

March 10, 2020

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

FLOYD F. RINEHOLD and CLARISSA E.  
RINEHOLD, husband and wife,

Respondents,

v.

GARY T. RENNE and ELEANOR F. RENNE,  
husband and wife,

Appellants,

DONALD DUANE DeNOTTA and CARON  
DeNOTTA, husband and wife, and D.D.  
DeNOTTA, LLC,

Defendants,

SCHOOL EMPLOYEES CREDIT UNION OF  
WASHINGTON, a Washington Credit Union;  
PINNACLE CAPITAL MORTGAGE CORP  
D/B/A CASCADE MORTGAGE, a  
Washington Corporation; MORTGAGE  
ELECTRONIC REGISTRATION SYSTEMS,  
INC., a Delaware corporation, as Nominee for  
Pinnacle Capital Mortgage Corp D/B/A  
Cascade Mortgage; CAVALRY SPV I  
LIMITED LIABILITY COMPANY, a  
Washington limited liability company, as  
Assignee of HSBC Bank Nevada,

Third Party Defendants.

No. 52915-7-II

UNPUBLISHED OPINION

MAXA, C.J. – Gary and Eleanor Renne appeal the trial court’s order on partial summary judgment in a quiet title action brought by their neighbors to the east, Floyd and Clarissa

Rinehold, regarding a strip of land adjacent to the western edge of a private gravel road on the Rineholds' property. The strip of land is located on the Rennes' front yard, and they believe that the western edge of the existing road marks the boundary between the two properties. The trial court ruled as a matter of law that a 2015 survey conducted for the Rineholds correctly determined that the western edge of the road did not mark the property boundary and that the strip of land was located on the Reinholds' property.

The original grantor of both the Renne and Reinhold properties was W.O. Watson, a surveyor who in 1952 prepared two unrecorded plats of the surrounding property. The plats showed that the eastern boundary of what became the Rennes' property was the western edge of a roadway. The deed for the Rennes' property described the eastern boundary as the westerly boundary of the roadway. However, the 2015 survey concluded that the actual property line as measured on the plats was further west than the existing roadway.

We hold that the trial court erred in granting partial summary judgment to the Rineholds and denying the Rennes' motion for reconsideration because genuine issues of material fact exist regarding Watson's intended location of the boundary line between the Rennes' property and the Rineholds' property. Accordingly, we reverse the trial court's orders granting partial summary judgment and denying reconsideration and remand for further proceedings.

## FACTS

### *Background*

The Rennes and the Rineholds own adjacent properties in Mason County just south of Hood Canal's south shore in an area known as Sunset Beach. Both properties are accessed by a private gravel road that intersects with State Road 106 at the road's northern end. The Rennes'

property is west and north of the road, which bends to the west on the south side of the Rennes' property. The Rineholds own the property on which the roadway is located and property that is primarily to the south of the roadway. An easement allows the Rennes and other property owners to use the roadway to access their properties from SR 106.

Watson originally owned both the Renne and Rinehold properties. He subsequently conveyed the properties in separate transactions to the predecessors of the Rennes and the Rineholds.

The Rennes bought their property in 2006 from Carroll and Sharon Moore. The Rennes' statutory warranty deed described the property as

BEGINNING at a point 855 feet North of the Southwest quarter of said Section 12; thence North  $74^{\circ}13'$  East 255.5 feet; thence North  $58^{\circ}40'$  East 403.7 feet; thence North  $61^{\circ}26'$  East 103 feet to the POINT OF BEGINNING of the tract of land hereby described; thence North  $69^{\circ}16'$  East *102 feet* to the Westerly boundary of roadway; thence South  $10^{\circ}$  East *along the Westerly boundary of said roadway* 415 feet; thence South  $59^{\circ}14'$  West, along the Northerly boundary of said roadway, 55 feet; thence North  $16^{\circ}42'$  West 418.2 feet to the TRUE POINT OF BEGINNING.

Clerk's Papers (CP) at 93 (emphasis added).

The Rennes' deed was consistent with the 1955 deed conveying the property that the Rennes now own from Watson to Albert Johnson. The deed to Johnson included calls describing the eastern border of the property as extending along the westerly side of the roadway. The deed in which Johnson transferred the property to the Moores also contained similar language.

#### *Plats of Sunset Beach Area*

Watson was a licensed surveyor in the area for many years. He surveyed the Sunset Beach area in 1952 and created at least two unrecorded plats. The plats show the property the Rennes now own. Watson's plats show the location of monuments in the ground to mark the lots

he platted, including iron stakes in the northwest, northeast, and southeast corners of the lot that the Rennes now own.

One of the plats shows a street immediately adjacent – to the east – of the property that the Rennes now own. The other plat shows the same area but does not label the area as a street. The western edge of the street is the same as the eastern edge of the lot the Rennes now own. The plats mark the street as 42 feet wide at the intersection with SR 106. The plats mark the northern border of the lot the Rennes now own as extending along SR 106 for 102 feet.

Roger Lovitt, a licensed surveyor, conducted a survey of the area in 1979. Lovitt's survey was based on Watson's plat and survey. The Lovitt survey also shows a street bordering the lot that the Rennes now own. Lovitt notated where he discovered iron pipes, apparently from Watson's original survey. He apparently did not locate the iron stake that Watson placed in the northeast corner of the lot that the Rennes now own. Lovitt marked the northern border of the Rennes' lot along SR 106 at 102 feet. Lovitt did not identify any encroachments.

In 1994, Daniel Holman, a licensed surveyor, conducted a survey of the area and recorded a short plat at the request of Joan Addington, then-owner of the Rineholds' property. Holman notated that he found a 3/4 inch lead pipe in the southeast corner of the lot that the Rennes now own. He apparently did not locate the iron stake that Watson placed in the northeast corner of that lot. The survey marked the width of the road at the intersection with SR 106 at almost 52 feet. The northern border of the lot along SR 106 was marked at 102 feet. The short plat did not identify any encroachments.

In 2015, the Rineholds retained Holman to again survey their property. Holman referenced Watson's survey, Lovitt's survey, and his own 1994 survey. He also researched the chain of title to the Rineholds' property, the Rennes' property, and other properties neighboring

the Rineholds. He considered the original deed from Watson conveying the property that the Rennes now own, the deed from the Moores to the Rennes, and deeds to the Rineholds' property.

Holman found iron pipes on the northwest and southeast corners of the Rennes' property. Again, he did not find the iron stake Watson placed on the northeast corner. As in his 1994 survey, Holman's 2015 survey marked the width of the road at the intersection with SR 106 at almost 52 feet and the northern border of the lot along SR 106 at 102 feet. Holman's survey showed that the Rennes' property did not extend to the edge of the existing roadway, but only to a survey line west of the actual roadway. Based on the survey, the Rennes' lawn, rock wall, and concrete parking area encroached on the Rineholds' property. Their house was barely on their property.

*Rineholds' Lawsuit and Summary Judgment Motion*

In January 2016, the Rineholds filed a lawsuit against the Rennes to quiet title to the strip of land between Holman's 2015 survey line and the existing roadway. The Rennes apparently asserted a number of defenses, including that they had acquired title to the strip of land through adverse possession.

The Rineholds filed a motion for partial summary judgment regarding a single issue, asking the trial court to find that Holman's 2015 survey "is a true, correct, and accurate survey and representation of the record title to [the Rineholds'] property . . . [and] correctly represents the record title for the easterly line of the Renne property." CP at 9. The motion was supported by a declaration from Holman, which attached the two Watson plats as well as the historical deeds for the two properties.

Holman stated that his 2015 survey was a retracement survey, "a common type of survey designed to locate property lines as established by the original common grantor." CP at 23. He

stated that he “looked for, and found, significant monumentation by W.O. Watson, who originally owned all the property in this area.” CP at 22. The survey indicated that Holman found a 3/4 inch iron pipe in the southeast corner of the Rennes’ property and a 1 1/2 inch iron pipe in the northwest corner of the Rennes’ property. Holman noted that this monumentation “was consistent with [Watson’s] plat map and consistent with the bearings and distances on his deeds.” CP at 22-23. Holman considered this consistency “clear evidence of [Watson’s] intention.” CP at 23. He also stated that his 2015 survey was consistent with Lovitt’s survey.

Holman stated that “if one were to interpret the references to the roadway in the Renne chain of title as being the present, physical roadway, the description would not close by twelve feet more or less. Being familiar with Watson’s work, he would not have made that significant a mistake.” CP at 23-24. Holman did not comment on the fact that his survey showed that the roadway was 52 feet wide at SR 106, which was inconsistent with the 42 foot width on Watson’s survey.

Holman noted that a surveyor the Rennes contacted located a buried 1/2 inch pipe in the vicinity of the northeast corner of the Rennes’ property that was 17 feet to the east of his surveyed boundary line. Holman discounted this pipe as marking the northeast corner because a 1/2 inch pipe was not typical of Watson, was not consistent with other found monuments, and was not consistent with anything. He stated that it was not uncommon for surveyors to find random pipes in the ground. He also pointed out that no prior survey had ever discovered this pipe. As a result, Holman concluded that Watson had not set the pipe and that it had no relation to the property boundary.

The Rennes opposed the summary judgment motion, arguing that (1) the term “roadway” in their deed was intended to mean the physical roadway as it was currently situated, and (2) the Rennes had acquired title to the strip of land through adverse possession.

The Rennes submitted a declaration from Eleanor Renne. She stated that when she and her husband purchased the property, the Moores identified the edge of the private roadway as their property line. The Rennes had always treated the land up to the western edge of the roadway as their front yard, installing a drainage ditch and a rock wall and landscaping and mowing to the edge of the road. In addition, Renne stated that in 2007, during excavation of their property for purposes of the drainage ditch, the excavators discovered an iron pipe in the northeast corner of their property. But at the time, no one thought the pipe might have anything to do with a prior survey.

The Rennes also submitted declarations from Carroll Moore, the previous owner of the Rennes’ property, and from Jack Addington, the previous owner of the Rineholds’ property. Moore stated that when he and his wife bought the property, the previous owners (the Andersons) identified the private roadway as the property line. The Andersons had landscaped the land up to the roadway, which the Moores maintained after purchasing the property. Addington stated that during the time he and his wife owned the property that the Rineholds now own, they did not maintain or improve the land to the west of the roadway and did not consider that land to belong to them.

Finally, the Rennes submitted the 1955 deed conveying the property that the Rennes now own from Watson to Albert Johnson. The deed included calls describing the eastern border of the property as extending along the west side of the roadway.

The Rineholds moved to strike the declarations of Eleanor Renne, Moore, and Addington, arguing that they were not relevant to the narrow issue on summary judgment, the intent of the original grantor Watson, and that lay witnesses were not qualified to testify regarding land surveys. The trial court granted the motion to strike.

The trial court also granted the motion for partial summary judgment. The trial court determined that Holman's 2015 survey more closely followed Watson's intent than the Rennes' interpretation of the language in their deed because Holman's survey retraced the lines in the field established by Watson. The trial court found that "the survey of Daniel Holman correctly locates the property lines . . . based upon deeds of record and the unrecorded plat of Sunset Beach." CP at 194.

*Rennes' Motion for Reconsideration*

The Rennes moved for reconsideration of the order granting partial summary judgment. They contended that they had found additional evidence since the entry of the order showing that Watson intended the roadway be 42 feet wide on the eastern side of their property, which was inconsistent with Holman's 2015 survey indicating the roadway was 52 feet wide.

The Rennes submitted a supplemental declaration of Eleanor Renne, attaching a United States Geographical Survey aerial photograph from 1951 that purported to show a clearing for the roadway. The Rineholds moved to strike the declaration, but the court allowed the Rennes a continuance for the purpose of authenticating the aerial photo and addressing other foundational issues.

The Rennes then submitted declarations from Pete Kauhanen, a graphic information systems (GIS) specialist, and James Dempsey, a licensed professional surveyor.

Kauhanen stated that his work often required him to interpret historical aerial images as well as use georeferencing to associate objects or structures, including historical objects or structures, with a current physical location. He stated that he routinely relied on USGS data, including aerial photographs. After viewing aerial images from 1951 up to the present, Kauhanen concluded that there had been a roadway in the same location as the present roadway since at least 1951 and the traveled width of the road had always been roughly 20 feet.

Dempsey reviewed Watson's survey, Lovitt's survey, the Rennes' deed, Holman's 1994 short plat, and Holman's 2015 retracement survey with the purpose of determining whether there were inconsistencies between Watson's original property lines and Holman's 2015 survey. Dempsey noted a number of inconsistencies with Holman's survey.

The Rineholds filed a motion to strike the Kauhanen and Dempsey declarations as lacking foundation, and argued that Kauhanen was not competent to authenticate the USGS aerial photo. The trial court stated that there was a question of fact regarding whether Kauhanen had the expertise to render an opinion regarding the aerial photographs. And the court ruled that Kauhanen's declaration was sufficient to authenticate the USGS photograph.

The trial court considered the declarations of Kauhanen and Dempsey even though they were submitted for the first time on reconsideration. However, the trial court denied the motion for reconsideration. The court did not reach the issues of striking Kauhanen and Dempsey's declarations or regarding their foundation because the priority of calls made ruling on those motions irrelevant.

The Rennes appeal the trial court's order granting partial summary judgment and order denying reconsideration.<sup>1</sup>

## ANALYSIS

### A. SUMMARY JUDGMENT

#### 1. Standard of Review

This court's review of an order granting summary judgment is de novo. *Frausto v. Yakima HMA, LLC*, 188 Wn.2d 227, 231, 393 P.3d 776 (2017). We review all evidence and reasonable inferences in the light most favorable to the nonmoving party. *Keck v. Collins*, 184 Wn.2d 358, 368, 357 P.3d 1080 (2015). We may affirm an order granting summary judgment if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); *Keck*, 184 Wn.2d at 370. A genuine issue of material fact is one where reasonable minds could differ on the facts controlling the litigation's outcome. *Sutton v. Tacoma Sch. Dist. No. 10*, 180 Wn. App. 859, 864-65, 324 P.3d 763 (2014).

The party moving for summary judgment has the initial burden to show there is no genuine issue of material fact. *Zonnebloem, LLC v. Blue Bay Holdings, LLC*, 200 Wn. App. 178, 183, 401 P.3d 468 (2017). The nonmoving party avoids summary judgment by establishing specific facts sufficient to rebut the moving party's contentions and create a genuine issue as to a material fact. *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008). No genuine issue of material fact exists where the nonmoving party relies on speculation or argumentative assertions that unresolved factual issues remain. *Id.*

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<sup>1</sup> Even though the trial court's order was only a grant of partial summary judgment, the trial court made an express direction under CR 54(b) and RAP 2.2(d), supported by findings, that there was no just reason for delay regarding an immediate appeal.

2. Record on Review

Both parties challenge the trial court's ruling regarding the consideration of certain evidence on summary judgment. We review *de novo* the trial court's evidentiary rulings regarding admissibility of evidence in the context of a summary judgment motion. *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).

Initially, the trial court decided to consider the declarations of Dempsey and Kauhanen even though they were submitted for the first time during the trial court's consideration of the motion for reconsideration. The trial court has wide discretion to consider new or additional evidence presented with a motion for reconsideration. *Martini v. Post*, 178 Wn. App. 153, 162, 313 P.3d 473 (2013). Because the trial court in the exercise of its discretion decided to consider these declarations, on appeal we will consider them in determining whether a genuine issue of fact exists.

The Rennes argue that the trial court erred in striking the declarations of Eleanor Renne, Carroll Moore, and Jack Addington, which stated that the disputed strip of property had been treated as belonging to the Rennes over the years. These declarations related to the Rennes' adverse possession claim. We conclude that the trial court did not err in striking these declarations.

Although the Rennes may have a claim to the disputed strip of land through adverse possession, that issue was not before the trial court on partial summary judgment. Instead, the partial summary judgment motion was restricted to the narrow issue of whether Holman's 2015 survey correctly located the "*record title* to [the Rineholds'] property . . . [and] correctly represents the *record title* for the easterly line of the Renne property." CP at 9 (emphasis added).

Whether the Rennes can claim title to the strip of land under an adverse possession theory does not involve the *record* title of the property.<sup>2</sup>

However, we conclude that the trial court erred in striking the portion of Eleanor Renne’s declaration that discussed a contractor finding an iron pipe near the northeast corner of their property in 2007. This portion of the declaration was based on Renne’s personal knowledge and was relevant to the validity of Holman’s survey.

The Rineholds suggest that the trial court should not have considered Kauhanen’s declaration because he was not qualified to render an opinion regarding aerial photographs. But Kauhanen’s declaration explains in detail why his experience allowed him to make determinations by reviewing the photographs. We agree with the trial court that viewed in the light most favorable to the Rennes, Kauhanen had sufficient expertise to evaluate the aerial photographs.

B. LOCATION OF BOUNDARY LINE

The Rennes argue that the trial court erred in determining as a matter of law that Holman’s 2015 survey retraced Watson’s original survey lines in the field and therefore established Watson’s intent. We agree.

1. Legal Principles

a. Deed Interpretation

“ [D]eeds are construed to give effect to the intentions of the parties, and particular attention is given to the intent of the grantor when discerning the meaning of the entire document.’ ” *Newport Yacht Basin Ass’n of Condo. Owners v. Supreme Nw., Inc.*, 168 Wn. App. 56, 64, 277 P.3d 18 (2012) (quoting *Zunino v. Rajewski*, 140 Wn. App. 215, 222, 165 P.3d 57

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<sup>2</sup> The Rennes are still free to argue their adverse possession theory at trial.

(2007)). If possible, we determine the parties' intent based on the language of the deed as a whole. *Newport Yacht Basin*, 168 Wn. App. at 64. "[T]he language of the written instrument is the best evidence of the intent of the original parties to a deed." *Id.* at 65.

However, where the language of the deed is ambiguous, we may consider extrinsic evidence to ascertain the parties' intent. *Id.* Such evidence includes "the circumstances of the transaction and the subsequent conduct of the parties." *Id.*

The same general rules apply in determining the location of a boundary established in a deed. *See Thompson v. Schlittenhart*, 47 Wn. App. 209, 212, 734 P.2d 48 (1987). The primary issue is the grantor's intent. *Id.* The focus is on the language of the deed, but when necessary we may look to the circumstances surrounding the entire transaction. *Id.* And we can determine an uncertain boundary "by the best evidence available." *Id.*

What the parties intended generally is a question of fact. *Newport Yacht Basin*, 168 Wn. App. at 64. Specifically, where the property boundaries are actually located is a question of fact. *DD & L, Inc. v. Burgess*, 51 Wn. App. 329, 335, 753 P.2d 561 (1988).

b. Boundary Descriptions

Deeds identify "boundary lines" between two properties. *DD & L*, 51 Wn. App. at 331 n.3. A "call" is a descriptive element in a deed used to identify boundary lines, including monuments, courses, distances, and area. *Id.* A "monument" is a permanent natural or artificial object that is actually on the ground and helps establish a boundary line. *Id.*; *see also Ray v. King County*, 120 Wn. App. 564, 590-91, 86 P.3d 183 (2004). "Natural monuments include such objects as mountains, streams, or trees. Artificial monuments consist of marked lines, stakes, roads, fences, or other objects placed on the ground" by people. *DD & L*, 51 Wn. App. at 331

n.3. A “course” is a direction of a line. *Id.* A “distance” is a horizontal measurement of a line in feet. *Id.*

When a deed references an artificial monument but that monument is constructed after a deed is signed, the monument under certain circumstances can mark a property boundary. *Ray*, 120 Wn. App. at 592. However, the monument must be constructed with the intention that it will conform to the deed. *Id.*

“In cases of conflicting calls [in a deed], the priority of calls is: (1) lines actually run in the field, (2) natural monuments, (3) artificial monuments, (4) courses, (5) distances, (6) quantity or area.” *DD & L*, 51 Wn. App. at 335-36.

Property boundaries may be based on original surveys and plats of the property. The court must ascertain the intention of the original platter. *Stauf v. Bilder*, 68 Wn.2d 800, 803, 415 P.2d 650 (1966). “The intention of one who has platted land into lots and blocks is indicated by the monuments which he has caused to be placed, marking the boundaries of the same.” *Olson v. City of Seattle*, 30 Wash. 687, 691, 71 P. 201 (1903). “[T]he known monuments and boundaries of the original plat take precedence over other evidence and are of greater weight than other evidence of the boundaries not based on the original monuments and boundaries.” *Stauf*, 68 Wn.2d at 803. And the lines actually marked or surveyed on the ground prevail over an inconsistent plat. *Id.*

“Where a plat delineates an actual survey, the survey rather than the plat fixes the location and the boundaries of the land. The plat is a picture, the survey the substance. In a conveyance referring to such plat, the lot bounded by the lines actually run upon the ground is the lot intended to be conveyed. The plat may be all wrong, but that does not matter if the actual survey can be shown. Thus, where there is a dispute as to the boundary line between a street and the abutting lots, the original survey will control the recorded plat. Where a surveyor of the land marks the division lines on the ground by monuments, such lines control calls and distances indicated on his map.”

*Neely v. Maurer*, 31 Wn.2d 153, 155-56, 195 P.2d 628 (1948) (quoting 6 Thompson on Real Property, Perm. Ed., 584, sec. 3378).

If subsequent surveys are used to determine property boundaries, “the question to be answered is not where new and modern survey methods will place the boundaries, but where did the original plat locate them.” *Staaf*, 68 Wn.2d at 803. “The main purpose of a resurvey is to rediscover the boundaries according to the plat upon the best evidence obtainable and to retrace the boundary lines laid down in the plat. Effort should be made to locate the original corners.” *Id.*; *see also DD & L.*, 51 Wn. App. at 336.

## 2. Accuracy of Holman 2015 Survey

The trial court ruled that there was no genuine issue of material fact regarding Watson’s intended boundary line between what are now the Renne and Rinehold properties and that as a matter of law the intended boundary line is the one shown on Holman’s 2015 survey.

Here, the Rennes’ deed (and Watson’s original deed) identified the boundary line between the Rennes’ property and the Rineholds’ property by reference to an artificial monument – the western edge of the roadway. However, the deeds did not delineate the exact location of the road edge. Therefore, the deed language is ambiguous and we must consider extrinsic evidence to determine Watson’s intent. *Newport Yacht Basin*, 168 Wn. App. at 64-65.

Watson’s deed identified the western edge of the roadway as the eastern boundary of the Rennes’ property. But the only evidence of Watson’s intent regarding the *location* of the roadway are the two plats he prepared that reflected his survey of the area. We must determine whether these plats establish the location of the roadway as a matter of law or whether genuine issues of fact remain regarding the location of the roadway.

In support of their summary judgment motion, the Rineholds relied primarily on Holman's 2015 survey. Holman characterized that survey as a retracement survey, which is "designed to locate property lines as established by the original common grantor." CP at 23. He located certain monuments placed by Watson, which were consistent with Watson's plat map and with the bearings and distances on his deeds. Holman believed that this consistency was clear evidence of Watson's intention.

Holman's survey placed the western edge of the roadway several feet west of the existing gravel road. Holman stated that this survey was consistent with Lovitt's 1979 survey, which was recorded. Holman's survey also appears to be consistent with his 1994 survey and short plat.

Holman further stated that if the term "roadway" in the Rennes' deed and Watson deeds was interpreted as being the present road, the description in the deeds would not "close" by approximately 12 feet. Holman stated that he was familiar with Watson's work and that Watson never would have made such a significant mistake. Conversely, Holman stated that using his survey, all the other deeds from Watson closed and harmonized.

Lines actually run in the field prevail over artificial monuments; here, the roadway. *DD & L*, 51 Wn. App. at 335-36. However, *Holman's placement of the eastern boundary of the Rennes' property was not based on the lines on the ground that Watson ran*. Holman was able to locate only two of the pipes that Watson placed to make the lot that the Rennes now own – on the southeast corner and on the northwest corner. Therefore, Holman had to calculate the location of the northeast corner based on other factors.

Holman did not explain how he calculated the location of northeast corner. However, it appears that he relied on the notation on both of Watson's plats showing the distance of the

northern boundary between the northwest corner and northeast corner – the frontage along SR 106 – at 102 feet. The deeds also called a distance of 102 feet along the north border of the property – “North  $69^{\circ}16'$  East *102 feet* to the Westerly boundary of roadway.” CP at 93 (emphasis added). It appears that Holman measured 102 feet from the pipe found at the northwest corner to establish the northeast corner. Apparently, Holman determined that the western edge of the present roadway was 114 feet from the northwest corner. As noted above, Holman did not believe that Watson would have made a 12 foot mistake in his plat measurements.

The Rennes did not submit their own retracement survey or any other type of survey to support their position that the location of the roadway referenced in the deeds is the location of the presently existing gravel roadway. Instead, they attacked the accuracy of Holman’s survey through other evidence and argument.

### 3. Erroneous Basis for Summary Judgment Ruling

The trial court’s summary judgment ruling was based on a belief that (1) Holman’s 2015 survey reflected the lines that Watson actually ran in the field when preparing his survey and plats, and (2) the Rennes were required to produce their own survey in order to challenge the validity of Holman’s survey. We conclude that the trial court erred in both respects.

First, as discussed above, Holman could not retrace the lines Watson actually ran in the field because nobody was able to find the iron stake that Watson placed in the northeast corner of the property the Rennes now own. Instead, Holman had to rely on other factors to determine the east boundary line. Holman’s determination of the northeast corner necessarily was based on the 102 foot distance call in Watson’s original deed and the 102 foot distance marked on Watson’s deed for the property’s northern boundary along SR 106.

Holman stated that his determination of the northeast corner and the east boundary line based on that corner reflected Watson's intent. But that statement was merely Holman's *opinion* based on a variety of factors, and Holman was not able to confirm where Watson *actually* placed the northeast corner or the east boundary line in the field.

Second, because Holman's survey represented an opinion regarding the east boundary line and not a simple tracing of the line between two monuments that Watson placed, we conclude that the Rennes were not required to submit their own survey. The Rineholds cite to no authority requiring the nonmoving party to submit a contrary survey in order to challenge the validity of a survey for summary judgment purposes. There is no reason that the Rennes could not create questions of fact regarding the validity of Holman's opinion regarding the placement of the eastern boundary line through means other than a full survey.

#### 4. Questions of Fact Regarding Eastern Boundary

The evidence the Rennes presented in opposition to summary judgment and in support of reconsideration established genuine issues of fact regarding the location of the eastern boundary of their property.

First, Holman's location of the northeast corner of the Rennes' property was based on the 102 foot distance for the northern boundary line, not on a monument on that corner. Therefore, the the eastern boundary of the Rennes' property did not represent a line Watson ran in the field. As a result, Holman's survey was not necessarily determinative of Watson's intent.

Second, while placing the eastern boundary line based on something other than Watson's monuments, Holman ignored a significant monument – the roadway – that Watson did identify. Under the priority of calls, the roadway monument should control over the distance call Holman used. *DD & L*, 51 Wn. App. at 335-36. Applying this priority does not necessarily determine

where the roadway was located, but the location of the roadway remains a question of fact when the distance call is disregarded.

Third, Holman's 2015 survey was inconsistent with both of Watson's plats regarding the width of the road. Both plats show the road width as 42 feet, while Holman's survey shows the width at 52 feet. Dempsey also noted this inconsistency. Holman chose to conclude that the 102 foot distance of the northern boundary shown on the plats was accurate, which resulted in the road width shown on the plats being wrong. But he just as easily could have concluded that the 42 foot road width shown on the plats was accurate, which would have resulted in the northern boundary distance shown on the plats being wrong.

In other words, Holman's survey showed that either the 102 foot distance or the 42 foot distance was wrong. All reasonable inferences must be resolved in favor of the Rennes, and an equally reasonable inference is that the road width on Watson's deeds was correct and the northern boundary distance was wrong. Applying that inference, the eastern boundary line would have been 10 feet further east than shown on Holman's survey.

Fourth, the Rennes presented evidence that a 1/2 inch pipe was found further to the east of Holman's boundary line near what they believed to be the northeast corner of their property. Holman discounted that pipe because Watson's pipe was larger and because no survey had discovered it before. But on summary judgment Holman's opinion regarding the pipe does not control; the evidence must be viewed in the light most favorable to the Rennes.

Fifth, the Rennes submitted evidence from Kauhanen that the present road existed in the same location in 1952 when Watson prepared his plats. Kauhanen stated, "[T]he indicated roadway is in the exact location as East Sunset View Lane is in all other subsequent imagery for this area that I have reviewed. This includes imagery from 1951, 1968, and recent imagery." CP

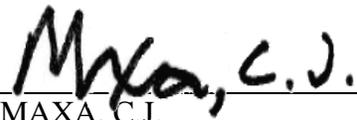
at 294. This evidence creates a question of fact as to whether Watson’s use of the word “roadway” in his deed referred to the existing roadway. The Rineholds may have a valid argument that the opinions expressed in Kauhanen’s declaration are questionable. But on summary judgment, we must assume that the opinions are true.

We conclude that genuine issues of material fact exist regarding the location of the east boundary line between the Rennes’ property and the Rineholds’ property. Therefore, we hold that the trial court erred in granting the Rineholds’ motion for partial summary judgment and in denying the Rennes’ motion for reconsideration.

CONCLUSION

We reverse the trial court’s orders granting the Rineholds’ motion for partial summary judgment and denying the Rennes’ motion for reconsideration, and we remand for further proceedings.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

  
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MAXA, C.J.

We concur:

  
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MELNICK, J.

  
\_\_\_\_\_  
SUTTON, J.