IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

| | | |
|---|---|---|
| FRIENDS OF THE STEWART PUBLIC TRAIL, INC., an Alaska Non-Profit Corporation,<br><br>Plaintiff,<br>vs.<br><br>FRANKLIN D. PUGH, Jr., et al.<br><br>Defendants. | ) | Case No. 3AN-19-05746 CI |

**ORDER DENYING CASE MOTION NO. 21**

## I. INTRODUCTION

This case concerns a putative prescriptive easement that purportedly grants the public at large the right to access an historic homestead road in South Anchorage ("the Stewart Trail" or "the Trail") for non-motorized recreational purposes. Friends of the Stewart Public Trail, Inc., an Alaska Non-Profit Corporation ("Plaintiff") moves in Case Motion No. 21 for summary judgment, arguing that the putative easement has vested in the Municipality of Anchorage on behalf of the general public as a matter of law pursuant to AS 09.45.052(d). Defendants Franklin and Oksana Pugh ("the Pughs") and Mattanaw (collectively "Defendants") separately opposed and Plaintiff replied. The Pughs are represented by counsel; Mattanaw is pro se. As further explained below, a genuine issue of material fact precludes summary judgment in favor of Plaintiff.

## II. BACKGROUND

In or around 1960, Ivan and Oro Stewart contracted with World War II veteran bulldozer operators, known as "catskinners," to assist Mr. Stewart with constructing a road to the tract that would become their homestead. The Stewart Trail was constructed so that the Stewarts could transport the houseboat that they used to prove up their homestead ("the Stewart Homestead"). The Stewart Homestead was subdivided upon the death of Oro Stewart in 2002 and passed by testamentary will to the Alaska Zoo and the Alaska Botanical Gardens ("the Stewart Tract").

Today, the Stewart Trail begins at the southern terminus of Steamboat Drive in the Rabbit Creek neighborhood of South Anchorage and runs south-southeast for approximately one-and-three-quarter miles through at least four tracts of privately held property.[1] The Trail first crosses a tract currently held by the Pughs ("the Pugh Tract"). The Pughs purchased their tract from the Mahlon James Shoff Revocable Trust in 2012. The Trail then runs through a tract currently held by Mattanaw ("the Mattanaw Tract"). Mattanaw purchased the Mattanaw Tract from the J & L Miller Alaska Community Property Trust in 2017. Next, the Trail crosses a tract held by Donald E. and Penny Waddell ("the Waddell Tract"); the Waddells are not parties to this action to quiet title. From the Waddell Tract, the Trail runs through the Stewart Tract to its other terminus at the border of Chugach State Park.

---

[1] Mattanaw asserts that the Trail also briefly crosses a fifth, privately-held tract.

Plaintiff's members submitted 63 affidavits attesting that they have used the Trail for various non-motorized recreational purposes over the years in support of the instant motion for summary judgment as Exhibit 38. All affiants have used the Trail for at least ten years, with some using it for nearly fifty. Collectively, the affiants used the Trail year-round: Skiing, hiking, running, mountain biking, snowshoeing, and photography were some of the uses listed in the submitted affidavits. Of those 63 affiants, nearly all stated that they used the Trail without the permission of the Pughs or Mattanaw, or their predecessors in interest, until 2015. One affiant, Mary Leykom, affied that between 2005 and 2010 she asked for permission from the Pughs' predecessor in interest, Dr. Mahlon Shoff, as well as one John Burns, to use the airstrip on the Pugh Tract, but she did not seek permission to use the Trail itself.

Exhibit 38 is numbered 1–64; Plaintiff acknowledged in its memorandum that it deleted Exhibit 38-49, which is the affidavit of one Charles Barnwell.[2] The Pughs attached Mr. Barnwell's affidavit to their summary judgment memorandum as Exhibit A—Mr. Barnwell affied in part:

> I have used the Stewart Trail frequently, an average of 4 times per week, every year from 1982 until we moved to Homer in 2013. . . . In the 1980's, I asked Oro Stewart, the Miller (Bob) family and the Schott [sic] family about using the Stewart Trail for recreation and access. They did not want motorized vehicles but were fine with us biking, walking and skiing. I recently (September, 2018) received a letter from Frank Pugh stating that I

---

[2] The court presumes that Exhibit 38-49 is Mr. Barnwell's affidavit, however, Mr. Barnwell affied that he used the Trail frequently between 1982 and 2013, but Plaintiff provided a notice that Exhibit 38-49 was deleted because it attested to fewer than ten years of use of the Trail, so it is possible that Plaintiff deleted more than one affidavit.

> was trespassing. This was the first time since 1982 I have seen such a letter or statement from a private landowner.[3]

The only evidence in the record of interactions between users of the Stewart Trail and Defendants' predecessors in interest is Mr. Barnwell's statement that he received permission to use the Trail in 1982 and Mary Leykom's statement that she received permission to access the airstrip on the Pugh Tract between 2005 and 2010.

In or around the year 2000, Oro Stewart constructed a gate at the Steamboat Drive entrance to the Trail. The gate blocked motor vehicle, but not pedestrian, access to the Trail. This is consistent with the statements of several affiants that Ms. Stewart supported pedestrian uses of the Trail by the general public.

After the Pughs purchased the Pugh Tract in 2012, they began to control the public's use of the portion of the Trail that crossed their property. In particular, the Pughs granted permission to certain users to use the Trail as it crossed their property, subject to certain conditions. The Pughs attempted to prevent the general public from using the Trail by posting no trespassing and other warning signs and mailing trespassing notices to users whom they could identify who would not agree to the conditions of use that the Pughs required. In 2015, the Pughs significantly enhanced the gate at the Steamboat Drive entrance to the Trail such that pedestrian users could no longer utilize that entrance without great difficulty, if at all.

---

Similarly, when Mattanaw purchased the Mattanaw Tract in 2017, he attempted to control the public's use of the section of the Trail that crosses his property. Mattanaw installed security cameras on his property and would personally intercept Trail users during those times when he was present on the Mattanaw Tract. Mattanaw explained to persons he encountered on the Trail that they were on private property and either not welcome, or only permitted to use the section of the Trail that lies on his property according to certain conditions.

Defendants assert that they began to control use of the Trail across their respective tracts because of the nuisance behavior of certain users. Additionally, the Pughs assert that they were under pressure from their neighbors in Rabbit Creek because of parking issues on Steamboat Drive related to the public's use of the Stewart Trail.

After it became difficult, if not impossible, to traverse the Trail running across the Pugh and Mattanaw Tracts, certain members of the public formed the non-profit corporation that is the Plaintiff in this quiet-title action; Plaintiff seeks to record a public prescriptive easement over the section of the Stewart Trail that runs across Defendants' tracts which would allow the public to use the Trail for the non-motorized pedestrian purposes it alleges Defendants' predecessors in interest historically acquiesced in.

## III. LEGAL STANDARD

Alaska R. Civ. P. 56(c) provides that summary judgment should be granted if the pleadings, depositions, admissions, interrogatories, affidavits, or other admissible evidence

show that there is no genuine issue of material fact and that a party is entitled to judgment as a matter of law.[4]

The standard for finding a genuine issue of fact is lenient. All reasonable inferences—or inferences that a reasonable fact finder could draw from the evidence—are drawn in favor of the non-movant.[5] The burden begins with the moving party, who must make a prima facie showing that it is entitled to judgment on the established facts as a matter of law. Upon such a showing, the non-moving party must demonstrate that there is a genuine issue of fact by showing that it can produce admissible evidence reasonably tending to dispute the movant's evidence.[6]

The non-moving party cannot rely on mere allegations, mere assertions of fact in pleadings and memoranda, or unsupported assumptions and speculation.[7] The non-moving party must only present some, i.e., more than a mere scintilla, of contrary evidence to survive a motion for summary judgment.[8]

**IV. DISCUSSION**

Plaintiff contends that the affidavits in Exhibit 38 establish the elements of a public prescriptive easement across Defendants' tracts as a matter of law. The Pughs argue that there are fact disputes as to each element, any one of which preclude summary judgment,

---

4 *Broderick v. King's Way Assembly of God*, 808 P.2d 1211, 1215 (Alaska 1991).
5 *Alakayak v. British Columbia Packers, Ltd.*, 48 P.3d 432, 449 (Alaska 2002).
6 *Broderick*, 808 P.2d at 1215.
7 *Witt v. State Dep't of Corrections*, 75 P.3d 1030, 1033 (Alaska 2003).
8 *Cikan v. ARCO Alaska, Inc.*, 125 P.3d 335, 339 (Alaska 2005).

and that, at the very least, Plaintiff has failed to rebut the legal presumption that the public's historic use of the Trail was permissive. Mattanaw argues that there is a fact dispute as to the physical location of the Trail and disputes the accuracy of the statements of Plaintiff's affiants. Defendants collectively argue that Plaintiff has failed to allege a specific ten-year statutory period.

The court concludes as follows: (1) There is a genuine issue of material fact regarding whether the public's historic use was hostile to the property rights of Defendants' predecessors in interest; (2) as the record stands now, there is undisputed evidence that the public's use of the Trail was open and notorious and continuous for the statutory period; but (3) although Mattanaw failed to proffer admissible evidence disputing the sworn statements of Plaintiff's affiants, he has disputed the accuracy of certain aspects of the affiants' statements—as a pro se litigant, the court will afford Mattanaw an opportunity to cross-examine Plaintiff's affiants at trial regarding their statements as those statements relate to the elements of a prescriptive easement.

### A. *Public prescriptive easements in Alaska*

Prescriptive easements in Alaska are governed by AS 09.45.052(d), which provides in relevant part:

> Notwithstanding AS 09.10.030, the uninterrupted adverse notorious use, including construction, management, operation, or maintenance, of private land for public transportation or public access purposes, including highways, streets, roads, or trails, by the public, the state, or a political subdivision of the state, for a period of 10 years or more, vests an appropriate interest in that land in the state or a political subdivision of the state.

"Prescriptive easements may be obtained either by private individuals or the general public."[9] The elements of a public and private prescriptive easement are the same.[10] The only difference between a public and private prescriptive easement is that so long as the public-at-large satisfies the elements of a prescriptive easement, the easement vests even if no individual member of the public independently satisfies all of the elements.[11]

Thus, to establish a public prescriptive easement in Alaska, a claimant must show three elements: (1) adverse, (2) continuous, and (3) open and notorious use of the putative easement by the public at large for at least ten years. "A claimant's use is adverse or hostile 'if the true owners merely acquiesce, and do not intend to permit a use[;]' . . . 'a permissive use requires the acknowledgement by the possessor that he holds in subordination to the owner's title.' "[12] There is a rebuttable presumption that a claimant's use of a putative servient estate is permissive:

> [The] presumption of permissive use [places] the burden on the adverse possessor to prove by clear and convincing evidence that the use was not permissive. To rebut that presumption adverse possessors must show they were not on the owner's land with permission, and that the record owner could have ejected them. That burden can be difficult to overcome if evidence shows possession began permissively, such as with a lease. But absent such evidence we have held the presumption rebutted when the

---

9 *Interior Trails Pres. Coal. V. Swope*, 115 P.3d 527, 529 (Alaska 2005) (internal quotation omitted).

10 *Price v. Eastham*, 254 P.3d 1121, 1125–26 (Alaska 2011).

11 *See Interior Trails Pres. Coal.*, 115 P.3d at 529–30.

12 *McDonald v. Harris*, 978 P.2d 81, 85 (Alaska 1999) (quoting *Tenala, Ltd. v. Fowler,* 921 P.2d 1114, 1120 (Alaska 1996)).

> adverse possessor at all times acted as if the land were his and treated it as his and held the property as an owner.[13]

In short, whether a claimant's use is hostile to the record owner turns on whether the owner permits, or merely acquiesces, in the claimant's use—which is counterintuitively analyzed by determining whether the claimant "acknowledg[es] . . . that he holds in subordination to the owner's title."[14] The hostility element is evaluated objectively, if a claimant proves "a distinct and positive assertion of a right hostile to the owner[,]" then the hostility element is satisfied, regardless of whether the claimant knew that the use was adverse to the rights of the owner.[15]

//

//

---

13 *Yuk v. Robertson*, 397 P.3d 261, 266–67 (Alaska 2017) (internal quotations omitted).

14 *Hubbard v. Curtiss*, 684 P.2d 842, 848 (Alaska 1984) ("[T]he key difference between acquiescence by the true owner and possession with the permission of the true owner is that a permissive use requires the acknowledgment by the possessor that he holds in subordination to the owner's title.") (citation omitted).

15 *Cf. HP Ltd. P'ship v. Kenai River Airpark, LLC*, 270 P.3d 719, 732–33 (Alaska 2012) (holding that hostility element was not satisfied where the claimant intermittently used the putative servient estate and intentionally evaded the record owner to avoid confrontation); *Hurd v. Henley*, 478 P.3d 208, 219 (Alaska 2020) (discussing the legislature's 2003 amendments to Alaska's adverse possession statute, which, among other things, eliminated bad faith adverse possession claims—after the 2003 amendments, a claim for adverse possession will lie only "where the claimant had either color of title or a good faith but mistaken belief that the claimant owned the land in question"). Where the legislature modified adverse possession by eliminating bad faith claims, but left the language regarding prescriptive easements unchanged, requiring only "adverse notorious use," the court presumes that the legislature could have required a claimant to prove that it was aware that its use was adverse, but deliberately chose not to.

### B. *There is a dispute of material fact regarding whether the public's historic use of the Stewart Trail was hostile to the record owners of Defendants' tracts*

Whether Plaintiff has established that the public's use of the Stewart Trail prior to 2015 was adverse—*i.e.*, whether Plaintiff has rebutted the presumption that the public's use was permissive by proof of a distinct and positive assertion of a right hostile to Defendants' predecessors in interest as a matter of law—is the central dispute in this quiet-title action.

The Pughs argue that the public's use of the Trail, without more, is insufficient to rebut the presumption. The court disagrees. "In the bundle of rights we call property, one of the most valued is the right to sole and exclusive possession—the right to *exclude* strangers, or for that matter friends . . . ."[16] The court concludes that entering the property of another, without the owner's permission, is a distinct and positive assertion of a right hostile to the owner's right to exclude.

The crux of the Pughs' argument vis-à-vis the hostility element is that under the presumption that use is permissive, Plaintiff's evidence of the public's historic use of the

---

16 *Caquelin v. United States*, 140 Fed. Cl. 564, 578 (2018), *aff'd*, 959 F.3d 1360 (Fed. Cir. 2020) (citations omitted); *see also Atmos Energy Corp. v. Paul*, 598 S.W.3d 431, 443 (Tex. App. 2020) ("A property owner's right to exclude others from his or property is one of the most essential sticks in the bundle of rights that are commonly characterized as property.") (quotation omitted); *Coast Hematology-Oncology Assocs. Med. Grp., Inc. v. Long Beach Mem'l Med. Ctr.*, 58 Cal. App. 5th 748, 756, 272 Cal. Rptr. 3d 715, 722 (2020) ("Fundamentally, any property right entitles the owner of the property to exclude others. If you own some real property, for instance, you can exclude trespassers from it, because the land is exclusively yours.") (emphasis omitted).

Stewart Trail must be presumed to be permissive until there is proof by clear and convincing evidence of a distinct and positive assertion of a right hostile to Defendants or their predecessors in interest. The court agrees that there is a presumption of permissive use, but parts ways with Defendants by concluding that the public's open and notorious use of the Trail, without permission, is itself an assertion of a right hostile to the record owners.

The Pughs relied heavily on *City of Anchorage v. Nesbett*[17] in their briefing, and at oral argument, but *City of Anchorage* is inapposite: In that case, the type of use at issue began permissively, with a lease—the Alaska Supreme Court concluded that even though the lease expired, which may have technically transformed a licensed use of property into a hostile use, the continued use of the land in the same manner as the use that was initially permitted was insufficient to rebut the presumption that the use was permitted.[18]

Here, the public's use of the Trail did not begin permissively. Although the legally relevant statements of the 63 affiants in Plaintiff's Exhibit 38 vary, they all state that they used the Trail without the permission of Defendants' predecessors in interest. Put differently, none of the affiants acknowledge that they used the Trail in subordination to the title of Defendants' predecessors in interest.

Some of the affiants state that Ms. Stewart gave them permission to use the Trail. Defendants argue that the permission Ms. Stewart granted to some pedestrian users of the

---

17 *City of Anchorage v. Nesbett*, 530 P.2d 1324, 1328–29 (Alaska 1975).

18 *Id.* at 1328–32.

Trail should be imputed to the Pughs' and Mattanaw's predecessors in interest, such that this case is, in fact, like *City of Anchorage* in that use began permissively. The court disagrees.

Ms. Stewart had no legal right to grant permission to any user to traverse the Pugh or Mattanaw Tract. That some users crossed the Stewart Homestead on the Stewart Trail with permission has no bearing on the analysis of whether the users acknowledged that their use of the Trail on the Pugh and Mattanaw Tracts was subordinate to the right of Defendants' predecessors in interest to exclude them. By way of example, in *Dickson*, there was evidence that many users of the homestead road at issue there believed the road was public.[19] That use was deemed to satisfy the hostility requirement, which is logical because use of a road under the mistaken belief that it is public is inconsistent with acknowledging that a private person would have the right to exclude the user, and comports with the objective nature of the user-centered test for acquiescence versus permission.

If the only evidence before the court were the 63 affidavits and other exhibits proffered by Plaintiff, the court would be inclined to conclude that the public's historic use of the Trail was hostile to Defendants' predecessors in interest. The problem for Plaintiff's case is the affidavit of Charles Barnwell. Mr. Barnwell affied that he received permission from the predecessors in interest of both the Pughs and Mattanaw in 1982 and then used

---

19 *Dickson v. State, Dep't of Nat. Res.*, 433 P.3d 1075, 1085 (Alaska 2018).

the Trail across the Pugh and Mattanaw Tracts with permission an average of four times per week until 2013.

The court recognizes that one person's permissive use of a putative public prescriptive easement does not necessarily vitiate the element of hostility.[20] In the *Dickson* trial, one witness testified that he believed the owner of the putative servient estate had granted one user permission to use the homestead road at issue.[21] But the court held that "the [weight of the] countervailing evidence of unpermitted use" was sufficient to establish the element of hostility.[22] So it may be here, but "Alaska's summary judgment standard does not allow trial courts, on the limited evidence presented at the summary judgment stage, to make trial-like credibility determinations, conduct trial-like evidence weighing, or decide whether a . . . party has proved its case."[23]

Plaintiff argues that even if Mr. Barnwell received permission to use the section of the Stewart Trail crossing Defendants' tracts, that permission was not granted until 1982 and there is evidence of 15–20 prior years of hostile use of the Trail. There, Plaintiff's challenge is a paucity of evidence. To prevail on summary judgment, the movant must establish a prima facie case by submitting evidence that, if uncontroverted, would be sufficient to prevail as a matter of law.

---

20 *Id.*
21 *Id.*
22 *Id.*
23 *Christensen v. Alaska Sales & Serv., Inc.*, 335 P.3d 514, 520 (Alaska 2014).

Here, there are seven affiants who attest that they used the Trail without permission prior to 1982.[24] The Alaska Supreme Court has not established the minimum number of persons who must use a putative prescriptive easement before it will vest in the public at large, but the court concludes that uncontroverted evidence that seven persons used the Stewart Trail, most of them sporadically, before 1982 does not establish a prima facie case for summary judgment on the element of hostility that shifts the burden of production to Defendants to show that there was permissive use of the Trail prior to 1982.[25]

Because there was permissive use of the Trail across Defendants' tracts from 1982 until 2015, there is a genuine issue of material fact regarding whether the public's use of the Trail was adverse to the record owners of the Pugh and Mattanaw Tracts. Under Alaska's summary judgment standard, Mr. Barnwell's attestation that he received permission to cross Defendants' tracts in 1982 satisfies the requirement that the non-movant must proffer more than "a mere scintilla" of admissible evidence to establish a genuine issue of material fact for trial.

### C. *Pro se litigants must be granted special solicitude*

"When a pro se litigant is obviously trying to accomplish an action, the trial court should inform the litigant of the proper procedure for that action[;] [b]ut a trial court is not required to instruct a pro se litigant as to each step in litigating a claim because such

---

24 Pl.'s Ex. 38-19, -36, -42, -45, -57, -61, & -62.

25 *See, e.g.*, *Dickson*, 433 P.3d at 1081 (20 witnesses, including five experts, sufficient to establish, among other things, a public prescriptive easement).

involved assistance would compromise the court's impartiality in deciding the case by forcing the judge to act as an advocate for one side."[26]

Mattanaw, a pro se litigant, seemed to assert at oral argument that he has personally heard certain of Plaintiff's affiants make statements directly contradictory to certain attestations in their affidavits. In addition to disputing certain specific statements, Mattanaw has asserted that he generally disputes the credibility of many affiants because of his personal knowledge of instances where they failed to accurately recall certain events and proceedings that he witnessed, calling into question the accuracy of affiants' memory. Mattanaw stated that he seeks an opportunity to test the assertions in Plaintiff's affidavits.

The court notes that, ordinarily, the 63 affidavits submitted by Plaintiff would establish that the public's use of the Stewart Trail was continuous, open, and notorious for the statutory period. Collectively, the affiants used the Trail continuously since the 1960s. Some of the affiants used the Trail as frequently as four times per week,[27] some used it more sporadically,[28] but since "it is 'qualifying use by the public' that matters[,]"[29] and as Defendants have proffered no evidence disputing the continuous, year-round use by the public from the 1960s until 2015 when the Pughs bolstered the gate at Steamboat Drive to

---

26 *Shooshanian v. Dire*, 237 P.3d 618, 624 (Alaska 2010).
27 *See, e.g.*, Pl.'s Ex. 38-3.
28 *See, e.g.*, Pl.'s Ex. 38-1, -2, -4.
29 *Dickson*, 433 P.3d at 1085.

make it impassable to pedestrians evinced by the affidavits, the court could conclude that Plaintiff has established the element of continuous use as matter of law.[30]

Similarly, Defendants have failed to controvert the evidence set forth in Plaintiff's affidavits and exhibits that the public's use was open and notorious. In *Dickson v. State*, the public prescriptive easement case quoted *supra*, the Alaska Supreme Court affirmed the superior court's finding that the public's use of the homestead road at issue was open and notorious when "any reasonable landowner, even for a relatively remote piece of property, would have objectively been able to notice a nine-foot road that has been visible from the air since at least 1960."[31]

The Stewart Trail is clearly visible from the air,[32] and none of the affiants state that they used the Trail in a clandestine manner, or otherwise attempted to traverse it undetected. Moreover, Plaintiff submitted an excerpt from a 1970s-era guidebook available to the general public that describes the Stewart Trail as a private road open to hikers so long as users do not attempt to drive it when the road is wet, placing Defendants' predecessors in interest on notice of the public's use of the Trail.[33] The uncontroverted evidence is that the physical Trail is obvious to the landowners across whose properties it

---

30 *See id.* (evidence that many users considered the road at issue to be public, and that the road was used year-round, was sufficient to establish that the road was used continuously between 1958 and 2008).

31 *Id.* at 1086 (alteration omitted).

32 The Pughs submitted in Ex. A to their summary judgment memorandum a photograph of the Stewart Trail clearly visible from the air.

33 Pl.'s Ex. 24, p. 5.

runs, and that the public used it year-round in a manner that would have been readily apparent to the record owners.

As a technical matter, Mattanaw was required to submit admissible evidence, whether in the form of an affidavit or otherwise, and specifically dispute any of affiants' legally relevant statements, if he has personal knowledge that would allow him to do so, in order to raise a fact issue on summary judgment. If Mattanaw had retained counsel, Defendants' collective failure to proffer admissible evidence disputing Plaintiff's evidence regarding the second and third elements of the putative prescriptive easement over the Stewart Trail would allow the court to conclude that Plaintiff has proven those elements as a matter of law. But because of the latitude granted pro se litigants in Alaska trial courts, the court concludes that Mattanaw must be afforded the opportunity he seeks to "test" the statements of Plaintiff's affiants as they relate to each element of the putative prescriptive easement at issue here at trial.

Additionally, Mattanaw has argued that the path of the Stewart Trail is not so clear and well-established as it would seem to be under the evidence proffered by Plaintiff.[34] In the event that Plaintiff is able to establish all of the elements of a public prescriptive easement at trial, the parties must be given an opportunity to submit evidence regarding the precise, present-day location of the Stewart Trail to assist the court with determining the proper scope of the easement. Particularly considering that Mattanaw asserted at oral

---

[34] Plaintiff and the Pughs have both submitted aerial photographs of what is alleged to be the Stewart Trail that seem to show a clearly defined road.

argument that the Trail crosses a fifth privately-held tract in addition to the four tracts discussed in this order.

### D. *In no event will the court find a public prescriptive easement over land held by entities not party to this quiet-title action*

Plaintiff brought an additional argument in its summary judgment motion regarding a contract ("the Road Agreement") concerning the Stewart Trail that Defendants' predecessors in interest and the Waddells were party to. Plaintiff argues that the Road Agreement is relevant to the court's analysis of the prescriptive easement elements. The Road Agreement was apparently never executed because a condition precedent was not satisfied. Plaintiff also argues that the section of the Trail running across the Waddell Tract "has been a lawful public roadway easement since 1988" when it was platted by the Municipality of Anchorage.[35]

As the court explained at oral argument, it will not issue a judgment affecting the property rights of persons or entities who are not parties to this quiet-title action, and so it will not reach Plaintiff's arguments regarding the Stewart Trail as it runs across the Waddell Tract, or the Stewart Tract, or any other privately held land for that matter. If it is established that Mattanaw is correct and the Trail runs for some distance across a fifth, as-yet-unidentified tract, the court will make no findings of fact or conclusions of law regarding that section of the Trail. To the extent that Plaintiff believes the Road Agreement

---

35 Pl.'s Mem. in Supp. of Summ. J. 31.

is relevant to the elements of a public prescriptive easement, or the Stewart Trail's physical location, Plaintiff is free to move to admit the Road Agreement at trial for those purposes.

## V. CONCLUSION

There is a genuine dispute of material fact regarding whether the hostility element of the putative public prescriptive easement at issue here has been satisfied. That fact dispute alone would preclude summary judgment in favor of Plaintiff. As a second basis for denying Plaintiff's motion, although Mattanaw has not submitted any admissible evidence disputing Plaintiff's evidence regarding each element of the putative prescriptive easement at issue here, he seemed to assert at oral argument that he has personal knowledge of contradictory statements that certain affiants have made regarding legally relevant assertions in their affidavits; as a pro se litigant, the court will afford Mattanaw an opportunity to cross-examine those affiants whose affidavits he questions at trial. Accordingly, **Case Motion #21 is DENIED.**

IT IS SO ORDERED.

DATED at Anchorage, Alaska this 6 June 2021.

D Crosby

Dani Crosby
Superior Court Judge

I certify that on 6.9.21 a copy of the above was mailed to each of the following at their address of record:

T. Meacham
Mattanaw
K. Fitzgerald

CG
Judicial Assistant