IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CHRISTOPHER G. BUTLER and KERRI S. BUTLER, husband and wife,	)	**No. 29198-7-III (consolidated with No. 29517-6-III)**
Respondents,	)	**Division Three**
v.	)	
SANDRA COYLE, a single person,	)	**UNPUBLISHED OPINION**
Appellant.	)	

Siddoway, J. — Sandra Coyle appeals the trial court's entry of a judgment reforming deeds and an easement to make clear that her neighbors partially own and have the right to use a road that Ms. Coyle attempted to close to their use. We affirm the trial court's judgment and, in a consolidated matter, affirm the trial court's order finding Ms. Coyle in contempt for interfering with survey work required by the court's judgment. While we deny Christopher and Kerri Butler's request for an award of fees and costs incurred in the appeal, we grant their motion for terms for Ms. Coyle's failure to appear

at the time set for oral argument.

FACTS AND PROCEDURAL BACKGROUND

Sandra Coyle owns real property located on Corkscrew Canyon Road in Tum Tum, Washington. Christopher and Kerri Butler own neighboring property on Corkscrew Canyon Road immediately adjacent to and southeast of Ms. Coyle's property. Both Ms. Coyle and the Butlers trace their title back to a common grantor, Reforestation Inc., which acquired both properties in June 1967. In October 1967, Reforestation entered into an unrecorded contract to sell what became the Butler property to Paul E. Parker and Janet J. Parker; a fulfillment statutory warranty deed transferring title to the Parkers was recorded in January 1974. In 1968, Reforestation entered into a contract to sell what became the Coyle property to George B. Woodbury and Joanne L. Woodbury; like the Parker fulfillment deed, the fulfillment statutory warranty deed transferring title to the Woodburys was recorded in January 1974.[1] We refer to these initial conveyances, by their recording dates, as the 1974 deeds or conveyances.

[1] The Butlers' evidence established that the Parkers conveyed the Butler property by statutory warranty deed to Neumann, Neumann quitclaimed to Potter, Potter quitclaimed to Peone, and the Butlers acquired title through a statutory warranty deed from Peone. Exs. 7-10. Evidence established that the Woodburys conveyed the Coyle property by statutory warranty deed to Fifield, and that Ms. Coyle acquired title through a statutory warranty deed from Fifield. Exs. 12-14. The portions of the legal description and reservations that are relevant to this dispute were the same or substantively equivalent in each conveyance.

The 1974 conveyances by Reforestation of the Butler and Coyle properties to the Parkers and the Woodburys identified the boundary line between the properties as the

> center line of present lane road, the center line of which is described as follows: Commencing at a point on the North line of said Lot 4, which is S89º 29' E., 941.25 feet from the NorthWest corner of said Lot 4, thence South 26º 11' 54" West 410.93 feet; thence South 52º 28' 59" West, 340.6 feet to the center of LaPray-Bridge Road No. 590, and reserving to the vendor, its successors or assigns easement and rights of way over prior and existing roads and easement for utilities.

Ex. 5; *see also* Ex. 11. LaPray-Bridge Road is an earlier name for what is now more commonly called Corkscrew Canyon Road. At trial, the parties stipulated that the "present lane road" referenced in the legal description, a dirt road currently used as a driveway by the Butlers, has been in the same location since 1961.

In addition to the rights in the road created by the deeds' description of the center line as a boundary and the deeds' reservation of rights-of-way over prior and existing roads to Reforestation's successors, Reforestation executed and recorded an easement in 1973 that provided for

> ingress and egress, over and across all roads presently existing or heretofore reserved by the grantor herein in deeds executed and to be placed of record, or already of record within the above described property. Said easement to be for the benefit of and appurtenant to each and every part of the subject legal description.

Ex. 4. An inconsistency in identifying the properties benefitted and burdened by the easement appears on the face of the easement document. A map is attached, which the

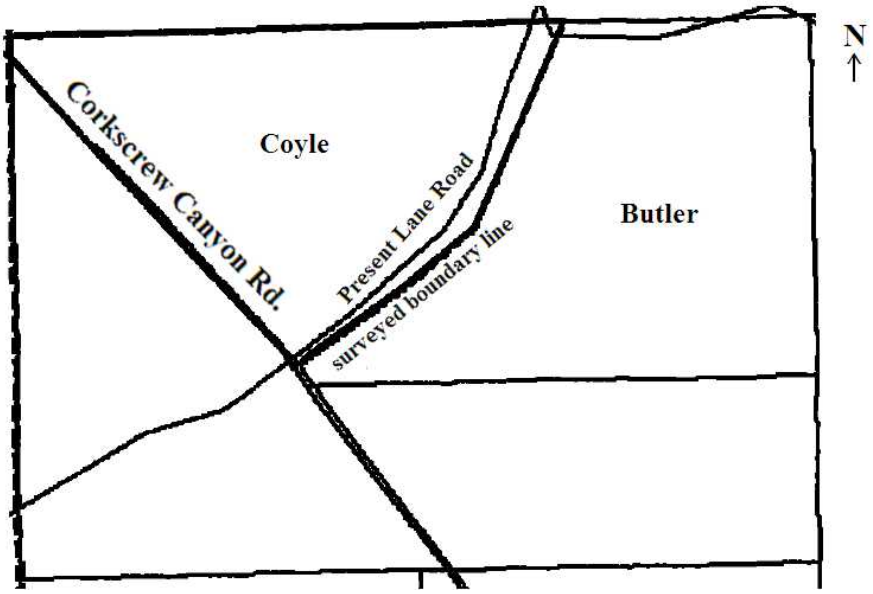
document expressly states is its more particular description of the affected properties. *Id.* The caption on the first page of the easement document states "BB Property" in its upper left-hand corner and the parcels depicted on the attached map—all of which are located within the *west* half of section 5—are designated by number, with the prefix "BB." *Id.* The Coyle property is identified on the map as BB-4 and the Butler property is identified on the map as BB-3. Nonetheless, the legal description set forth on the first page of the easement describes the affected properties as situated in "[t]he *East* Half . . . of Section 5," despite the fact that the map does not depict any properties located in the east half of section 5. *Id.* (emphasis added).

The record suggests that for some 35 years following the recording of this 1973 easement and the 1974 deeds neither the internally-inconsistent easement document nor the description of the boundary between the properties gave rise to any difficulties between the owners of the properties. The Butlers purchased their property on Corkscrew Canyon Road in July 2004.

In the spring of 2007, Ms. Coyle purchased her property and in October 2007 hired Todd J. Emerson, PLS,[2] to survey the boundary line between her property and the Butler property in anticipation of erecting a fence. In preparing his survey, Mr. Emerson

[2] Registration as a professional land surveyor (PLS) in Washington is addressed by chapter 18.43 RCW and Title 196 WAC.

discovered a discrepancy between the location of the existing center line of the lane road and the metes and bounds description of that center line set forth in the Butler and Coyle deeds, as depicted in the following map:



Clerk's Papers (CP) at 211 (digital alterations ours). In his survey, which Mr. Emerson

recorded in February 2008, he based the boundary line between the properties on the metes and bounds description of the road center line rather than its actual center line. Acting on the recorded survey, Ms. Coyle began fencing in what she contended was her land in April 2008. Her construction of the fence eventually cut off the Butlers' access to their property by enclosing the lane road. The Butlers filed a complaint for declaratory relief, reformation, slander of title, and injunctive relief in July 2008 and obtained a preliminary injunction requiring Ms. Coyle to remove the fence pending the outcome of the lawsuit.

Both Mr. Emerson and Thomas Todd, PLS, the Butlers' expert, testified at trial. The discrepancy between the metes and bounds description of the road center line and its actual center line was undisputed. Mr. Emerson testified that the discrepancy created an ambiguity that he disclosed to Ms. Coyle and the Butlers, hoping to get their agreement to a boundary line that could be formally established through a boundary line adjustment. He testified that he surveyed the center line of the road on the ground and suggested it as an agreed boundary, acknowledging that it might have been the intended boundary at the time of the original conveyance by Reforestation. When Ms. Coyle and the Butlers did not reach agreement on a boundary line, he recorded his survey. At trial, he could identify no reason why he relied on the metes and bounds description from the deeds rather than the actual center line in depicting the boundary line between the Coyle and

Butler properties.

Mr. Todd testified that in his opinion, Mr. Emerson's survey should have reflected the actual center line of the road as the boundary, because the road, being a monument, ordinarily takes precedence over an inconsistent metes and bounds description in a deed. Mr. Todd also offered an explanation for the discrepancy between the metes and bounds description and the actual center line: he concluded that the starting point for the course and distance measurements had been different. Both surveyors testified that Mr. Emerson relied for his survey on a northwest corner of section 5 that had been reestablished by surveyor Scott Valentine in 1982, after having earlier been lost. Both surveyors agreed that the metes and bounds description in the 1974 Reforestation deeds was almost certainly based on a survey, given its measurements to within a hundredth of a foot, although no record of the survey remained. Mr. Todd testified that it was improbable that Mr. Valentine had reestablished the northwest corner at precisely the same point as its earlier location. In reviewing Mr. Emerson's work, Mr. Todd noticed that the boundary line based on the metes and bounds description did not terminate at the center of Corkscrew Canyon Road, as it should have by its terms (the last call being "thence South 52º 28' 59" West, 340.6 feet to the center of LaPray-Bridge Road No. 590"). Exs. 5, 11. Mr. Todd's research revealed that the center of LaPray-Bridge Road, now Corkscrew Canyon Road, had not changed. By moving the terminus of Mr. Emerson's boundary

line so that it would fall in the center of Corkscrew Canyon Road and then adjusting the point of beginning to keep it on the true north line of section 5, Mr. Todd found that the entire boundary line shifted northwesterly approximately 32 feet, coming into alignment with the actual center line of the road. From this, Mr. Todd concluded that whoever prepared the metes and bounds description used in the 1974 deeds surveyed the same center line existing on the ground today, but relied on a northwest corner of section 5 that was about 32 feet to the east of the corner reestablished in 1982 by Mr. Valentine.

When asked about Reforestation's easement prepared and recorded in 1973, Mr. Todd testified that it made no sense unless it was intended to refer to the properties that were depicted on its attached map, and which were located in the west half, not the east half, of section 5.

After hearing the evidence presented by the parties, the trial court entered findings, conclusions, and a judgment reforming the parties' deeds to establish that the boundary line between the Butler and Coyle properties was the actual center line of the lane road, reforming the easement for what it found to be a scrivener's error, and finding that Ms. Coyle had committed common law trespass. During trial, Ms. Coyle had testified that if the trial court established the center line of the road as a boundary, she would build a fence down the middle of the road, so the trial court also granted a permanent injunction preventing Ms. Coyle from interfering with the Butlers' use of the easement. Ms. Coyle

retained new counsel and filed a motion for reconsideration, which was denied. She timely appealed.

Postjudgment, the Butlers moved for a contempt order against Ms. Coyle, demonstrating that she was violating the court's injunction and preventing preparation of a new survey, which was one aspect of the relief ordered by the court. The trial court found Ms. Coyle in contempt and entered judgment against her for the terms and fees imposed. Ms. Coyle timely appealed that order and judgment, which we consolidated with her initial appeal.

ANALYSIS

I

The Butlers argue that many of Ms. Coyle's assignments of error improperly raise issues for the first time on appeal, are insufficiently supported by argument or reference to the record as required by the rules on appeal, or are otherwise improper. We agree and first address the assignments of error that we will not consider for reasons that are well-settled in the case law or under our rules.[3]

RAP 2.5(a) and the Collateral Bar Rule Preclude Review of Assignments of Error 1, 2, 3, 4, 7, 8, 9, 10, and 17

[3] Ms. Coyle represents herself in this appeal. As a pro se litigant, Ms. Coyle is held to the same standard as an attorney and must comply with all procedural rules on appeal. *Westberg v. All-Purpose Structures, Inc.*, 86 Wn. App. 405, 411, 936 P.2d 1175 (1997); *In re Marriage of Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993).

Generally, appellate courts will not entertain issues raised for the first time on appeal. RAP 2.5(a); *Brundridge v. Fluor Fed. Servs., Inc.*, 164 Wn.2d 432, 441, 191 P.3d 879 (2008). The reason for this rule is to afford the trial court the opportunity to correct errors, thereby avoiding unnecessary appeals and retrials. *Smith v. Shannon*, 100 Wn.2d 26, 37, 666 P.2d 351 (1983). We likewise do not consider theories not presented below. *John Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d 772, 780, 819 P.2d 370 (1991).

New theories presented for the first time to the trial court as part of a motion for reconsideration need not be considered, *Wilcox v. Lexington Eye Inst.*, 130 Wn. App. 234, 241, 122 P.3d 729 (2005), *review denied*, 157 Wn.2d 1022 (2006); *Int'l Raceway, Inc. v. JDFJ Corp.*, 97 Wn. App. 1, 7, 970 P.2d 343 (1999), and the same holds true for arguments raised for the first time in an appellant's reply brief, *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). A party generally cannot raise new grounds challenging the propriety of an underlying court order during a contempt proceeding under the collateral bar rule. *In re Det. of Broer*, 93 Wn. App. 852, 858, 957 P.2d 281, 973 P.2d 1074 (1998), *review denied*, 138 Wn.2d 1014 (1999).

Ms. Coyle's following assignments of error are not entitled to review based upon these principles:

Ms. Coyle's first assignment of error alleges that she was a bona fide purchaser. This case involves a boundary line described in Ms. Coyle's deed, an easement of which

she had notice, and a road actively being used by the Butlers, making it unlikely that she could viably claim to be a bona fide purchaser without notice. In any event, the theory was not presented until Ms. Coyle's motion for reconsideration and we will not consider it.

Her second assignment of error alleges that portions of Mr. Todd's testimony lacked sufficient foundation. No such evidentiary challenge was made below and we need not consider it.

Her third assignment of error alleging that the Butlers' suit was brought in violation of the statute of limitations reveals a lack of understanding of when a cause of action accrues. As a threshold matter, however, it was not raised until her pro se response to contempt proceedings and is both untimely and a prohibited collateral attack on the underlying order.

Her fourth assignment of error alleging that the trial court failed to observe the requirements of chapter 58.04 RCW pertaining to lost or uncertain boundary lines has no application to this case,[4] and again, was not raised below.

Assignments of error 7, 9, and 10, pertaining to the validity of the 1973 easement,

[4] Provisions of RCW 58.04.020 relative to establishing lost boundaries in property disputes are inapplicable to situations where parties contend that different, existing boundaries are the true division line. *Stewart v. Hoffman*, 64 Wn.2d 37, 390 P.2d 553 (1964).

and 8 and 17, pertaining to an alleged failure on the part of the Butlers to amend their pleadings to request relief, fail for the same reasons.

Ms. Coyle for the first time on appeal also makes several groundless arguments under irrelevant state and federal constitutional and statutory provisions that appear throughout her briefing. These include assertions that the trial court's reformation of the deeds violated the statute of frauds, that the trial court unlawfully deprived her of several constitutional rights in violation of 18 U.S.C. §§ 241-42, and that this court should prosecute opposing counsel on perjury and forgery charges. Br. of Appellant at 35, 37-38, 50. These arguments are as untimely as they are meritless and will not be considered.

Insufficient Argument Precludes Review of Assignments of Error 5, 11, 12, 13, 14, a portion of 15, 16, 20, 21, and 22

Our rules require Ms. Coyle to support each of her assignments of error with appropriate argument and citations to the record. Failure to do so for an assignment of error waives the assignment. RAP 10.3(a)(5)-(6); *Milligan v. Thompson*, 110 Wn. App. 628, 635, 42 P.3d 418 (2002); *Holland v. City of Tacoma*, 90 Wn. App. 533, 538, 954 P.2d 290 (noting that "[p]assing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration"), *review denied*, 136 Wn.2d 1015 (1998); *In re Estate of Lint*, 135 Wn.2d 518, 532, 957 P.2d 755 (1998) (concluding that "[i]t is incumbent on counsel to present the court with argument as to why specific findings of

the trial court are not supported by the evidence and to cite to the record to support that argument"); *In re Rosier*, 105 Wn.2d 606, 616, 717 P.2d 1353 (1986) ("'[N]aked castings into the constitutional sea are not sufficient to command judicial consideration and discussion.'" (quoting *United States v. Phillips*, 433 F.2d 1364, 1366 (8th Cir. 1970), *cert. denied*, 401 U.S. 917 (1971))).

Even construing Ms. Coyle's brief in the most charitable light, the following assignments of error are so lacking in reasoned argument and citation to the record that we would have to guess at reasoning that might support them, something we will not do:

Assignment of error 5 alleges that the trial court erred in finding that Mr. Valentine's re-establishment of the northwest section corner was 32 feet off, but Ms. Coyle's argument is not supported by adequate argument. The substance of her argument primarily reiterates assignment of error 2.

Assignments 11 and 12, which challenge the admission of an aerial photograph of the properties with an allegedly forged date, are not supported by any argument that can be considered.

Assignment 13 contests the trial court's finding that a handwritten date appearing on a photograph existed on the photograph when obtained by opposing counsel and was not forged by him or at his direction. Rather than argue from the evidence, Ms. Coyle claims that this finding interfered with investigation by the Washington State Bar

Association of a complaint she filed based on the photo. The state bar association has no primary jurisdiction to determine the issue, which was properly resolved by the court; moreover, the bar association had deferred the processing of Ms. Coyle's complaint pending resolution of the action below.

Assignment 14, which complains of a lengthy delay in the entry of findings below, is not supported by any citation to the record evidencing a delay.

Assignment 15 is likewise unreviewable insofar as it pertains to her contention that the trial court erred by finding that the 1973 easement burdens her property.

Assignment 16 alleges that the trial court erred by finding common law trespass, based on the trial court's reference at trial to the trespass supporting nominal recovery, but it is completely devoid of meaningful argument.

Assignment 20 simply asserts that the trial court erred by not reconsidering its decision in this matter. The argument supporting this assignment of error is cumulative and need not be separately addressed.

Assignment 21 raises a First Amendment challenge and service of process issues without any accompanying argument.

Assignment 22 is supported by no relevant authority in claiming that the trial court's order for issuance of a writ of restitution was improperly granted.

Based upon a careful review of Ms. Coyle's briefing, only four of her assignments

of error sufficiently raise issues warranting review. Restated for purposes of clarity, they are:

> 1. Assignment of error 15: Whether substantial evidence supports certain portions of the trial court's findings.
>
> 2. Assignment of error 19: Whether the center line of the present lane road can constitute a monument for surveying purposes because it allegedly cannot be mathematically ascertained from the recorded deeds.
>
> 3. Assignment of error 6: If the center line of the present lane road constitutes a monument, whether the trial court erred by giving priority to the monument call in the deeds over the metes and bounds call.
>
> 4. Assignment of error 18: Whether Ms. Coyle is entitled to any relief as a result of an allegedly deficient first page of the judgment summary as specified by RCW 4.64.030.

II

We understand Ms. Coyle's assignment of error 15 to contend that substantial evidence does not support certain of the trial court's findings. She adequately presents only two challenges: she contends, first, that when reciting the contents of the deeds at issue, the trial court's finding of fact 1.1 includes language not included in those documents and, second, that there was no evidence the 1973 easement contained a scrivener's error as determined by the court's finding of fact 3.3.

We review whether substantial evidence supports the trial court's factual findings and then review, de novo, whether the trial court's conclusions of law flow from the supported findings. *Ruse v. Dep't of Labor & Indus.*, 138 Wn.2d 1, 5, 977 P.2d 570

(1999). Substantial evidence will support a finding when the evidence in the record is sufficient to persuade a rational, fair-minded person that the finding is true. *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000). "A challenge to the sufficiency of the evidence admits the truth of [the opposing party's] evidence and any inference drawn therefrom and requires that the evidence be viewed in a light most favorable to [the opposing party]." *Bott v. Rockwell Int'l*, 80 Wn. App. 326, 332, 908 P.2d 909 (1996). Credibility determinations are solely for the trier of fact and cannot be reviewed on appeal. *Morse v. Antonellis*, 149 Wn.2d 572, 574, 70 P.3d 125 (2003).

Ms. Coyle complains that the trial court erred when reciting the contents of the Butler deed in its finding 1.1, by adding specific language referring to an easement for ingress and egress that is not included in that document. Br. of Appellant at 43. Although the formatting of the finding could suggest that all of the language set off by indentation came from a single document, the text of the finding explicitly cites to exhibits other than the deed. When read, the substance of the finding is supported by the evidence and is not misleading.

Next, Ms. Coyle contests the trial court's finding that the 1973 easement contained a scrivener's error mistakenly describing the subject properties as being located in the eastern half of section 5, rather than the western half. Read in its entirety, the easement

document itself, considered in the light of the surrounding circumstances and the situation of the parties, was sufficient support for the finding. The trial court was justified in inferring from those matters that the easement's single inconsistency was a drafting error. *See Maxwell v. Maxwell*, 12 Wn.2d 589, 599, 123 P.2d 335 (1942) (notwithstanding drafting error, "the correct real property description expressive of the intention of the parties can readily be determined"). In addition, the court was presented with the following testimony of Mr. Todd:

> Q And do you see any conflicts between the legal description and the map?
> A The legal description says the east half of Section 5 and we're working in the west half.
> . . . .
> Q The—When it says "east half of Section 5 except for the east half of the northeast quarter of the northwest quarter," does that make any sense?
> A No.
> Q Okay. How would it have to read for it to make sense?
> A I think—It would have to be the west half of Section 5.
> Q Now if we make that the west half of Section 5 does the map that's attached make sense?
> A Yes, it does.
> Q And so, if we make that the west half then the exception that is written—written into there, would that be that rectangular portion about where it says "County Road" on the map?
> A Yes.
> Q Okay. So if this document were revised to say "West half of Section 5" instead of "East half of Section 5" then the map attached makes sense?
> A Yes, sir.

Report of Proceedings at 79-80.

The two findings of the trial court that are adequately challenged by Ms. Coyle are supported by substantial evidence.

III

The crux of Ms. Coyle's appeal appears to be the issues we glean from her assignments of error 19 and 6, which we address next: whether the present lane road was properly recognized as a monument by the trial court for purposes of the boundary line dispute and, if so, whether the actual center line of that road was entitled to more weight in determining the boundary than the conflicting metes and bounds description contained in the recorded deeds.

For surveying purposes, a monument is a permanent natural or artificial object on the ground that helps establish the location of the boundary line called for. *DD&L, Inc. v. Burgess*, 51 Wn. App. 329, 331 n.3, 753 P.2d 561 (1988). Natural monuments include such objects as mountains, streams, or trees, while artificial monuments consist of marked lines, stakes, roads, fences, or other objects placed on the ground. *Id*. If the monument has width, the general rule is that the boundary is the center line of the monument. *Id*.

Relying on *Kesinger v. Logan*, 113 Wn.2d 320, 779 P.2d 263 (1989), Ms. Coyle argues that the center line of the present lane road cannot constitute a monument because "[a] location referenced in a deed is not a monument unless it is capable of being

mathematically ascertained from the deeds on record." Br. of Appellant at 11. But all that is required by Washington cases in this respect is that the monument be "'a point capable of being mathematically ascertained.'" *Kesinger*, 113 Wn.2d at 329 (quoting *Matthews v. Parker*, 163 Wash. 10, 15, 299 P. 354 (1931)). Ms. Coyle introduces the concept that it must be mathematically ascertainable "from the deeds on record." Her suggested gloss makes no sense; a requirement that the surveyed position of a monument must be determinable from deeds on record would defeat the purpose of calling to a monument in the first place. Ms. Coyle's position is contrary to explicit Washington case law; in *Matthews*, the court recognized that monuments need only be capable of "be[ing] mathematically established upon the ground." 163 Wash. at 15.

The decision in *Kesinger* does not support Ms. Coyle's position. In that case, the court treated a metes and bounds description as controlling even though it referred to and purported to account for a canal company's historic right-of-way; the canal company argued that its alleged 50-foot right-of-way was a monument and, since the right-of-way was mentioned in Ms. Kesinger's deed, it took precedence over the metes and bounds description allowing for only a 20-foot right-of-way. But unlike the road in this case, the canal company's right-of-way could not be seen and surveyed on the ground; it existed, if at all, only in legal acts of conveyance or reservation—and there was no conveyance establishing a 50-foot width for the right-of-way. The canal's claimed right-of-way could

not be mathematically ascertained because of the lack of a conveyance establishing essential information: its width. 113 Wn.2d at 329. In this case, Mr. Todd testified that the center line of the present lane road could be mathematically ascertained and Mr. Emerson proved that it could, by surveying the center line without difficulty. The trial court had an ample basis for finding that the center line of the present lane road is a valid monument for purposes of describing a boundary.[5]

Ms. Coyle also argues that even if the present lane road is a valid monument, the trial court erred by giving it priority over the metes and bounds description of the boundary line in the deeds. 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; *see also Bullock v. Yakima Valley Transp. Co.*, 108 Wash. 413, 417, 184 P. 641, *adhered to on reh'g*, 187 P. 410 (1919) (holding that "[i]t is a well established rule of law that description by monuments will control over description by metes and bounds").

In *Ray v. King County*, 120 Wn. App. 564, 592, 86 P.3d 183, *review denied*, 152

[5] Ms. Coyle's argument that the road cannot be considered a monument because it has shifted over time and is therefore not permanent is precluded since the parties stipulated that the road had not shifted since 1961. Further, this argument was not raised until her reply brief and is therefore untimely. Reply Br. of Appellant at 14. Finally, the Butlers offered photographs and testimony sufficient to support a finding that the road had not moved.

Wn.2d 1027 (2004), the court addressed similar conflicting elements in a deed and applied the general rule as to their precedence. The deed at issue in *Ray* described the location of a railroad right-of-way as follows:

> "Such right of way strip to be fifty (50) feet in width *on each side of the center line of the railway track* . . . which location is described as follows to-wit.
>
> Commencing at a point 410 feet West from North East corner of Section six (6) township 24 N R 6 East and running thence on a one (1) degree curve to the left for 753 3/10 feet thence South 16 degrees and 34 minutes West 774 2/10 feet thence with a 3 degree curve to the right for 700 feet . . . thence S 36° 15' W 150 feet to South boundary of lot 3 of said Sec 6 which point is 1320 feet North and 2170 feet west from SE corner of said Sec 6."

120 Wn. App. at 572 (emphasis added). The course and distance description of the center line of the railway track did not match the actual location of the center line on the land. *Id*. at 592. The court held that "because the monument"—the railroad tracks—"controls over the distance calls, we hold that the strip of land conveyed in this deed is centered on the railroad tracks, as constructed." *Id*. The trial court in this case was presented with similar evidence, reasonably leading to its conclusion that the boundary line must be controlled by the location of the road on the ground.

Ms. Coyle ignores these cases dealing with the relative weight given conflicting calls in favor of a different rule of construction: she relies on a more general rule that "'"[w]here a particular and general description in a deed conflict, and are repugnant to

each other, the particular will prevail unless the intent of the parties is otherwise manifested on the face of the instrument."'" Br. of Appellant at 25 (quoting *Stockwell v. Gibbons*, 58 Wn.2d 391, 397, 363 P.2d 111 (1961) (quoting Annotation, *Rule That Particular Description in Deed Prevails Over General Description*, 72 A.L.R. 410, § II(a) (1931))). Ms. Coyle submits that the metes and bounds description of the center line is a particular description, which prevails over the deed's direct reference to the center line, which she characterizes as a general description.

Two responses are in order. First, Washington precedents establishing the principle of construction that applies to the specific conflict in this case—monument calls versus metes and bounds calls—control over Washington precedents establishing more general rules of construction. Second, the "particular versus general description" principle relied upon by Ms. Coyle applies only when the two conflicting descriptions are independent efforts directed at describing a third thing—the boundary. It does not apply where, as here, the purpose of the "particular" metes and bounds description is to more precisely identify the location of the "general" description: the monument. Notably, the A.L.R. annotation on which Ms. Coyle indirectly relies states that "[w]here a general description is followed by a particular one, the particular description will not restrict the general if it is used in the sense of reiteration." 72 A.L.R. at 423, § III(b). Here, the metes and bounds description was clearly used in the sense of reiteration; the deeds rely

for a boundary on "the center line of present lane road," and continue, "the center line of which is described as . . . ." This merely reiterative role of the metes and bounds description manifests the drafter's intent that the actual center line of the road controls and supports the trial court's conclusion that the actual center line demarks the boundary. CP at 322 (Conclusion of Law 2.15).

IV

Ms. Coyle's assignment of error 18 challenges the form of the judgment, arguing that RCW 4.64.030(2)(b) requires that the judgment summary include some description of the property at issue and a reference to its full legal description on the first page.[6] A judgment reforming a deed and easement arguably does not "provide[] for the award of any right, title, or interest in real property" triggering application of the statutory requirement, although the notice-providing purpose of the requirement would be served by applying it in reformation cases. We need not decide whether the requirement applies, however, because even if it does, the judgment includes a legal description of the land at issue on its second, third, and fourth pages. Substantial compliance with the statute is all

[6] RCW 4.64.030(2)(b) provides that "[i]f the judgment provides for the award of any right, title, or interest in real property, the first page must also include an abbreviated legal description of the property in which the right, title, or interest was awarded by the judgment, including lot, block, plat, or section, township, and range, and reference to the judgment page number where the full legal description is included, if applicable; or the assessor's property tax parcel or account number, consistent with RCW 65.04.045(1) (f) and (g)."

that is required and is all that is reasonably possible where the relief granted by the court makes it difficult or impossible to include the entire judgment summary on the first page. *Hu Hyun Kim v. Lee*, 102 Wn. App. 586, 592, 9 P.3d 245 (2000), *rev'd on other grounds*, 145 Wn.2d 79, 31 P.3d 665, 43 P.3d 1222 (2001). Ms. Coyle has not shown that any substantive requirement of the statute has been violated or identified any remedy that is necessary or appropriate.

V

The Butlers request attorney fees and costs on appeal pursuant to RCW 4.84.185, which permits a trial court to make such an award where a civil action is found to be frivolous. RAP 18.9(a) provides that we may impose terms or sanctions against a party, including sua sponte, where that party "uses these rules for the purpose of delay, files a frivolous appeal, or fails to comply with these rules." In determining whether to impose terms or sanctions under RAP 18.9, we must bear in mind (1) that a civil appellant has a right to appeal under RAP 2.2; (2) all doubts as to whether the appeal is frivolous should be resolved in favor of the appellant; (3) the record should be considered as a whole; (4) an appeal that is affirmed simply because the arguments are rejected is not frivolous; and (5) an appeal is frivolous if there are no debatable issues upon which reasonable minds might differ and it is so totally devoid of merit that there was no reasonable possibility of reversal. *Tiffany Family Trust Corp. v. City of Kent*, 155 Wn.2d 225, 241, 119 P.3d 325

(2005) (quoting *Green River Cmty. Coll. Dist. No. 10 v. Higher Educ. Pers. Bd.*, 107 Wn.2d 427, 442-43, 730 P.2d 653 (1986)).

The vast majority of the assignments of error made by Ms. Coyle to the conduct and outcome of trial can be characterized as frivolous; resolving all doubts in her favor, however, we cannot say that the patent and latent ambiguities in the deeds and easement gave rise to no debatable issues. Her appeal of the trial court's contempt order can be characterized as frivolous in its entirety. The appeal of a contempt order does not open the door to renewed or new collateral attacks on the underlying judgment, which were the only arguments made by Ms. Coyle; all such arguments were totally devoid of merit.

Given the rules' appropriate regard for a party's right of appeal, we are constrained to limit fee awards to cases where an appeal is frivolous in its entirety. Having consolidated the cases for appeal on our own motion, they were briefed on a consolidated basis and must be considered as one. We therefore deny the Butlers' request for fees and costs on appeal. We do so with a cautionary note to Ms. Coyle that she should take care not to reargue matters whose resolution is final and not to raise new issues that were required to be raised if at all in the first trial; if she does so, she faces a real risk of being assessed fees and costs as sanctions.

VI

The parties were notified approximately two months in advance that Ms. Coyle's

appeal was set for oral argument at 9:00 a.m. on October 27, 2011. Less than an hour before the scheduled argument, Ms. Coyle telephoned the office of the clerk to report that she would not appear due to an unexplained family emergency. The Butlers' lawyer, Chris Montgomery, did appear, having prepared for oral argument and driven to Spokane from Colville for the purpose of the hearing.

At the beginning of the docket, the chief judge advised Mr. Montgomery that the court was prepared to decide the appeal without oral argument and asked if the Butlers would waive argument; on behalf of his clients, Mr. Montgomery respectfully declined. The judge then notified him that notwithstanding his declination, the panel was of the unanimous view that it could, and it therefore would, decide the appeal on the briefs.

The Butlers have now moved for terms and elaborated on Mr. Montgomery's reasons, stated briefly on October 27, for believing that Ms. Coyle's nonappearance should not be excused by the court. In response, Ms. Coyle declines to explain her absence, which she characterizes as a private matter.

The Butlers should not be required to bear the expense of their lawyer's preparation and travel to Spokane for the hearing, which was rendered pointless through no fault of their own. They are awarded the $991.16 in terms requested by their motion.

We affirm the trial court's "Reformation of Easement, Reformation of Deeds, Permanent Injunction and Judgment" entered April 20, 2010, and its "Order Finding

Defendant in Contempt; and for Entry of Judgment" and its "Judgment" entered November 5, 2010 in the contempt proceeding.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

_____
Siddoway, J.

WE CONCUR:

_____
Kulik, C.J.

_____
Korsmo, J.