IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

RAY M. COLLINS and CAROL J. COLLINS,

Plaintiffs,

vs.

DAVID W. HALL and MARGARET R. HALL Trustees, and their successors in trust, of the D & M Hall Community property trust, dated March 14, 2005, and also all other persons or parties unknown claiming a right, title, estate, lien, or interest in the real estate described in the complaint in this action,

Defendants.

FILED IN CHAMBERS
State of Alaska
First Judicial District at Juneau
by KJK on: July 14, 2017

CASE NO. 1JU-14-00771 CI

Faulkner Banfield, P.C.
8420 Airport Boulevard, Suite 101
Juneau, Alaska 99801-6924

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Trial of this matter was heard by the Superior Court for the State of Alaska, First Judicial District at Juneau, by Judge Philip M. Pallenberg on November 28th through December 1st, and on December 7th, 2016. Ray Collins and Carol Collins were present and represented by Joseph Geldhof. David Hall and Margaret Hall were present and represented by Lael Harrison. All parties and counsel appeared in person, except that on December 7th the Collinses appeared telephonically (Mr. Geldhof, however, was present in the courtroom). Based on the evidence and testimony presented at trial, the court makes the following findings of fact and conclusions of law.

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FINDINGS OF FACT

1. Both parties are residents of Juneau, Alaska, and the property at issue in this case is within the First Judicial District, therefore this court had jurisdiction over the matter and venue was proper.
2. Ray and Carol Collins own Lot 14 Area 1, Colt Island Recreational Development according to Plat 75-11, U.S. Survey 1755, Juneau Recording District, First Judicial District, State of Alaska.
3. David and Margaret Hall own Lot 15, Area 1, Colt Island Recreational Development according to Plat 75-11, U.S. Survey 1755, Juneau Recording District, First Judicial District, State of Alaska. They own this property as trustees of the D&M Hall Community Property Trust dated March 14, 2005.
4. The property belonging to the Collinses shares a boundary with the property belonging to the Halls.
5. The Collinses sued the Halls for quiet title to Lot 14 according to a survey recorded as Plat 2014-46, prepared by surveyor John W. Bean. Mr. Bean later amended this survey. The amendment is recorded as Plat 2015-37. The amendment does not alter the boundary shown by Plat 2014-46. According to the boundary shown by these surveys, an outhouse and shop on Lot 15 encroach onto Lot 14.
6. The Halls counterclaimed against the Collinses for quiet title to Lot 15 according to a survey recorded as Plat 2012-32, prepared by surveyor Mark Johnson with

R&M Engineering. This survey depicts the boundary found by Mr. Bean as well as the boundary found by R&M Engineering, and they are significantly different. The boundary between Lots 14 and 15 found by R&M Engineering is about 18' to the south of the boundary found by Mr. Bean.

7. The most significant difference between the R&M Engineering survey and Mr. Bean's amended survey is the "point of beginning" used.

8. The correct point of beginning for Plat 75-11, U.S. Survey 1755 is a monument created by U.S. Survey 1755 called "Witness Corner to Meander Corner 1" ("WCMC1"). Plat 75-11 is a "paper plat" that establishes no monuments, but it is an accurate representation of U.S. Survey 1755. Therefore, monuments established by U.S. Survey 1755 are used to locate lots created by Plat 75-11. U.S. Survey 1755 established only one monument, WCMC1. Therefore, WCMC1 is the correct point of beginning for Plat 75-11.

9. The field notes to U.S. Survey 1755 describe the creation of that monument. First, the notes explain that the true point of beginning is "Meander Corner 1," located 57.87 chains (3,819.42 feet) from United States Land Monument 1285 ("USLM 1285") on Admiralty Island at a bearing of S31°13'W. The notes then explain:

> As the above true point for meander corner falls at an unsafe place for corner, I establish a witness corner at a point which bears S.38°22'E, 0.21 ch[ain]s dist[ant] from this true corner point, as follows: On the sharply sloping face of a bedrock ledge, showing 2 ft. x 3 ½ ft. above ground and facing northwest, I mark with cross (+) and with letters: WC MC1 S1755, for witness corner to Cor[ner] No. 1 and M[eander] C[orner] of this survey.

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10. Because the field notes give the distance and bearing between USLM 1285 and Meander Corner 1, and also the distance and bearing between Meander Corner 1 and WCMC1, it is possible to calculate the distance and bearing between WCMC1 and USLM 1285. According to the information given in the field notes, the distance between WCMC1 and USLM 1285 is 3,814.61 feet and the bearing is N31°24'42"E.

11. In their survey for the Halls, R&M Engineering used as the point of beginning a monument engraved with a cross and the letters "WCMC1 S1755." R&M Engineering determined the distance between this monument and USLM 1285 to be 3813.49 feet, and the bearing to be N31°24'42"E.

12. In his amended survey for the Collinses, Mr. Bean used as a point of beginning a monument he created and determined to be Meander Corner 1 to U.S. Survey 1755 using as WCMC1 a very faint "x" engraved in rock without numbers or letters. The monument he placed where he determined Meander Corner 1 to be is 3,841.62 feet from USLM 1285 at a bearing of S31°13'04"W.

13. Mr. Bean's reason for using this faint "x" as WCMC1 was that, in the 1970s when he prepared Plat 75-11, he believed it was the correct WCMC1 created by U.S. Survey 1755, and he set some "control points" around the island based on it. However, he never recorded any of the surveying work that he did based on that monument or the location of these "control points."

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14. The monument used by R&M Engineering is the monument created by U.S. Survey 1755 and therefore the correct point of beginning for Plat 75-11. The engravings are consistent with the description in the field notes to U.S. Survey 1755, and it is only 1.12 feet closer to USLM 1285 than the field notes to U.S. Survey 1755 describe. This difference of 1.12 feet is likely due to the improvement in surveying equipment and techniques since U.S. Survey 1755 was done in the 1920s. In fact, considering the techniques and equipment available to them at the time, the surveyors who prepared U.S. Survey 1755 in the 1920s were quite accurate.

15. The monument used by Mr. Bean is not the WCMC1 created by U.S. Survey 1755. It does not have engraved numbers and letters as described in the field notes, and it results in a Meander Corner 1 about twenty-two feet further away from USLM 1285 than is described by U.S. Survey 1755.

16. Furthermore, surveying using the monument engraved with numbers and letters, R&M Engineering found the seaward boundary of Lot 15 to run along the beach. The field notes to U.S. Survey 1755 describe the seaward boundary of the survey as being the mean high tide line. Although it is likely that the mean high tide line has receded somewhat due to isostatic rebound, it likely still runs along the beach in the area R&M Engineering found it to be. However, surveying using the faint "x," Mr. Bean found the seaward boundary of Lot 14 to run about half-way up a steep bluff. The effects of isostatic rebound would not be so great as to create a

new bluff where the meander line was in 1927. So the placement of the seaward property line further confirms that R&M Engineering used the monument created by U.S. Survey 1755.

17. It was suggested at trial that the monument used by R&M Engineering was carved after the 1920s. I reject this suggestion as implausible. The suggestion was based on two facts: first, that many people (including Mr. Bean) searched for it without success at various times. Second, that the engravings read vertically (from top to bottom) rather than horizontally (from left to right). First, given the growth of moss and the number of shale rocks on Southeast Alaska beaches, it would not be surprising that some people might have looked unsuccessfully for the monument and others may have found it by dumb luck. Before the engravings were marked with bright chalk in 2008, it might easily have been missed. Second, it is not clear why the engravings are vertical rather than horizontal, but a forger would have no more reason to make them vertical than the original surveyors did. So the fact that the engravings are vertical does not make it more likely that they are the work of a forger.

18. Mr. Howard Lockwood testified that in the 1970s he located a monument in that area engraved with letters and numbers reading horizontally rather than vertically, but I find this testimony not credible. It is unlikely that there is a third monument in that area engraved with numbers and letters horizontally that no one has seen since. It is more likely that Mr. Lockwood misremembered the

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direction of the engravings after the passage of so much time. It was apparent from his testimony that he misremembered other facts from that time period, so he likely also misremembered this one. For example, he testified that the seaward boundary of the subdivision was at the top of the bluff, rather than along the beach where it actually is (the 1927 meander line).

19. I find further support for my conclusion in Alaska Tidelands Survey 1620, recorded as Plat 2004-10, prepared by Mr. Bean in 2002 and recorded in 2004. That survey depicts Tract D of Plat 75-11 and adjacent tidelands. In that survey, Mr. Bean used as the point of beginning the same monument that R&M Engineering used in their survey for the Halls, not the faint "x" that Mr. Bean later used in his amended survey for the Collinses. Mr. Bean did not give a clear explanation why he did this. The only sensible explanation is that Mr. Bean recognized in 2002 that the monument used by R&M Engineering is the correct WCMC1.

20. Finally, Mr. Bean's surveying work in general is made less credible by discrepancies in Plat 75-11 (which he prepared) and in his amended survey for the Collinses. In Plat 75-11, the meander line that runs along the seaward side of Area 1 is stated to be 947.76 feet. However, when all the lots, rights-of-way, and other distances subdivided along that line are added up, the total is 957.26 feet. So all of the lots, rights-of-way, and other distances allocated to that meander line do not fit in it. Also, in his amended survey for the Collinses, Plat 2015-37,

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the meander lines between Meander Corner 1 and Lot 14 are not the same distances or bearings as are written in Plat 75-11. Mr. Bean did not give a clear explanation of why that was so.

21. There was testimony at trial that Lot 15 was originally purchased from the developer Howard Lockwood by George Fisher. Mr. Fisher testified that when he purchased the property there was one stake marking the corner between Lots 15 and 14, but that he was never entirely sure where the property line was. Mr. Fisher testified that stake was gone by the time he sold the property to Mr. and Ms. Hall.

22. Mr. Fisher also testified that he built the outhouse on Lot 15 that Mr. Bean's survey determined encroaches onto Lot 14.

23. Mr. Hall testified that after he and Ms. Hall purchased Lot 15, he tried to locate the property boundaries in 1999. He located a stake that he believed marked the northeast corner of Lot 18, Area 1, and measured 300' feet from it locate the northeast corner of Lot 15 (Lots 18, 17, and 16 in between are each 100' wide). Mr. Hall is not a surveyor but it was apparent from his testimony that he is a careful and meticulous person who likely measured accurately from that stake. Based on that measurement, Mr. Hall set stakes where he believed the boundaries of Lot 15 to be. Those stakes have since been removed but he testified that he believed they were about halfway in between the boundary determined by R&M Engineering and the boundary determined by Mr. Bean.

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24. In 2009, Mr. Bean placed the corners on Lot 14 that he later documented in Plats 2014-46 and 2015-37. He placed those corners by measuring off corners he placed on a nearby lot in the 1990s. The corners he placed in the 1990s were based on the unrecorded control points he set in the 1970s based on the erroneous WCMC1.

25. Lot 15 is encumbered by covenants recorded at Book 127, Page 934, Juneau Recording District, First Judicial District, State of Alaska on January 25, 1977. The Collinses have alleged that the Halls have violated covenant number five regarding building setbacks and number nine regarding sewage disposal.

26. According to the property boundaries found by Mr. Bean, the Halls' outhouse and shop encroach on Lot 14. According to the property boundaries found by R&M Engineering, the Halls' outhouse and shop are about fifteen feet from the property line. Covenant number five calls for buildings to be set back at least twenty feet from property lines.

27. The Halls sewage disposal system is a pit privy outhouse. It has been in place since it was constructed by Mr. Fisher in the 1980s without complaint either as to its location or as to its sewage disposal system.

28. The covenants provide that they may be enforced as follows: any Colt Island property owner may send a complaint to a violator outlining the nature of the violation and a suggested remedy. Within thirty days of the complaint,

> a special meeting of the Board [of directors of the Colt Island Alaska Recreational Association] will be called, where the matter will be presented. A

ruling will be rendered. If this ruling is not satisfactory then a vote will be taken by all the registered Lot and Tract owners. The outcome of this vote will be final.

No Colt Island Alaska Recreational Association was ever formed. In this case, no vote of the registered lot and tract owners was taken regarding the Halls' alleged violations.

29. There was testimony that a number of buildings on Colt Island are less than twenty feet from property lines and that there are a number of other outhouses on the Island. There was also testimony that those buildings and outhouses have never been the subject of violation complaints.

CONCLUSIONS OF LAW

1. The court is first tasked with determining which survey accurately depicts the boundary line between Lots 14 and 15, Area 1, Colt Island Recreational Development, according to Plat 75-11, U.S. Survey 1755, Juneau Recording District, First Judicial District, State of Alaska.
2. Property lines are determined by the property descriptions contained in the deeds, and the instruments referenced in the deeds. In this case, those instruments are Plat 75-11 and U.S. Survey 1755. Because Plat 75-11 does not establish any monuments, the property lines created by Plat 75-11 flow from WCMC1 established by U.S. Survey 1755. Plat 2012-32 prepared by R&M Engineering for the Halls uses the correct WCMC1 as the point of beginning, and is otherwise consistent with the recorded documents in all respects. Therefore I find that it

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accurately depicts the boundary between Lots 15 and 14, Area 1, according to Plat 75-11 and U.S. Survey 1755.

3. The final survey prepared by Mr. Bean for the Collinses does not use the correct WCMC1 and has other unexplained discrepancies making it less credible.

4. The equitable doctrine of "boundary by acquiescence" can alter property lines established in a deed. According to *Lee v. Konrad*, 337 P.3d 510, 520 (Alaska 2014):

> [A] boundary line is established by acquiescence where adjoining landowners (1) whose property is separated by some reasonably marked boundary line (2) mutually recognize and accept that boundary line (3) for seven years or more.

5. *Lee v. Konrad* does not state the burden of proof by which a party must establish these elements. The doctrine of boundary by acquiescence is similar to the doctrine of adverse possession, and the Alaska Supreme Court has held that the burden of proof for that doctrine is clear and convincing evidence.[1] And the *Lee v. Konrad* decision notes that the trial court in that case determined the burden of proof to be clear and convincing evidence.[2] Furthermore, other courts to have considered the question have determined that boundary by acquiescence must be established by clear and convincing evidence.[3] Therefore, I determine the burden of proof by which the Collinses would have to establish a boundary by

[1] *Nome 2000 v. Fagerstrom*, 799 P.2d 304, 309 (Alaska 1990).
[2] 337 P.3d at 516.
[3] *See e.g. Essential Botanical Farms, LC v. Kay*, 270 P.3d 430, 432 (Utah 2011); *Anchorage Realty Trust v. Donovan*, 880 A.2d 1110, 1112 (Me. 2004).

acquiescence in order to move the property lines from those established by the deeds to be clear and convincing evidence.

6. I do not find clear and convincing evidence that the boundary established by Mr. Bean in 2009 and recorded in Plats 2014-46 and 2015-37 was established by acquiescence. It is apparent that the Halls never acquiesced in the boundary set by Mr. Bean, and less than seven years passed before this lawsuit. Before Mr. Bean set corners in 2009, both Mr. Fisher and Mr. Hall testified that the boundary between Lots 14 and 15 was not marked while the Halls owned the property. However, Mr. Fisher testified that when he purchased the property there was one stake that he believed marked the property boundary. There was not clear testimony about who set that stake or how it was set. Nor was there evidence about the location of that stake (which was gone by the time the Halls purchased the property in 1994). There was no evidence regarding whether it was along the property boundary determined by Mr. Bean in 2009. The fact that Mr. Fisher built his outhouse over the property boundary determined by Mr. Bean in 2009 indicates that the stake was not on that boundary. Alternatively, if the stake were along Mr. Bean's 2009 boundary, it shows that Mr. Fisher did not in fact acquiesce in that boundary line. Furthermore, in 1999, Mr. Hall located a stake on Lot 18 likely set around the same time as the stake observed by Mr. Fisher. When Mr. Hall used that stake to locate his property boundary, he found the boundary to be about ten feet away from where Mr. Bean located the

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property boundary in 2009. This casts further doubt on whether the stakes set in the 1970s were consistent with the boundaries found by Mr. Bean in 2009. Finally, Mr. Bean's surveying work presented in this case is unreliable in other ways, specifically in the discrepancies in Plat 75-11 and in Plat 2015-37. These discrepancies cast further doubt on whether the boundary he located in 2009 was consistent with the stake testified to by Mr. Fisher.

7. Additionally, although the Alaska Supreme Court has not considered such a case, other courts have held that in order to find a boundary by acquiescence, purchasers must be on notice of the location of the boundary. In *Anderson v. Fautin*, 379 P.3d 1186, 1189 (Utah 2016), the Utah Supreme Court explained that, when the doctrine of "boundary by agreement" is being invoked against successors in interest to the parties who originally agreed to the boundary, there must be "demarcation of a boundary line such that a reasonable party would be placed on notice that the given line was being treated as the boundary line between the properties." Because the stake testified to by Mr. Fisher was gone when the Halls purchased Lot 15, they were not on notice of any purported boundary by acquiescence.

8. I am not aware of any other equitable doctrine that would warrant altering the property boundaries from those created by the deeds and written instruments.

9. This court recognizes that many property boundary disputes likely remain on Colt Island, and this case cannot resolve them. This court can only adjudicate the

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rights of the parties before it. However, the court encourages the property owners on Colt Island to seek an amicable island-wide solution to those remaining problems.

10. This court further holds that the Collinses cannot enforce covenants number nine and number five against the Halls as to the location of their outhouse and shop, and as to their sewage disposal system. To the extent these covenants would prohibit pit privies or require the Halls' outhouse and shop to be farther from Lot 14, they have been abandoned and it would be inequitable to enforce them against the Halls. *See BBP Corp. v. Carroll,* 760 P.2d 519, 523-24 (Alaska 1988).

CONCLUSION

Based on the Findings of Fact and Conclusions of Law stated above, I hold that the defendants David Hall and Margaret Hall, as trustees of the D&M Hall Community Property Trust dated March 14, 2005, are entitled to quiet title against the plaintiffs Ray Collins and Carol Collins, and those claiming through them, to Lot 15, Area 1, Colt Island Recreational Development according to Plat 75-11, U.S. Survey 1755, Juneau Recording District, First Judicial District, State of Alaska as surveyed by R&M Engineering in Plat 2012-32. The Plaintiffs' claims are denied in their entirety. This court will issue final judgment in favor of the Halls and a clerk's deed quieting title in the Halls according to this court's holding.

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DATED 7/6/17

Judge Philip M. Pallenberg

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Superior Court Clerk

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

RAY M. COLLINS and CAROL J. COLLINS,

Plaintiffs,

vs.

DAVID W. HALL and MARGARET R. HALL Trustees, and their successors in trust, of the D & M Hall Community property trust, dated March 14, 2005, and also all other persons or parties unknown claiming a right, title, estate, lien, or interest in the real estate described in the complaint in this action,

Defendants.

FILED IN CHAMBERS
State of Alaska
First Judicial District at Juneau
by KJK on: July 6, 2017

CASE NO. 1JU-14-00771 CI

Faulkner Banfield, P.C.
8420 Airport Boulevard, Suite 101
Juneau, Alaska 99801-6924

LODGED 12/21 BY PS
DATE INITIALS

ORDER

Final Judgment in this matter having been entered, the *lis pendens* recorded on July 31, 2014, at serial number 2014-003387-0, Juneau Recording District, First Judicial District, State of Alaska, is hereby expunged.

IT IS SO ORDERED.

DATED 7/6/17.

Judge Philip M. Pallenberg

SEAL OF THE TRIAL COURTS OF THE STATE OF ALASKA FIRST JUDICIAL DISTRICT

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

RAY M. COLLINS and CAROL J. COLLINS,

Plaintiffs,

vs.

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Defendants.

FILED IN CHAMBERS
State of Alaska
First Judicial District at Juneau
by KJK on: July 6, 2017

CASE NO. 1JU-14-00771 CI

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FINAL JUDGMENT

This matter having been tried to this court, and this court having found in favor of defendants David W. Hall and Margaret R. Hall on both the plaintiffs' claims and the defendants' counterclaims:

IT IS ORDERED that judgment is entered in favor of defendants David W. Hall and Margaret R. Hall against defendants Ray M. Collins and Carol J. Collins, jointly and severally, as follows:

a. All right, title and interest that Ray M. Collins and Carol J. Collins, and those claiming through them, have in Lot 15, Area 1, Colt Island Recreational Development according to Plat 75-11, U.S. Survey 1755, as surveyed in Plat 2012-

32, Juneau Recording District, First Judicial District. This transfer of interest shall be made by Deed of the Clerk of Court in the form attached to this Final Judgment.

b. As the prevailing party, defendants David W. Hall and Margaret R. Hall may move for attorney's fees and file a bill of costs within ten (10) days of the date of distribution of this judgment. The amount awarded for fees and costs will be entered below upon the court's ruling on the motion for attorney's fees and the clerk's assessment of costs.

c. Attorney's fees: $_____

Date awarded: _____

Judge: _____

d. Costs: $_____

Date awarded: _____

Clerk: _____

e. **Total Judgment:** $_____

f. Post-judgment interest rate: _____%

DATED 7/6/17

Judge Philip M. Pallenberg

SEAL OF THE TRIAL COURTS OF THE STATE OF ALASKA FIRST JUDICIAL DISTRICT

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICTAT JUNEAU

RAY M. COLLINS and CAROL J. COLLINS,
Plaintiffs,

vs.

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Defendants.

FILED IN CHAMBERS
State of Alaska
First Judicial District at Juneau
by KJK on: July 6, 2017

Case No.: 1JU-14-00771 Civil

ORDER

THIS MATTER having come before the court on a motion by plaintiff seeking a brief extension in which to prepare and review the transcript of this court's oral determination made in open court on December 14, 2016, and having considered this matter,

NOW THEREFORE, the motion is granted.

Plaintiffs have until the close of business on January 4, 2017 to file additional objections or comments related to the proposed Findings of Fact and Conclusions of Law prepared by defendants in this case.

DATED this 6 day of ~~December~~ July, 2017 at Juneau, Alaska.

SUPERIOR COURT for the
STATE of ALASKA

Phillip M. Pallenberg,
Superior Court Judge

SEAL OF THE TRIAL COURTS OF THE STATE OF ALASKA FIRST JUDICIAL DISTRICT

LODGED 12/27/16 DATE BY HB INITIALS

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