Estoppel

More Notes

1. Traversing the Law: When Estoppel Has the Right-of-Way – Jefferey Lucas – POB
2. Glenn Hwy MP 118 North – accepting BLMs chord definition of highway ROW, once mapped by DOT should state be estopped from asserting an alternative interpretation.
3. State is not bound by the actions of individual public employees:
    a. There is some case law on this. (Bowers?
    b. Disposal of land interests a Commissioner authority, delegated to Regional Director, can action by staff result in a disposal?

State of Alaska v. Vernon Dale Simpson (397 P.2d 288, Alaska 1964)

The property owners in *State v. Simpson* argued that equitable estoppel precluded the government from requiring them to move their improvements. The Alaska Supreme Court reversed the trial court stating: "We hold that the right of way dedication along Charcoal Boulevard, now known as Tongass Avenue, was held in trust for the public. The failure of municipal and other governmental officers to affirmatively assert governmental rights where the dedicated but as yet unused street was being occupied by appellee and his predecessors cannot serve as a basis for equitable estoppel."

State v. Alaska Land Title Ass'n (667 P.2d 714, 725-26 Alaska 1983)

This case holds that published land orders impart constructive notice of easements, barring "innocent purchaser" estoppel claims.

Keynote: "Because publication of land orders in Federal Register imparted constructive notice of easements which they created, that notice made reliance unreasonable, and thus State was not estopped from claiming any easements under orders here involved."

"In the seventh claim, plaintiffs contend that the State is estopped from claiming any easements under the orders here involved. The State responds that constructive notice defeats the estoppel claim. Estoppel requires "the assertion of a position by conduct or word, reasonable reliance thereon by another party, and resulting prejudice." Plaintiffs claim that the State has asserted by conduct that it claims no easements by allowing the owners to develop their property inconsistently with the easements, and by not recording the land orders. They assert that reasonable reliance on that assertion has taken place. Because we have already found that publication of the land orders imparts constructive notice of the easements which they create, that notice makes plaintiffs' reliance unreasonable. Thus, the estoppel claim lacks merit. The ninth claim of plaintiffs is based on the fact that the property owners' patents involved here did not expressly refer to any land order easements.

The premise of this argument is that a patent which does not say that it is issued subject to a public easement operates to transfer the property free from the easement. We rejected this premise in *Green.* We held there that an unexpressed DO 2665 easement was effective. Similarly, in *Girves v. Kenai Peninsula Borough,* we affirmed a trial court ruling that a right-of-way not expressed in a patent was effective: At the outset Girves notes that neither her "Notice of Allowance", nor her patent contained

any express reservation of rights-of-way in favor of any public body. However, the absence of an express reservation of easement does not preclude the borough from showing that a right-of-way was established prior to the issuance of these documents. We cited as authority for that statement *State v. Crawford, 7 Ariz.App. 551, 441 P.2d 586 (1968)*. That case aptly states: [I]t is also clear from cases decided under *43 U.S.C. § 932* that a subsequent patentee takes subject to previous right-of-ways established under the grant contained in that federal statute. No contrary authority has come to our attention.... The silence of the patents does not preclude the State from showing the full extent of its right-of-way established prior to the time when the patents were issued to plaintiff's predecessors."

U.S. Smelting, Refining & Mining Co. v. Wigger (684 P.2d 850, Alaska 1984)

"Quasi-estoppel differs from other forms of estoppel in that it appeals to the conscience of the court to prevent injustice by precluding a party from asserting a right inconsistent with a position previously taken by him, and does not require ignorance or reliance as essential elements. It is necessary, however, that any representation made to the party claiming quasi-estoppel must have been based with full knowledge of the facts."

Sterling Highway Encroachments (memo), AAG Tennant to Beardsley Chief ROW, August 1, 1989

"As a general rule, the theory of estoppel does not extend to state governments. The essential elements of the doctrine of equitable estoppel are:

1. Assertion of a position by conduct or words.
2. Reasonable reliance on that position by another.
3. Resulting prejudice to the relying party.

The *Simpson* decision was based upon earlier cases from Oklahoma and Oregon which held that the government could no, absent express, affirmative action, be estopped from exercising its interest in a street right-of-way. These cases proceeded from the theory that the government held the street rights-of-way in trust for the public in its "governmental capacity", and that a different standard would apply if the claimed estoppel concerned property held in a "proprietary" capacity."

Dressel v. Weeks (779 P.2d 324, Alaska - August 18, 1989)

"The essence of the doctrine of quasi-estoppel is the existence of facts and circumstances making the assertion of an inconsistent position unconscionable. This determination is essentially a factual one and . . . will not be disturbed on appeal unless the findings on which it is based are clearly erroneous. . . . Among the many considerations which may indicate that an inconsistent position is unconscionable and the doctrine of quasi-estoppel should be applied are whether the party asserting the inconsistent position has gained an advantage or produced some disadvantage through the first position; the magnitude of the inconsistency; whether changed circumstances tend to justify the inconsistency; whether the inconsistency was relied on by the party claiming estoppel to his detriment; and whether the first assertion was made with full knowledge of the facts. Thus, in determining whether the doctrine of quasi-estoppel is applicable to the matter before it, the trial court should consider whether the party

asserting the inconsistent position has gained an advantage or produced some disadvantage through the first position; whether the inconsistency was of such significance as to make the present assertion unconscionable; and whether the first assertion was based on full knowledge of the facts."

City of Nome v. Kenick (Alaska 1992 Not Reported)

The superior court found that the City was equitably estopped from asserting title to the Belmont encroachment, a dedicated right-of-way, because the City had sold Lot 29 to Kenick's predecessor in interest, Ellingson, and subsequently taxed the improvements on the right-of-way as though they were in fact located on Lot 29. We have previously held that the taxation of improvements located on a dedicated right-of-way does not constitute the kind of affirmative conduct which justifies the application of estoppel. See State v. Simpson, 397 P.2d 288, 291-92 (Alaska 1964).

Keener v. State (*889 P.2d 1063/ 1066 Alaska 1995*)

The Alaska Supreme Court held in *Keener* v. *State* "at most" the state is required to bring suit within a reasonable time after its right-of-way is challenged.

Does the lack of accurate mapping place the public's interest at risk? It certainly can make management of the right-of-way more difficult. Claims have been made against the State based on a lack of or erroneous mapping. The claims were based on the doctrine of Laches and Quasi Estoppel. The case Keener v. State relates to the widening of Davis road in Fairbanks in 1989. While Davis road was having its right-of-way mapped for the first time, the West end of Davis where it intersects with University Avenue had been graphically depicted on prior plans for University Avenue as encumbering 33-feet of the Keener's lot rather than the 50-feet now claimed by the State under Secretarial Order No. 2665. The claim under Laches is that the State unreasonably delayed its determination of the Davis Road right-of-way with resulting prejudice to Keener. The claim under Quasi Estoppel asserted that the State should be prevented from taking a position inconsistent with one previously taken (50 vs. 33 feet) where circumstances render assertion of the second position unconscionable. The Laches claim failed in that the period of delay did not commence until the conflict was identified. And in this situation the conflict was not identified until the current project mapping made both parties aware. In that sense, there was no unreasonable delay that prejudiced Keener. The Estoppel claim failed on the basis that the earlier graphic representation of the Davis road right-of-way was not based on a full knowledge of the facts. The State was not changing its previous determination of the Davis road right-of-way; it was more correctly, determining it for the first time on the current project. The fact that the State prevailed in this case is not an argument against the development of accurate mapping for our highway rights-of-way. While the public's rights may have been preserved, it still cost the State a significant amount of resources to defend its claim.

"In applying the doctrine of quasi estoppel, we will consider "whether the party asserting the inconsistent position has gained an advantage or produced some disadvantage through the first position; whether the inconsistency was of such significance as to make the present assertion unconscionable; and whether the first assertion was based on full knowledge of the facts." The Keeners allege that the State made two assertions which are inconsistent with its current position that it owns a

fifty-foot right of way. First, the Keeners claim that the public plats issued prior to 1988 and the plat for the University Avenue project, which showed a thirty-three-foot right of way for Davis Road, constitute representations as to the width of the Davis Road right of way. The State argues that the depiction of a thirty-three-foot right of way in the University Avenue plat does not rise to the level of a representation because the focus of the plat was University Avenue; inclusion of the Davis Road right of way on the plat was incidental to the purpose of the plat. While we believe that the State has made a good argument that these depictions do not rise to the level of a representation, it is not necessary to resolve the issue because the Keeners have failed to show any of the other elements of quasi estoppel."

Safeway, Inc. v. State, Dept. of Transp. And Public Facilities (34 P.3d 336, Alaska 2001)

The State cannot be estopped from asserting its interest in a public highway where the State recorded its legal interest and the party claiming estoppel knew or should have known of the State's ownership.

Offshore Systems – Kenai v. State of Alaska DOT&PF (282 P.2d 348 Alaska 2012)

Estoppel was argued in the Supreme Court brief but the case was decided on other issues.

(State's brief to Supreme Court) "The superior court ruled that he state's claims are not barred by quasi-estoppel because the state never made any representation that would justify an estoppel claim. In applying the doctrine of quasi-estoppel, this Court considers: Whether the party asserting the inconsistent position has gained an advantage or produced some disadvantage through the first position; whether the inconsistency was of such significance as to make the present assertion unconscionable; and whether the first assertion was based upon a full knowledge of the facts." (Safeway)

(State Superior Court Brief) "The Alaska Supreme Court has rejected land title claims based on the theory that the State abandoned or "sat on its rights" with respect to a public right of way. In Tetlin Native Corp. v State, 759 P.2d 528 (Alaska 1988), the Court held that the State did not "abandon" a sand and gravel materials easement through inaction with respect to the easement. In a not yet published decision, Kelley v. Matanuska Electric Assoc., Inc., 2008 WL 4367550 (Alaska September 24, 2008), the Court rejected a claim that a utility had abandoned its right of way by removing its equipment and allegedly failing to use the right of way for a long period. This is consistent with the law of other jurisdictions. See City of Jackson v. Bettille Revocable Trust, 260 S.W.3d 918, 926-927 (Mo. Ct. App. 2008); Curran v. City of Louisville, 7 K.L. Rptr. 734 (Ky. Ct. App. 1886); Boyer v. Dennis, 742 N.W.2d 518, 520-522 (N.D. 2007). As all of these authorities demonstrate State highways and interests in real property are subject to special protection."