

2010 WL 9524851 (Alaska Super.) (Trial Pleading)  
Superior Court of Alaska.  
Third Judicial District  
Anchorage Borough

**Ronald KAYLOR and Jean K. Kaylor, Plaintiffs,**  
**v.**  
**David MCCARREY and Donna McCarrey, Defendants.**

No. 3AN-10-7799 Civil.  
May 27, 2010.

**Complaint**

[Calvin R. Jones](#), Jones & Colver, LLC, 3201 "C" Street, Suite 203, Anchorage AK 99503, Attorney for Plaintiffs.

COMES NOW the plaintiffs, Ronald Kaylor and Jean K. Kaylor, by and through counsel, and for their complaint against defendants, David McCarrey and Donna McCarrey, and for their causes of action against defendants, state and allege as follows:

**GENERAL ALLEGATIONS**

1. Plaintiffs are the owners of real property located near Elmore Road, with a street address of 4500 East 135<sup>th</sup> Avenue, with the legal description being:

Lot Seven (7), Block Two (2), Olson Heights Subdivision, Plat No. 79-68, Anchorage Recording District, Third Judicial District, State of Alaska.

2. Lot fourteen (14) of Block Two (2) is located to the immediate south of the Plaintiffs' Lot Seven (7). Lot Fourteen (14) is encumbered by a road easement of fifty feet (50') on the north side of the lot.

3. A dirt road runs from Elmore Road in an easterly direction and is located on the northern areas of the southerly lots (Lots 13-20) including the defendants' Lot 14. (Aerial Photograph - Exhibit 1; Plats -Exhibit 2),

4. Plaintiffs purchased their home in early 1988 and have resided therein continuously since that time. The home on Lot 14, presently owned by the defendants, had construction commenced on it about three years ago, with the defendants purchasing the same about one and one-half years ago.

5. On the south portion of Plaintiffs' Lot 7, plaintiffs have a cleared area of approximately 80 feet wide for parking. Plaintiffs' septic system is largely located on the west side of the Lot, but standpipes for such system exist through the south portion of the lot below the house.

6. On or about Monday, May 24, 2010 by letter from the Defendants' counsel Plaintiffs were told that a fence would be erected on their south property line running east-west the entire width of their lot, and the with seventy-two (72) hours notice we could get the intended, but unknown size gate opening.

7. East 136<sup>th</sup> Avenue is utilized by many of the homes adjacent thereto, including the defendants.

**COUNT I**

**(Prescriptive Easement)**

8. While East 136<sup>th</sup> Avenue, upon information and belief, has not been accepted by the city for maintenance, and is a small dirt road, Plaintiffs have utilized such roadway that is located in whole or in part, upon the defendants' northern portion of their Lot 14. (See Aerial Photograph -Exhibit -2.

9. Upon information and belief the Northern Portion of Lot 2 contains a fifty foot (50') right of way easement for road purposes. Plaintiffs have continually and openly, used the roadway for a period in excess of fifteen (15) years to access the southern portion of their lot, and in all other respects met the requirements for a prescriptive easement.

10. The placement of a fence in accordance with the defendants notice unreasonably impairs the past continuous use by the Plaintiffs, including the exiting onto and use of East 136<sup>th</sup> Avenue.

## COUNT II

### (Injunctive Relief)

11. The defendants' action of placing a fence within the intended location as stated in the letter from their counsel, and as further learned directly from the defendants, unreasonably interferes with valuable property rights of the Plaintiffs, and causes irreparable harm to the continued access to the southern portion of their lot. The movement of the septic system, and/or providing additional parking area on the south side of plaintiffs' lot from the north side is not reasonably possible and erodes the value of their lot and home.

12. Plaintiffs are entitled to immediate relief in the form of a Temporary Restraining Order prohibiting the placement of the fence in such a manner that restricts their past long term use of the south access, to be followed by a permanent injunction effecting the present owners of Lot 14 and attaching to the lot itself.

WHEREFORE, Plaintiffs pray for the following relief:

1. For damages to be determined in an amount to be proven.
2. For the issuance of both a preliminary injunction and a permanent injunction following, in such form and conditions as appropriate;
3. For costs and attorney's fees.
4. For such other and further relief as the court deems appropriate.

DATED this 27 day of May, 2010.

Jones & Colver, LLC

By: <<signature>>

Calvin R. Jones

Alaska Bar No. 7610109