

SUPREME COURT OF ALASKA

Cowan v. Yeisley

255 P.3d 966 (Alaska 2011) · No. S-13380 · Decided May 27, 2011

SUMMARY

The Supreme Court of Alaska held that a deed granting a perpetual right of way conveyed an easement rather than a fee interest in the disputed land. The court further held that applying Alaska's post-2003 adverse-possession statute was impermissibly retrospective because the alleged adverse-possession rights may have vested before the amendment. The court reversed and remanded on the adverse-possession claim, vacated the public-dedication ruling and attorney's-fee awards, and otherwise affirmed.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Stowers, Justice; Carpeneti, Chief Justice; Fabe, Justice; Winfree, Justice; Christen, Justice
JURISDICTION	Alaska
DECIDED	May 27, 2011
DOCKET	S-13380
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Cowans appealed from a superior court judgment rejecting their quiet-title claim, ruling that the 2003 adverse-possession statute barred their claim as a matter of law, treating the disputed right-of-way as validly dedicated to the public, and awarding attorney's fees.
STANDARD OF REVIEW	Summary judgment is reviewed to determine whether a genuine issue of material fact exists and whether the moving party is entitled to judgment as a matter of law, with reasonable factual inferences drawn for the nonmoving party. Statutory construction, deed ambiguity, and interpretation of attorney-fee rules are reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Harold M. Cowan, Ellen Jane Cowan v. Sharon Yeisley, Gerald Byron, Cherryle Byron, Ketchikan Gateway Borough, John Does

TOPICS

adverse possession

easements

title disputes

quiet title

summary judgment

PRACTICE AREAS

real estate

property law

municipal law

civil procedure

remedies

QUESTIONS PRESENTED

1. Whether the 1956 deed conveyed a fee interest in the disputed thirty-foot strip or only an easement.
2. Whether the superior court erred by applying the 2003 adverse-possession statute to a claim allegedly perfected before the statute's enactment.
3. Whether the Cowans presented a genuine issue of material fact regarding adverse possession under the pre-2003 statute, particularly the hostility element.
4. Whether the disputed land was validly dedicated to public use through the 1980 and 1981 subdivision plats.
5. Whether the Cowans' or Sharon Yeisley's claims were barred by waiver, equitable estoppel, or laches.
6. Whether the attorney's-fee awards were proper.

HOLDINGS

1. The 1956 deed unambiguously conveyed the Cowans a right-of-way easement, not a fee interest in the thirty-foot strip.
2. The superior court erred by applying the 2003 version of AS 09.10.030 to the Cowans' adverse-possession claim.
3. The Cowans raised a genuine issue of material fact concerning adverse possession under former AS 09.10.030, so summary judgment was improper.
4. The public-dedication ruling had to be vacated and reconsidered on remand because its validity depended on whether the Cowans had acquired fee title by adverse possession before the plats were recorded.
5. Neither the Cowans' claims nor Sharon Yeisley's claims were barred by waiver, equitable estoppel, or laches.
6. The attorney's-fee awards were vacated in light of the disposition of the appeal.

KEY QUOTATIONS

"The 1956 deed granted to the Cowans a "perpetual right of way running with the land over the 30 foot strip of right of way." (972)

"Thus, on its face, the deed grants to the Cowans an easement, not a fee interest." (972)

"Applying the amended statute to the Cowans' case would therefore give the Cowans' pre-2003 conduct a different legal effect, effectively stripping them of their title." (974)

“If the adverse possessor, without the true owner’s permission, “acted toward the land as if he owned it,” then his claim is hostile.” (975)

“For the reasons discussed above, we AFFIRM in part, REVERSE in part, VACATE the award of attorney’s fees, and REMAND for further proceedings consistent with this opinion on the Cowans’ adverse possession claim.” (978)

FACTUAL BACKGROUND

Claude Yeisley received title to Tract A in 1948 and conveyed Lot 1 to the Cowans in 1956 with a perpetual right of way over a thirty-foot strip. Later deeds conveying portions of Tract A did not expressly convey the strip, and subdivision plats recorded in 1980 and 1981 depicted the right-of-way and thereby purported to dedicate it to public use. The Cowans used portions of the strip for a driveway, play, flowers, and parking, and asserted that their use and efforts to exclude others supported adverse possession. After the superior court applied the 2003 adverse-possession statute and ruled for the defendants, the Cowans appealed.

PROCEDURAL HISTORY

The Cowans filed suit in 2006 seeking quiet title to a disputed thirty-foot right-of-way based on the 1956 deed or adverse possession, and also asserted trespass and water-rights claims. The superior court ruled on summary judgment that the 1956 deed conveyed an easement rather than fee title, but found a genuine factual dispute regarding adverse possession. At trial, the court applied the 2003 adverse-possession statute, entered judgment for the defendants, mooted or dismissed related claims, and awarded attorney’s fees. The Alaska Supreme Court affirmed the deed and waiver, estoppel, and laches rulings, reversed the adverse-possession ruling, vacated the public-dedication ruling and fee award, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The superior court must reconsider the adverse-possession claim under the pre-2003 statute, determine whether a genuine issue of material fact exists as to each adverse-possession element, and specifically determine which Cowan activities were hostile and when they occurred, in light of *Hansen v. Davis*. The court may reconsider the existing record or reopen the record and take new evidence. It must then reconsider the validity of the public dedication in light of whether the Cowans acquired fee title before 1980. The attorney’s-fee awards are vacated.

CASES CITED

- *Wright v. State*, 824 P.2d 718, 720 (Alaska 1992)
- *Zeman v. Lufthansa German Airlines*, 699 P.2d 1274, 1280 (Alaska 1985)
- *State v. Strane*, 61 P.3d 1284, 1286 n. 4 (Alaska 2003)
- *Todd v. State*, 917 P.2d 674, 677 (Alaska 1996)
- *Dias v. State, Department of Transportation & Public Facilities*, 240 P.3d 272, 274 (Alaska 2010)

- Estate of Smith v. Spinelli, 216 P.3d 524, 529 (Alaska 2009)
- Lakloey v. Ballek, 211 P.3d 662, 664-65 (Alaska 2009)
- Norken Corp. v. McGahan, 823 P.2d 622, 626 (Alaska 1991)
- Knadler v. Adams, 661 P.2d 1052, 1053 (Wyo. 1983)
- Dillingham Commercial Co., Inc. v. City of Dillingham, 705 P.2d 410, 415 (Alaska 1985)
- Northern Alaska Environmental Center v. State, Department of Natural Resources, 2 P.3d 629, 637 n. 38 (Alaska 2000)
- Gerstein v. Axtell, 960 P.2d 599, 600 n. 2 (Alaska 1998)
- Wessells v. State Department of Highways, 562 P.2d 1042, 1049-51 (Alaska 1977)
- Foster v. State, Department of Transportation, 34 P.3d 1288, 1289 (Alaska 2001)
- Hagans, Brown, & Gibbs v. First National Bank of Anchorage, 783 P.2d 1164, 1166 n. 2 (Alaska 1989)
- Tenala, Ltd. v. Fowler, 921 P.2d 1114, 1118-19 (Alaska 1996)
- Hansen v. Davis, 220 P.3d 911, 915-17 & n. 7 (Alaska 2009)
- Eastwind, Inc. v. State, 951 P.2d 844, 847 (Alaska 1997)
- Hubbard v. Curtiss, 684 P.2d 842, 849 (Alaska 1984)
- Ayers v. Day & Night Fuel Co., 451 P.2d 579, 581 (Alaska 1969)
- Nome 2000 v. Fagerstrom, 799 P.2d 304, 309 (Alaska 1990)
- Glover v. Glover, 92 P.3d 387, 392 (Alaska 2004)
- Smith v. Krebs, 768 P.2d 124, 126 (Alaska 1989)
- Peters v. Juneau-Douglas Girl Scout Council, 519 P.2d 826, 832 (Alaska 1974)
- City of Anchorage v. Nesbett, 530 P.2d 1324, 1329 (Alaska 1975)
- Keller v. French, 205 P.3d 299, 304 (Alaska 2009)
- Powers v. United Services Automobile Association, 6 P.3d 294, 299 (Alaska 2000)
- Milne v. Anderson, 576 P.2d 109, 112 (Alaska 1978)
- Carr-Gottstein Foods Co. v. Wasilla, LLC, 182 P.3d 1131, 1136 (Alaska 2008)
- Tufco, Inc. v. Pacific Environmental Corp., 113 P.3d 668, 671 (Alaska 2005)
- Anchorage Citizens for Taxi Reform v. Municipality of Anchorage, 151 P.3d 418, 425 (Alaska 2006)
- State, Department of Commerce & Economic Development, Division of Insurance v. Schnell, 8 P.3d 351, 358-59 (Alaska 2000)
- Pavlik v. State, Department of Community & Regional Affairs, 637 P.2d 1045, 1047-48 (Alaska 1981)
- Beal v. McGuire, 216 P.3d 1154, 1178 (Alaska 2009)
- Ellison v. Plumbers & Steam Fitters Union Local 375, 118 P.3d 1070, 1078 (Alaska 2005)