

Bond Case Briefs

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ADVERSE POSSESSION - MICHIGAN

Waisanen v. Township of Superior

Court of Appeals of Michigan - June 24, 2014 - N.W.2d - 2014 WL 2871387

In 1971, Kenneth Waisanen purchased property in a subdivision. The parcel abuts First Street, a lake access roadway dedicated to public use. At the time Waisanen purchased the property, it contained a break wall. In 1981, Waisanen constructed an addition to his home on the property.

In 2008, defendant conducted a survey of lake access roadways in the subdivision. According to the 2008 survey and unbeknownst to Waisanen, the break wall encroached approximately ten feet onto First Street, and the addition encroached approximately three feet onto First Street.

Following the survey, Waisanen filed an action to quiet title to the portion of First Street that included his break wall and addition. The Township counterclaimed for possession of that same portion of First Street. The circuit court granted Waisanen's request to quiet title in his favor, finding that Waisanen had established the elements of adverse possession or, in the alternative, that he had acquired title through acquiescence. Township argued on appeal that the trial court erred with respect to both theories.

The Court of Appeals held that:

- The elements of adverse possession had been established; and
- Given defendant's active and passive acquiescence to the use being made by the Waisanen family up to the break wall for a period well in excess of 15 years, the trial court did not err by granting plaintiff's motion to quiet title under the alternate theory of acquiescence.