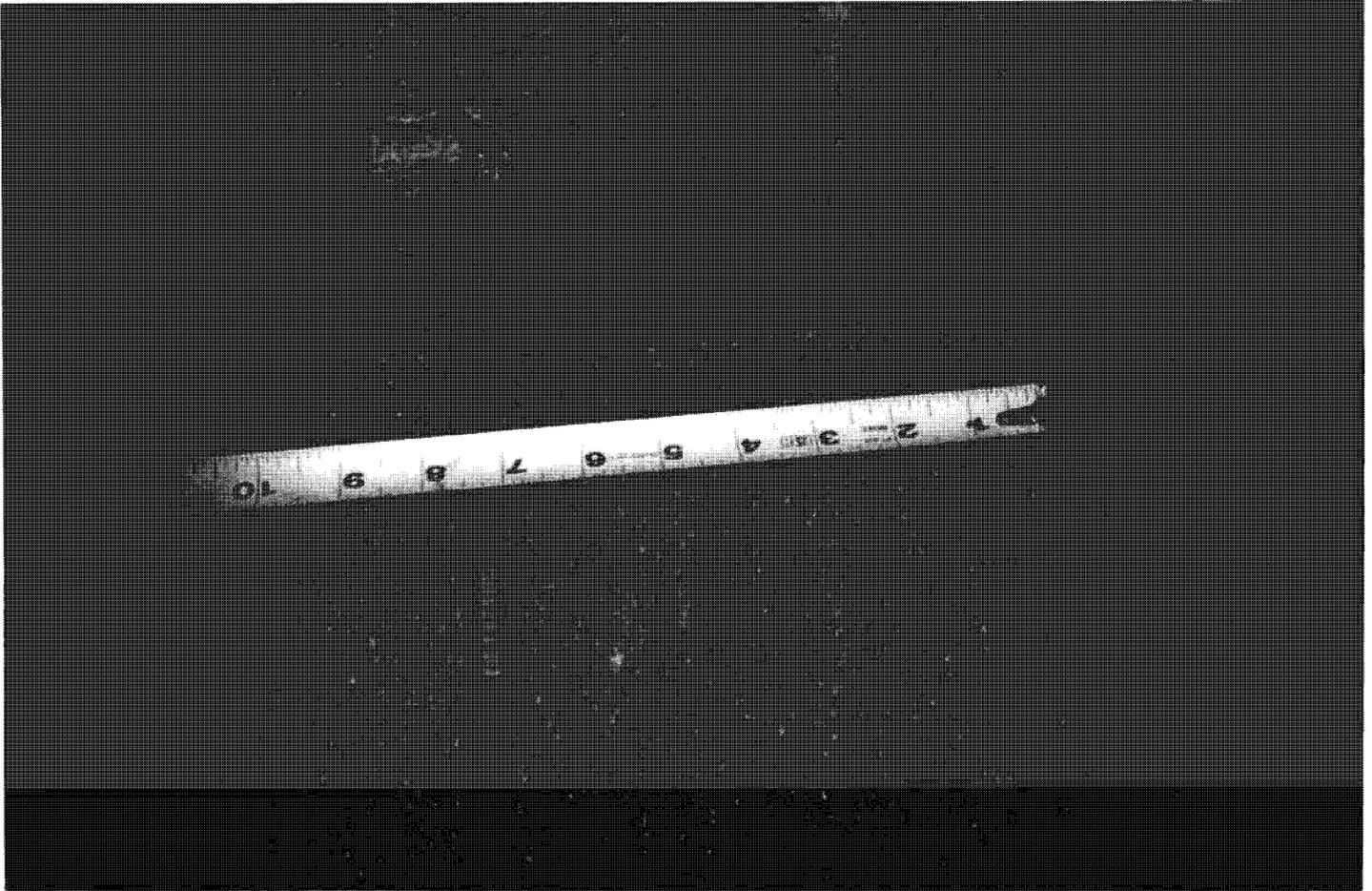
Ex 44: A 2003 photo taken from the east side showing the location of the fence extending into the white laurel bush prior to repairs made by the Ryggs; fence leaning in-line north/south.



Board Fence Attaches to the Ryggs' Garage



Photo from **Exhibit 46**, showing the Rygg side yard enclosed by the Board Fence, with the Ryggs' garage on the *Right* and trimmed ivy growing along the fence.

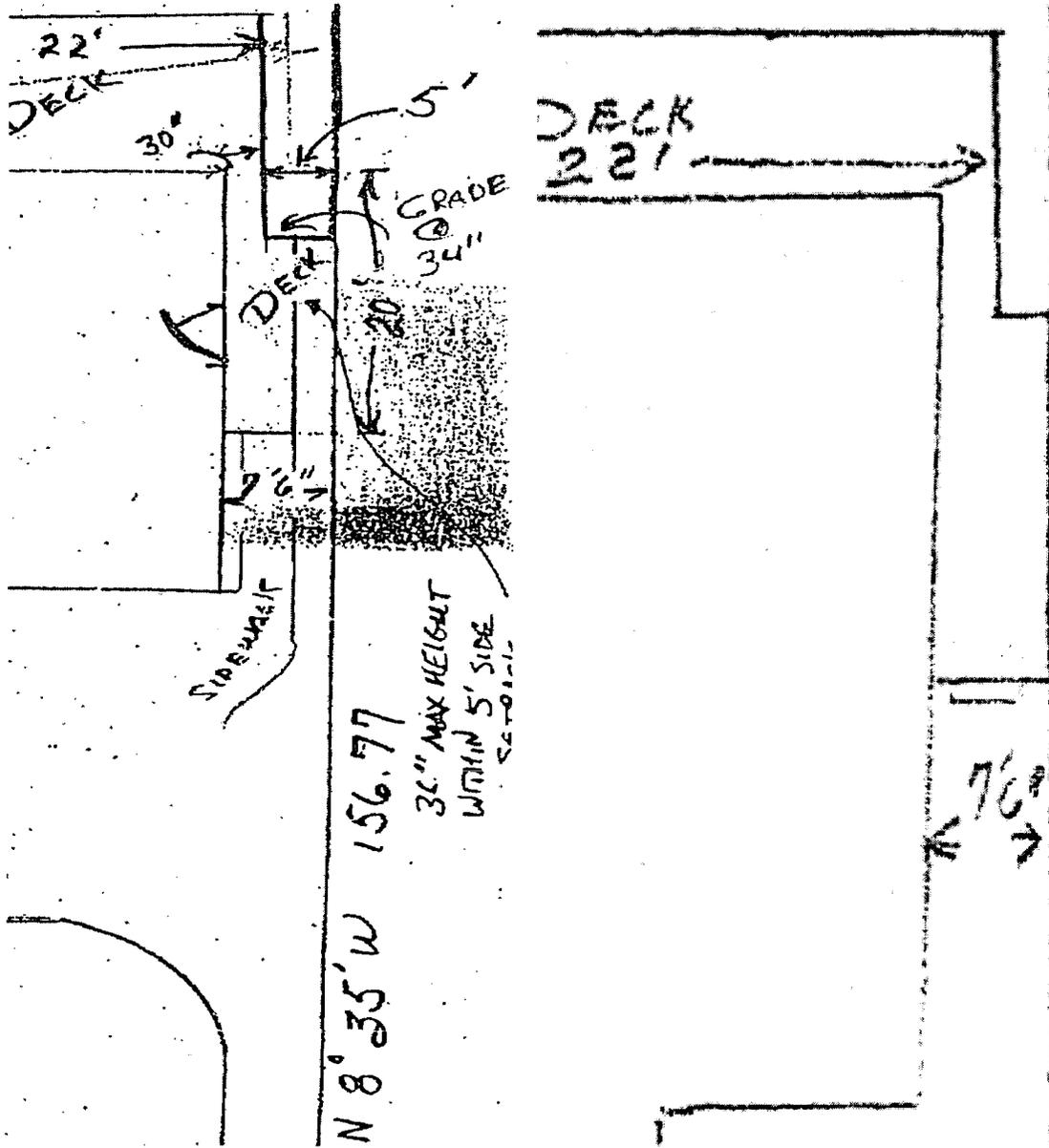


Ex 38, photo showing notching of Reinertsens' new deck construction into corrugation of Ryggs' board fence.

Mr. Reinertsen Places the Property Line East of his House at 7 ½ Feet

Exhibit 24, dated 6/3/03.

CP 434, dated 9/20/04.



Site plans created by Mr. Reinertsen. Ex 24 (Left), gives the property line as “N8° 35’W 156.77” (compare to McCurdy’s “N8° 35’W 164.73”, A-13) and has two measures from the East side of the house of 7 ½ feet: 30” plus 5’ (Top), and 7’6” (Bottom).

In CP 434 (Right), created during this lawsuit, Mr. Reinertsen again places the property line from the East side of his house at 7’6”.