

McCarrey v. Kaylor

[PROPERTY LAW]

In *McCarrey v. Kaylor*,^[1] the supreme court held that the Federal Land Policy and Management Act (“FLPMA”) does not terminate classifications created by the Small Tract Act.^[2] The Kaylor owned a property directly adjacent to a property owned by the McCarreys.^[3] The McCarreys’ property lot had its origins in the Small Tract Act, an act that authorized the sale of public lands to private parties.^[4] Furthermore, the deed accompanying the McCarrey lot reserved a fifty-foot right-of-way that allowed access to a section of the Kaylor lot.^[5] Eventually, the McCarreys planned to build a fence that would restrict the Kaylor’s use of the right-of-way.^[6] The Kaylor then commenced this action to establish a prescriptive easement and obtain an injunction preventing the erection of the proposed fence.^[7] On appeal, the McCarreys argued that the right-of-way on their land was terminated when the Small Tract Act was repealed by the FLPMA.^[8] The supreme court affirmed the lower court’s decision, explaining that the right-of-way survived the repeal of the Small Tract Act because the FLPMA did not explicitly terminate the classifications created by the Small Tract Act, one of which formed the basis for this right-of-way.^[9] The court further reasoned that such classifications survived since the Bureau of Land Management’s regulations stated that the classifications created by the Small Tract Act remained effective despite the Act’s repeal.^[10] Furthermore, the court noted that the FLPMA was limited in scope to public lands and that it probably did not affect the private land interests involved here.^[11] Affirming the lower court’s decision, the supreme court held that the Federal Land Policy and Management Act (“FLPMA”) does not terminate classifications created by the Small Tract Act.

^[1] 301 P.3d 559 (Alaska 2013).

^[2] *Id.* at 567.

^[3] *Id.* at 561.

^[4] *Id.* at 561, 565.

^[5] *Id.* at 562.

^[6] *Id.* at 561.

^[7] *Id.*

^[8] *Id.* at 564.

^[9] *Id.* at 565.

^[10] *Id.* at 566.

^[11] *Id.*