

SUPREME COURT OF MONTANA

Bonnie M. Combs-DeMaio Living Trust v. Kilby Butte Colony, Inc.,
2005 MT 71

109 P.3d 252, 326 Mont. 334 (2005) · No. 04-141 · Decided March 22, 2005

SUMMARY

The Supreme Court of Montana affirmed a judgment rejecting the Bonnie M. Combs-DeMaio Living Trust's claim that it had established a prescriptive easement over land owned by Kilby Butte Colony, Inc. The court held that the evidence of historical use was insufficient to prove the required elements by clear and convincing evidence and declined to address whether any easement had later been extinguished.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Patricia O. Cotter; Karla M. Gray; John Warner; James C. Nelson; Jim Rice
JURISDICTION	Montana
DECIDED	March 22, 2005
DOCKET	04-141
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Trust appealed a judgment of the Fourteenth Judicial District Court concluding that it failed to prove the existence of a prescriptive easement over Colony's property.
STANDARD OF REVIEW	Findings of fact are reviewed for clear error. A finding is clearly erroneous if it lacks substantial evidentiary support, the trial court misapprehended the effect of the evidence, or the reviewing court is convinced that a mistake was made. The appellate court does not second-guess the trial court's assessment of conflicting testimony. Conclusions of law are reviewed for correctness.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential.
PARTIES	Bonnie M. Combs-DeMaio Living Trust v. Kilby Butte Colony, Inc.

TOPICS

prescriptive easements

easements

real estate

standard of review

appellate procedure

PRACTICE AREAS

real estate

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QUESTIONS PRESENTED

1. Whether the District Court erred in finding that the Trust failed to establish a prescriptive easement.
2. Whether the District Court erred in finding that any prescriptive easement that may have existed was extinguished.

HOLDINGS

1. The Trust failed to prove by clear and convincing evidence that the roadway was used openly, notoriously, exclusively, adversely, continuously, and uninterrupted for the applicable statutory period; therefore, no prescriptive easement was established.
2. The court did not reach the extinguishment issue because the Trust failed to establish that a prescriptive easement ever existed.

KEY QUOTATIONS

“The party seeking to establish a prescriptive easement must show open, notorious, exclusive, adverse, continuous, and uninterrupted use of the easement for the full statutory period by clear and convincing evidence.” (255)

“We therefore affirm.” (256)

FACTUAL BACKGROUND

The Trust owned property south of land owned by Kilby Butte Colony, Inc., and a roadway across Colony's property connected the Trust property to a public road. Historical occupants and tenants of the Trust property allegedly used the roadway, including weekly trips to town and travel by children to a school-bus stop during the 1950s and 1960s. The evidence was conflicting regarding the continuity, exclusivity, notoriety, and permissive or adverse nature of the use, as well as whether alternate access routes existed.

PROCEDURAL HISTORY

The Trust filed suit on January 23, 2003, seeking recognition of a prescriptive easement. After a bench trial on August 7 and 8, 2003, the District Court entered findings of fact, conclusions of law, and judgment on December 30, 2003, ruling that the Trust had not met its burden. The Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Gelderloos v. Duke, 2004 MT 94, ¶ 22, 321 Mont. 1, 88 P.3d 814
- Wareing v. Schreckendgust, 280 Mont. 196, 206, 210, 930 P.2d 37, 43, 45-46 (1996)
- Double AA Corp. v. Newland & Co., 273 Mont. 486, 494, 905 P.2d 138, 142 (1995)
- Rafanelli v. Dale, 278 Mont. 28, 37, 924 P.2d 242, 248 (1996)
- Brimstone Mining, Inc. v. Glaus, 2003 MT 236, ¶ 21, 317 Mont. 236, 77 P.3d 175
- Lemont Land Corp. v. Rogers, 269 Mont. 180, 183, 185, 887 P.2d 724, 726-27 (1994)
- Mildenberger v. Galbraith, 249 Mont. 161, 167, 815 P.2d 130, 134-35 (1991)
- Hitsheew v. Butte/Silver Bow County, 1999 MT 26, ¶ 17, 293 Mont. 212, 974 P.2d 650
- Public Lands Access Assn. v. Boone & Crockett Club Found., 259 Mont. 279, 283, 856 P.2d 525, 527 (1993)
- Rettig v. Kallevig, 282 Mont. 189, 192-93, 936 P.2d 807, 809 (1997)
- Johansen v. Department of Natural Resources & Conservation, 1998 MT 51, ¶ 24, 288 Mont. 39, 955 P.2d 653