

Bond Case Briefs

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PUBLIC EASEMENT - MONTANA

Public Lands Access Ass'n v. Board of County Com'rs of Madison County

Supreme Court of Montana - January 15, 2014 - P.3d - 2014 MT 10

Public lands access group filed complaint against county, alleging that landowners adjacent to bridges had erected fences along county roads preventing public from using rights-of-way to access river. Landowner intervened as defendant. The District Court granted group summary judgment on issue of public access to river from bridge abutting landowner's property, and following bench trial, denied public access to river at county road. Group appealed and landowner cross-appealed. Appeals were consolidated.

The Supreme Court of Montana held that:

- County did not have secondary easement that was separate from public road right-of-way;
- Remand was necessary to determine width of right-of-way;
- As a matter of first impression, use of right-of-way to access river was permitted; and
- Public access to river via landowner's property did not constitute unconstitutional taking.

County did not have secondary easement over county road right-of-way for purposes of construction, maintenance, and repair that was separate from public road right-of-way established by prescriptive use; areas necessary to support maintenance of road, as well as land needed to make road safe and convenient for public use were included in public right-of-way. Courts do not separate general public's use of public prescriptive road easement and land needed for construction, repairs, and maintenance to create two distinct interests, public road for travel and a secondary easement for maintenance, but rather, courts recognize one public road right-of-way.

Minimum statutory 60-foot road width does not apply to roads established by prescriptive use.

Rather, width of roadway acquired by prescription is determined as a question of fact by character and extent of its use and may be more or less than width of highways established by statute.

Use of public road right-of-way established through prescriptive use to access river over which right-of-way crossed was permitted, even if use was not established adversely during prescriptive period, since scope of right-of-way was not strictly limited to adverse usage through which easement was acquired, but rather scope included public uses that were reasonably foreseeable and were reasonably incidental to uses through which easement was acquired. Access to river was reasonably foreseeable use of right-of-way.

Public access to river via right-of-way county purchased from landowner did not constitute unconstitutional taking of landowner's property, despite contention that right-of-way was never intended to be used for access to river for recreational purposes. Landowner's predecessor in interest expressly granted public right-of-way for road, bridge, and land and water underlying it without limiting its uses, and surface waters that traversed riverbed were publicly owned, such that landowner had no compensable priority interest in property he claimed had been taken from him.

