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No. 71534-8-I

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COURT OF APPEALS
DIVISION ONE
OF THE STATE OF WASHINGTON

MCCAULEY FALLS, LLC, a Washington limited liability company;
ABACULO, LLC a Washington limited liability company,
Respondents,

v.

KING COUNTY, a political subdivision of the State of Washington,
Respondents,

v.

STEVEN NICHOLS AND LINDA NICHOLS, husband and wife,
Appellants/Intervenors

SEP 03 2014
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REPLY BRIEF OF THE APPELLANTS

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I. INTRODUCTION

Respondents McCauley Falls, LLC (hereinafter “McCauley Falls”) and Abaculo, LLC (hereinafter “Abaculo”) sought and obtained vacation of a public ROW either established or maintained by King County for decades, contrary to the enabling statute and county ordinances, without notice to property owners abutting the ROW used by the Appellants. Steven and Linda Nichols (hereinafter “Nichols”) for decades, as fully set forth in the Brief of the Appellants, seek remand ordering reopening the hearing on the original complaint, the decree for which was by stipulated facts, never subject to discovery.

The Nichols agree portions of the road as has been established and maintained for decades is not within some of the area described in the original condemnation. McCauley Falls calls that the “historic road”. Further, the Nichols agree to vacation of the portion of Road # 978, which is not co-extensive with the as-built Road # 978.

However, what the trial court, on motion to vacate the court commissioner’s findings and decree, failed to appreciate is whether the as-built and as-maintained road is in the public domain by reason of RCW 36.75.070-Highways worked seven years are county roads and common law authority, road easements shift to follow the as-built and travelled area parallel to the metes and bound described right away.

Never did the property owners present any evidence or conclusion of law that the county maintenance for seven years of the road brings the road into the public domain. RCW 36.75.070.

II. ARGUMENT

A. Summary.

Preceding entry of the Stipulated Findings and Decree (CP 13), no testimony or documentary evidence to support the decree was offered or presented into evidence or weighed in entering the findings, conclusion and decree, completely under the radar of the public and adjoining property owners.

The surprising net effect of the outcome sought by the land owners (McCauley Falls and Abaculo) is total blockage of public access to the Southern length of John McGee Road (Road # 978), an obvious absurd result, to even the casual observer.

Both the procedure and the outcome, as a matter of law are challenged in this appeal.

What the Respondents, McCauley Falls and Abaculo, failed to address in presenting the stipulated decree to the court commissioner is the self-named “historic road” had been maintained by King County for decades. Remember, the county exacted payment of \$2,377.10 from the Nichols to help improve and maintain the “historic road”. (CP 15)

Use of the phrase “historic road” is presumptive proof of a public road of some nature, the significance of which was never weighed in trial.

McCauley Falls boasts the decree did not affect “any private interest or easement”, *See* Appendix B of the Brief of the Respondent. But McCauley Falls fails to discuss the loss of public use of the ROW historic road reduced to 15-20 feet in width (CP 1 and 13), lack of which clearly jeopardizes the Nichols’ future development of their 40 acres served by Road # 978.

McCauley Falls cites *Turner v. Davisson*¹, that lapse of time in opening a road which was merely a path in the woods was a vacation as a matter of law. The instant case involves a finished road claimed by the county as a county right of way, repair of which the county charged \$2,377.10 to the Nichols for a right of way use permit to maintain. In *Turner*, the court never considered the effect of RCW 36.75.070-Highways worked seven years are county roads. Nor was that issue of law presented by fact or citation to RCW 36.75.070 in the instance case in obtaining the decree.

McCauley Falls cites *Stevens County v. Burrus*,² as a “similar fact pattern” to the instant case, when that case is all about prescriptive

¹ *Turner v. Davisson*, 47 Wn.2d 375, 287 P.2d 726 (1955)

² *Stevens County v. Burrus*, 180 Wash. 420, 40 P.2d 125 (1935)

easements and that the 7 year rule did not apply after trial of all the evidence. The instant case never had the privilege of a trial.

McCauley Falls argues that the Nichols have no right to complain because their land does not front on the vacated road. McCauley Falls misses the point the road ends at the Nichols property which road they cannot use as the public any longer.

Strangely, McCauley Falls cites RCW 36.87.020-County road frontage owners' petition-bond, case deposit or fee to suggest the Nichols lack standing to seek vacation because they abut the end of the ROW. The irony in that statute cited at page 10 of the Brief of Respondents, is the statutory process for vacating road, the process McCauley Falls ignored.

Standing to seek intervention is presented by the fact the Nichols' rights were foreclosed by the decree. No one else was joined in this action to present the circumstance of errors in the finding of fact presented in the stipulated facts and decree not supported by the stipulated facts. *Automotive United Trades Organization v. State*³, allowed a case to proceed without joinder of a sovereign nation, or Indian tribe, and is not a holding joinder of the Nichols is impermissible.

³ *Automotive United Trades Organization v. State*, 175 Wn. 2d 214, 223, 285 .3d 52 (2012)

The Brief of the Respondents ignores the impact of the 2003 Galloping Gadgets suit (page 4 of Brief of Appellants) that the ROW is “...an established King County Right-of-Way known as Road No. 978.” And further ignores the line of Washington cases cited in Brief of Appellant, page 20, the right of way shifts to the area built.⁴

III. CONCLUSION

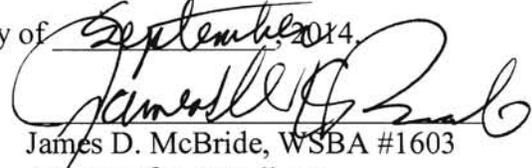
The Decree Quieting Title should be vacated. The case should be remanded with instruction requiring the vacation of the road be applied for according to state statute and county code and disallowing the reduction of the right of way from 60 feet to 20 feet.

And, the trial court should be required to take evidence to support entry of Findings of Fact and Conclusions of Law which would support the Decree.

Pursuant to RCW 7.28.083-Adverse Possession-Reimbursement of taxes or assessments-Payment of unpaid taxes or assessments-Awarding of costs and attorneys fees, the Nichols move for an award of costs and attorney’s fees.

⁴ *Barnhart v. Gold Rum, Inc.*, 68 Wash. App. 417, 843 P2d 545 (1993) citing *Curtis v. Zuck*, 65 Wash App. 377, 829 P2d 187 (1992)

Respectfully Submitted this 1 day of September, 2014.



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DEPT. OF COMM. & TRADE
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Case No.: 71534-8-I

AFFIDAVIT OF MAILING

vs.

KING COUNTY, a political
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STEVEN NICHOLS and LINDA
NICHOLS, husband and wife,
Intervenors/Appellants.

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COURT OF APPEALS
STATE OF WASHINGTON

I, SARA J. RUSSELL, being duly sworn first upon oath, depose
and say that:

I am a citizen of the United States of America, over the age of 21
years and competent to be a witness herein.

On the 3rd day of September 2014, I deposited copies of the Reply Brief of the Appellants in the United States Mail, first class mail, postage prepaid to:

John Furse Briggs
516 3rd Avenue, Room W400
Seattle, WA 98104-2388

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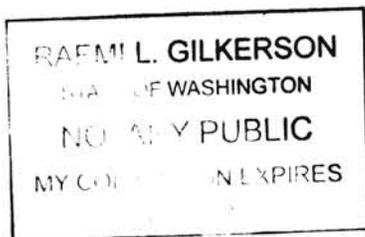
William Boyd Foster III
4300 198th Street SW, Suite 100
Lynnwood, WA 98036-6771

Dated this 3rd day of September 2014.



SARA J. RUSSELL

SUBSCRIBED AND SWORN to before me this 3rd day of September 2014.





Printed Name: Raemi L. Gilkerson
NOTARY PUBLIC in and for the State of WA,
Residing at: Lynnwood, WA
My Commission Expires: 11/20/17