

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2005-014043

04/01/2008

HONORABLE KRISTIN HOFFMAN

CLERK OF THE COURT  
D. Glab  
Deputy

STEPHEN R CALL, et al.

VICTORIA L ORZE

v.

ROY D PIERPOINT, et al.

BRIAN IMBORNONI

MINUTE ENTRY

The Court has read and considered Defendants' Motion for Reconsideration and Plaintiffs' Response.

The Motion for Reconsideration requests that the Court reconsider or address those parts of Defendants' Motion for Summary Judgment in which they sought summary judgment on the issues of whether an easement by estoppel is available under Arizona law and whether damages may be awarded in an action to establish a prescriptive easement.

Under Arizona law, an easement can not be established by estoppel. Plaintiffs do not disagree with this in their pleadings, but argue that they relied on Defendants' conduct in establishing their prescriptive easement. Plaintiffs may present all relevant evidence in support of their claim for prescriptive easement including evidence of lack of objection to their prior use of Pierpont Road and the continuous use of Pierpont Road by Plaintiffs, their predecessors in title, school buses, UPS and U.S. Mail carriers. They may not present a separate claim for an easement by estoppel.

Plaintiffs claim diminution in value of their land as a result of the gating of Pierpont Road. Their expert opined that if they regain access to their land from Pierpont Road the

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diminution will no longer exist. They have no expert testimony that establishes damages if their claim for prescriptive easement is granted.

If the trier of fact determines that Plaintiffs have no right to an easement, the Plaintiffs cannot establish the right to damages for lack of access across Pierpont Road.

The Court makes no ruling at this time on whether Plaintiffs may or may not seek damages for loss of use or loss of access to their land during the period the gates were in place if they prevail on their claim for prescriptive easement.

IT IS ORDERED granting Defendant's' Motion for Reconsideration regarding claim for easement by estoppel and granting the Defendants' Motion for Reconsideration in part as it relates to damages.