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DISTRICT III

August 4, 2026

To:

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Circuit Court Judge
Electronic Notice

Brent William Jacobson
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Kelly Schremp
Clerk of Circuit Court
Marathon County Courthouse
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Cal R. Tillisch
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You are hereby notified that the Court has entered the following opinion and order:

2025AP581

Mark D. Kramer v. Justin P. Gaffney (L. C. No. 2021CV506)

Before Stark, P.J., Hruz, and Gill, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Mark Kramer and the David and Donna Kramer Revocable Trust Dated October 31, 2011 (collectively, Kramer) appeal from an order that amended a prior judgment granting Justin and Emily Gaffney¹ title to a disputed strip of land located along the border of the parties' adjoining properties. Kramer challenges the amended legal description of the boundary. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for

¹ We will refer to Justin and Emily Gaffney collectively as "the Gaffneys." When necessary, we will refer to them individually by their first name.

summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).² We reverse and remand on the ground that the circuit court improperly relied upon evidence outside of the record when it revised the legal description of the disputed area’s boundary.

On May 9, 2024, following a trial to the circuit court, the court entered a judgment awarding the Gaffneys title to the disputed area by means of adverse possession.³ The following day, Kramer asked the court, by letter, to correct what he characterized as a “typographical error” in the legal description of the new boundary, which transposed the terms “eastern” and “western” from the way they were depicted in a survey plat entered into the record as trial exhibit 91. Then, on May 21, 2024, Kramer filed a motion seeking to modify the legal description of the new boundary in several additional respects to conform with Justin’s trial testimony. Specifically, Kramer asserted that the new boundary should be located a little less than 80 inches south of a maple tree in the Gaffneys’ backyard, 73 inches south of the edge of the Gaffneys’ house, and 52 inches south of the edge of the Gaffneys’ driveway. According to Justin’s testimony, this line would correspond to where he believed an old fence and line of trees had once stood.

In response, the Gaffneys agreed that the original judgment had transposed the words “eastern” and “western” in the description of the new boundary, suggested that the circuit court attach exhibit 91 to its decision, and proposed their own revisions to the legal description to better conform to what was depicted in that exhibit. Kramer objected to the Gaffneys’ proposed

² All references to the Wisconsin Statutes are to the 2023-24 version.

³ Although the Gaffneys devote a considerable portion of their brief to defending the circuit court’s determination that the elements of adverse possession were established, we do not discuss the details of that decision because Kramer has not challenged it on appeal.

revisions, again asserting that the north/south reference points should be calculated from the landmarks Justin described in his testimony, rather than from the previously recorded boundary line depicted in exhibit 91. In reply, the Gaffneys asked the court to limit its modification of the judgment to changing the eastern and western references.

The circuit court held a nonevidentiary hearing on Kramer's motion. At the hearing, Kramer suggested that the Gaffneys should obtain, or the court should order, a new survey to show where the line would be if it were calculated from the landmarks described in Justin's testimony, rather than from the prior survey line depicted in exhibit 91. The court then set a schedule for the parties to brief the issue.

In their posthearing brief, the Gaffneys agreed that the boundary line established by adverse possession could be calculated from the tree, house, and driveway landmarks described in Justin's trial testimony, as Kramer had requested. The Gaffneys obtained and attached a new survey showing where they believed that line would be, although they also asserted that it was not necessary to refer to the new survey in order to revise the judgment to conform to the testimony at trial.

In Kramer's posthearing brief, accompanied by an affidavit from counsel, Kramer disputed the accuracy of the new survey. He asserted that a surveyor's marker on the western end of the boundary was placed approximately 8 inches further south of a stump from the old tree line referred to in Justin's testimony, and that the 80 inches the surveyor measured from the maple tree on the eastern side ended up approximately 31 inches further south than where the fence once stood. The Gaffneys objected to counsel's affidavit on the dual grounds that it

contained hearsay and constituted inadmissible posttrial evidence regarding the location of the property boundary reference points.

The circuit court stated that it would “not substitute its observations for that of a professional surveyor,” and it found that the new survey was “reasonably accurate” in giving effect to the trial testimony. The court then amended the judgment to state that the land adversely possessed is a strip of land as “depicted and described” in the new survey map, which it incorporated by reference.

Although neither party addresses it, our analysis must begin with the identification of the authority under which the circuit court acted to amend the judgment. Kramer’s modification motion cited WIS. STAT. § 805.16, but that provision applies only to motions after verdict following a jury trial. The court treated Kramer’s request to modify the judgment as a motion for clarification, which calls upon a court’s inherent authority. However, the amendment the court ultimately ordered did not merely clarify an ambiguous term in the original judgment, but rather it made substantive changes to the legal description that the court determined had failed to conform to the evidence at trial. We conclude that the court’s authority came from WIS. STAT. § 805.17(3), which authorizes motions for reconsideration following a trial to the court based upon newly discovered evidence or a manifest error of law or fact. See *Koepsell’s Olde Popcorn Wagons, Inc. v. Koepsell’s Festival Popcorn Wagons, Ltd.*, 2004 WI App 129, ¶44, 275 Wis. 2d 397, 685 N.W.2d 853.

We review reconsideration decisions under the erroneous exercise of discretion standard. *Id.*, ¶6. “A circuit court erroneously exercises its discretion when it fails to examine the relevant facts, applies the wrong legal standard, or does not employ a demonstrated rational process to

reach a reasonable conclusion.” *Borreson v. Yunto*, 2006 WI App 63, ¶6, 292 Wis. 2d 231, 713 N.W.2d 656.

As we have observed, the applicable legal standard in this case is that of manifest error. A manifest error refers to a “self-evident” mistake due to “oversight, omission, or miscalculation,” which tends to “immediately reveal itself as such to reasonable legal minds.” *Schinner v. Schinner*, 143 Wis. 2d 81, 92-93, 420 N.W.2d 381 (Ct. App. 1988). A manifest error “does not, and should not, embrace those kinds of alleged errors which lend themselves to legitimate legal debate and difference of opinion viewed from the standpoint of reasonable advocacy.” *Id.* at 93.

It is undisputed that the legal description in the original judgment contained two manifest errors of fact because it inadvertently transposed the terms “eastern” and “western” and measured north/south distances from an old survey line, rather than from landmarks described in the testimony given at trial. It is not self-evident, however, that the new survey corrects the second error, because there is a factual dispute over whether the surveyor accurately identified the location of the landmarks from Justin’s testimony.

Faced with this factual dispute, the circuit court had two options. It could have disregarded the new survey and amended the judgment using the descriptions given in the testimony, or it could have held an evidentiary hearing to resolve the parties’ factual dispute over the accuracy of the new survey. What it could not do was make a determination as to the new survey’s accuracy or the surveyor’s credibility without hearing from the surveyor or giving Kramer an opportunity to cross-examine the surveyor or present an alternate survey. We therefore reverse and remand with directions that the court either amend the judgment using

language derived from the trial testimony or hold an evidentiary hearing before determining whether the new survey accurately represents the trial testimony.

Upon the foregoing,

IT IS ORDERED that the order is summarily reversed and the cause remanded with directions. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals