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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

DWANE J. SYKES,	)
	)
Plaintiff,	)
	)
vs.	)
	)
JI-LU HOU LUKER, GEORGE W. LUKER,	)
CLIFTON GENE TRICKEY, PHYLLIS MARIE	)
TRICKEY, et. al.,	)
	)
Defendants.	)
	)

4FA-06-2646CI

Final Judgment

The action came on for trial before the court on 12 December 2011. The court heard testimony over four days and entered its Memorandum Decision of even date.

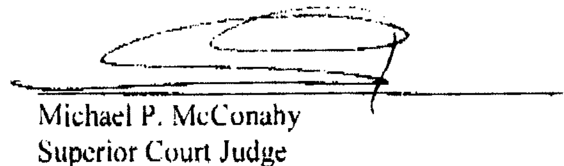
IT IS ORDERED that the section line easements and private easements set out in deeds and platting documents apply to the subject lots as set out in the Memorandum Decision.

IT IS FURTHER ORDERED that the plaintiff take nothing regarding all remaining claims, and that the action is hereby dismissed.

IT IS FURTHER ORDERED that the defendants Lukers are the prevailing party.

DATED at Fairbanks, Alaska, this 8th of March 2012.

Michael P. McConahy
Superior Court Judge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Memorandum Decision

This is a relatively simple case involving right-of-way and easement disputes which – despite its simplicity – has spanned decades and consumed an inordinate amount of resources. The court lays responsibility for the delays and costs of finally bringing the case to trial squarely on the prolixity and dilatory tactics of Dwane Sykes.

The matter finally came on for hearing 12, 13, 14, 15, and 16 December 2011. Sykes and defendant Ji-Lu Hou Luker (hereinafter "Ms. Luker") were present; defendant George W. Luker (hereinafter "Mr. Luker") appeared telephonically. Defendants Clifton and Phyllis Trickey resolved their dispute with Sykes after many years of travail, but before trial, and therefore did not participate in the 5-day trial in December.[1]

Sykes testified at length and called the following witnesses: Eugene Belland, a real estate lawyer; Pamela Throop, a realtor who provided damage information regarding lots owned by the plaintiff; Mr. and Mrs. Tubbs, former residents in the area who

[1] No final judgment has entered and Trickeys are still a party to this action. Their lawyer, Steve Elliott, is still the attorney of record.

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expressed distress with the Lukers as neighbors; Mr. FitzSimmons, a forestry and horticulture expert who testified to damage to vegetation and trees; Mr. Werner, another forestry expert who testified to damage to trees; Mr. Kalen, a surveyor and section line expert; Mr. and Ms. Luker, defendants; and Charles Bruker III, a maintenance worker for the Lukers. Ms. Luker testified on her own behalf, as did Mr. Luker. A cornucopia of exhibits going back to statehood days were admitted into evidence.

Determination of right-of-ways (both section line easements and easements running with individual lots pursuant to platting and deed description) was only a part of Sykes' case and constituted a very small portion of his 18 causes of action. In fact, the easements involved lots owned by the Lukers which had a total face value of only a fraction of the monetary damages sought by Sykes, as Sykes pursued punitive damages as well as injunctive relief. Sykes sought damages of approximately $270,000 for interference with his economic opportunity to sell other lots in the subdivision[2] and sought treble damages in amounts varying from $210,582[3] to $160,746[4] for damage to trees and vegetation on parcel 9. Sykes additionally sought a variety of other damages as set out in the *ad damnun* clause of his complaint. Sykers thus asked this court – in a dispute over lots worth between $25,000 and $30,000 each – to award over a half million dollars in compensatory damages, as well as an unspecified amount of punitive damages, resulting in a request for monetary judgment in excess of one million dollars.[5] Anyone would be hard pressed to characterize this case as primarily about access. The court finds it is primarily about money.

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[2] Testimony of Throop.
[3] Treble damages based on the damage amount of $70,154 per Fitzsimmons.
[4] Treble damages based on the damage amount of $53,400 per Werner.
[5] *See* AS 09.17.020 (creating ratio for the relationship between punitive and compensatory damages awards).

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Several preliminary matters need be discussed before explaining the ruling on this case. The real property at issue was subject to prior litigation in the case of *Tubbs v Luker*, case number 4FA-02-0259CI. The focus of that case was a temporary restraining order and a preliminary injunction, sought by the Tubbs, to force the Lukers to remove barriers and signs blocking access to the Tubbs' property. Sykes was not a party to that litigation, although he was a common grantor.

Judge Beistline on 2 April 2002 issued an Order Granting Motion for Preliminary Injunction and Scheduling Trial Setting Conference in the *Tubbs* case. The Lukers contended Judge Beistline's 2002 Order resolved easement and right-of-way issues between them and Sykes, and they relied on the 2002 Order in their subsequent actions. It is understandable that the Lukers came to this conclusion, but it is an erroneous conclusion.

First, although though Sykes was a common grantor for the subject properties, he was not a *party* to the 2002 action and he did not have an opportunity to litigate these issues. Sykes therefore is not bound by the result of the action under principles of *res judicata* or collateral estoppel.

Second, Judge Beistline's order addressed the extraordinary remedy of restraining and enjoining the rights of parties *before* a hearing on the merits. The standards for that remedy are entirely different than for adjudication on the merits.[6]

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[6]*See* Alaska Civil Rule 65; *see also Holmes v. Wolf*, 243 P.3d 584, 591 (Alaska 2010) (in deciding whether to grant or deny a preliminary injunction, Alaska courts apply the "balance of hardships" test. Immediate injunctive relief is warranted when the following three factors are present: "(1) the plaintiff must be faced with irreparable harm; (2) the opposing party must be adequately protected; and (3) the plaintiff must raise 'serious' and substantial questions going to the merits of the case." Where the harm is not irreparable, or where the other party cannot be adequately protected, then the moving party must show probable success on the merits).

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Third, the language of Judge Beistline's 2002 order set out at pages 2-3 is precatory and dicta and does not constitute a legal finding. Judge Beistline stated:

> The Defendants [the Lukers] have provided evidence to support a conclusion that no section-line easement exists and the Court so finds. The also have supplied sufficient evidence to prove the grant of easement across Parcel 33 is invalid [footnotes omitted].[7]

Judge Beistline did, in fact, grant the *preliminary* injunction "until a final decision on the matter can be made."[8] A *final* decision, however, never occurred, as the Tubbs apparently did not pursue their lawsuit to conclusion.

Fourth, and finally, Judge Beistline *suggested* a resolution in post script. That suggestion in no wise constitutes a determination of the merits of the case.

Turning to the instant case, the court does not find any party to be credible on all issues. Sykes has done nothing to simplify or even advance this litigation. On the contrary, his pleadings have been obtuse, prolix, repetitive, and, in many instances, defiant of court orders. For instance, Sykes would file motions, then file "supplements" and "amendments" to existing motions. The court specified pleadings allowed, denied the use of amended motions, and required parties to put the name of the underlying motion in any opposition or reply.[9] The pleadings did not become any more focused. Rather, Sykes thereafter continued to file a "barrage" of motions.[10] Both parties continued to file motions without regard for deadlines set out in the pretrial order.[11]

At trial, Sykes refused to comply with requests that he testify regarding his own knowledge or to explain why certain documents were relevant. Even during cross-

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[7] 4.02.02 Order.
[8] 4.02.02 Order, p. 4.
[9] 8.23.11 Order.
[10] 10.24.11 Order.
[11] 12.12.011 Order.

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examination, when specifically instructed not to testify but rather ask questions, Sykes would carry on to finish his testimony without restraint. Although the parties had waited a long time for trial, Sykes was given three days to present his case and chose to use that time mainly by testifying himself. That testimony largely included trying to read from documents.

Ms. Luker appeared at trial in person. English is not Ms. Luker's first language, but she was actively engaged in the litigation and language was not a barrier to her effective participation at trial. The court finds, however, that her answers were selectively evasive as well as argumentative. Mr. Luker did not appear in person but testified by telephone; he has been absent from Alaska for substantial periods of time and has admitted memory problems.

Turning to the case at hand, the easement issues are straightforward. On these issues only, the court finds Sykes' testimony and the documentary evidence more credible than that of the Lukers. The court does find, nonetheless, finds that Sykes overstated evidence and minimized the impact that other persons (besides the Lukers) have had on the issues in this case. An example is that some of his remaining lots have sold and been returned to him by their owners independent of any acts of the Lukers, yet he seeks damages for such lots without noting these other, independent causes of damages. In short, the court finds Sykes is motivated by venality and an overriding desire to vindicate his position at all costs regarding all of his damage claims.

On the easement issues, the court finds that the subject properties all come from an original patent issued to Walker. A U.S survey, imposing valid section line easements on the subject properties, was filed. Walker made three entry claims for the property: 27

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October 1958, 10 July 1961, and finally in 28 August 1963. The first two entries were not successful; the last entry, after the filing of the U.S survey, ultimately resulted in the issuance of a patent to the Walkers. The court finds the critical entry for purposes of determining whether a section line applies is the last entry that resulted in the issuance of a patent. Here, that successful entry was after the U.S survey and therefore is subject to the section line right-of-ways.

Second, the lots have a common grantor through Sykes, who purchased the parcel from the Fairbanks North Star Borough. Sykes secured a waiver of subdivision requirements for dividing the parcel. The lots from this parcel sold pursuant to the waiver of subdivision requirements, were subject to the easements noted on the auction offering and memorialized in sale contracts and deeds conveyed to purchasers. All lots in question were and are subject to these easements. The court finds these easements of record are valid easement of record and all the subject lots are subject the benefits and burdens of these easements.

Third, a utility easement from GVEA impacts some of these lots. The court finds no evidence that the utility easement is anything but valid; the court makes no other findings regarding the utility easement.

The above makes clear that Sykes has the right to the access and use of property he owns and which is subject to the benefit of the easements mentioned. The Lukers' property is subject to the burdens of these easements.

On the issue of Sykes' tort claims and corresponding damages, however, the court finds the Lukers' testimony more credible and ultimately more persuasive.

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First, a claim of intentional infliction of emotional distress must show: (1) the conduct was extreme and outrageous, (2) the conduct was intentional or reckless, (3) the conduct caused emotional distress, and (4) the distress was severe.[12] The court has found the Lukers' reliance on Judge Beistline's decision to be understandable, albeit incorrect. Their conduct in denying Sykes access was based upon a genuine but incorrect interpretation of Judge Beistline's order and does not meet the elements of a claim for intentional infliction of emotion distress. The court finds Sykes failed to meet his burden of proof on this claim.

Second, to prove interference with a business relationship there must be sufficient evidence that: (1) a prospective business relationship existed; (2) the defendant knew of the prospective relationship and intended to prevent its fruition; (3) the prospective business relationship did not culminate in pecuniary benefit to the plaintiff; (4) the defendant's conduct interfered with the prospective relationship; (5) the interference caused the plaintiff's damages. The court finds the Lukers did not interfere with any of the sales of other property and the plaintiff has failed to prove, by a preponderance of the evidence, any damage claims for interference with Sykes' business relationships.

Third, the court finds Sykes has failed to prove the Lukers damaged trees or vegetation on Lot 9 and thus Sykes is not entitled to damages either as compensatory or treble damages. The court finds the Lukers to be credible concerning their denials that they caused this damage, and the court therefore does not reach the issue of the value of the trees and vegetation or the treble value of same.

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[12] *Lincoln v. Interior Regional Housing Authority*, 30 P.3d 582, 598 (Alaska 2001) (citations ommitted).

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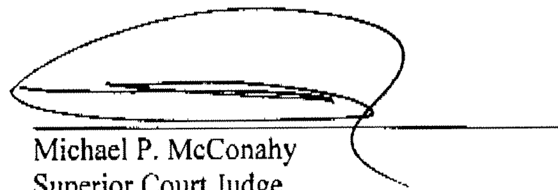
1. Section line easements and private easements of record for the subject lots are valid and the benefit and burden of these easements run with the lots consistent with descriptions, terms, and conditions applicable to each type of easement.

2. All claims are injunctive relief are DENIED.

3. All claims for monetary damages are DENIED.

4. The court finds the major issue in this litigation was damages, in the amount of roughly one million dollars requested by Sykes and was not simply the determination of easements. Sykes failed to meet his burden of proving these claims for monetary damages by a preponderance of evidence. Therefore the court finds the Lukers are prevailing parties[17] for Civil Rules 79.[18]

DATED at Fairbanks, Alaska, this 8th day of March 2012.



Michael P. McConahy
Superior Court Judge

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[17] Civil Rule 82 provides that "the prevailing party in a civil case shall be awarded attorney's fees." The prevailing party is "the party who has successfully prosecuted or defended against the action, the one who is successful on the 'main issue' of the action and in whose favor the decision or verdict is rendered and the judgment entered." *Shepherd v. State, Dep't of Fish & Game,* 897 P.2d 33, 44 (Alaska 1995) (citing *Adoption of V.M.C.*, 528 P.2d 788, 795 n. 14 (Alaska 1974) (internal quotation marks omitted)).

[18] The Lukers were not represented by counsel and therefore are not entitled to an award of attorney fees under Civil Rule 82.

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