



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**

**CASE SUMMARY
ROBIN PLEAK et al v. ENTRADA PROPERTY ASSN et al
CV-03-0310-PR**

Parties: Robin R. Pleak and Audrey Pleak, husband and wife; and Michael T. and Ann Shurtliff, husband and wife, v Entrada Property Owners Association, et. al.

Petitioners: Entrada et. al., are represented by John Iurino, John Hinderaker and Erin Simpson of Lewis & Roca.

Respondents: Charles Wirken, Gust Rosenfeld represents the Pleaks, et. al. _

Amicus Curiae: The Land Title Association of Arizona is represented by Gary Birnbaum, Michael Rubin and Dave Ouimette of Mariscal, Weeks, McIntyre and Friedlander

Facts:

This case concerns whether Arizona law permits the dedication of a roadway easement to the public by other than statutory means in the context of a public road that exists without any governmental oversight or maintenance. Language in *Burlington Northern & Sante Fe Railway Co. v. ACC.*, 198 Ariz. 604, 12 P.3d 1208 (App. Div. 1 2000), can be construed as conflicting with the holding by the court of appeals in this case. Older cases concerning a common law dedication being effected when an owner of land both recorded a plot with language purporting to dedicate an easement and sold lots referring to the recorded plot are cases that do not involve the dedication of roads. Rather, they mostly apply to the dedication of parks or public grounds. Further, most of those cases are very outdated, construing easements recorded before the enactment of the Arizona Revised Code of 1901. Such older cases were not decided in the context of public road maintenance ordinances and other laws imposing maintenance, insurance, and design obligations on those who are responsible for such roads.

In 1987, more than 2,000 acres of un-developed land near Tucson, known as Entrada, was surveyed and divided into a development with 48 lots. The Pleaks, et. al, own properties that are part of Sycamore Canyon Estates, which is located just east of Entrada. The disputed road, Kolb Road, extends into Entrada by 75 feet. The Entrada Property Association maintains the road in issue.

First American, predecessor to Entrada, recorded a “record of survey” of Entrada, consisting of three adjacent sections of real property. The survey was prepared in 1987 and recorded with Pima County in 1988. No governmental body ever expressly approved of the survey. The survey depicts certain easements for roadways and utilities and

includes an express dedication of those “easements to the public for use as such.” The survey identifies Kolb Road and other roads.

The Pleaks and other members of the public have used Kolb Road for access to and from Sycamore Canyon. When the survey was recorded, however, the public could not access Kolb Road because a gate and fence restricted access and conventional motor vehicles could not use the path that existed.

Kolb Road was improved in 1996. To build Kolb Road, Entrada complied with some requirements imposed by Pima County and the Pima County Flood Control District. When that happened, the documents that were filed at the Recorder’s Office stated that those who owned the property held all governmental bodies harmless if flooding, erosion or other incidents happen.

The Pleaks filed a three-count complaint requesting the trial court to declare that Entrada’s predecessor had dedicated the Kolb Road easement to the public, to quiet title in the roadway “in trust for the public,” and to permanently enjoin Entrada from interfering with the Pleaks’ use of the Kolb Road easement.

The trial court granted partial summary judgment to Entrada, finding that the survey did not constitute a statutory dedication of the roadway to the public and further, because the dedication had never been accepted, no common law dedication had occurred. The court also awarded Entrada its attorneys’ fees.

The court of appeals reversed and held that Entrada’s predecessor in interest dedicated the roadway easement to the public and reversed the judgment. The court found that a common law dedication is not inconsistent with the statutory methods for creating public highways, and that parties to land transfers may still employ the common law to dedicate public roadway easements. The court noted that Entrada’s predecessor intended to dedicate the road for public use. The court further held that Entrada’s purchase of the land referring to the recorded survey that showed the easements completed the common law dedication of the roadway easement.

Entrada seeks review of the court of appeals’ decision and asks this Court to reverse the court of appeals and reinstate the trial court’s decision.

Issues:

- “ 1. Whether property owners can dedicate real property to the general public – for its use and enjoyment – by non-statutory means?
2. Whether a dedication to the general public can occur when no government body is involved in the acceptance of the dedication.
3. What must occur to effect an acceptance by the general public of a common law dedication?
4. Who – the general public or the owners of the property described in the dedicatory instrument – benefits from the dedication at issue?”

Definition:

Common law: The law that exists as created by decisions by various courts over the years, as distinguished from law that is created by legislative enactment into statutes.

This Summary was prepared by the Arizona Supreme Court Staff Attorney-s Office solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.



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CASE SUMMARY

**NORTH VALLEY EMERGENCY SPECIALISTS, L.L.C., et al. v. HON. MARK
R. SANTANA; TEAM PHYSICIANS OF ARIZONA, P.C. dba EMERGENCY PHYSICIANS,
EPI,
CV-03-0279-PR**

Parties and Counsel:

Petitioners : North Valley Emergency Specialists, L.L.C. and individual physicians Scott Kurbat, Trina Bogart, Marc Brown, Bradley Butler, David Connor, Frank Contursi, Kurt Dickson, Michael Egan, Freeman Favors, Garth Gemar, Samuel Johnson, Stephen Johnson, Steven Johnsson, James Kurbat, Willie Lansden, Kathryn Perkins, William Schneider and Thomas Wills, represented by Stanley Lubin and Nicholas J. Enoch, Lubin & Enoch.

Respondent: Real Party in Interest Team Physicians of Arizona, P.C. doing business as Emergency Physicians, EPI, represented by Philip A. Robbins, Janet B. Hutchison and James O. Ehringer, Robbins & Green, P.A.

Facts:

Respondent (ATPA@) provides physician and related services to hospital emergency departments. It enters into employment agreements with individuals, and arranges for them to provide medical services to hospitals. This case involves a TPA contract to provide physician services at the Thunderbird Samaritan Hospital emergency department. During the summer of 2002, some of the physicians formed North Valley Emergency Specialists (ANVES@) to provide these emergency room medical personnel services in competition with TPA. All of them had entered into written employment agreements with TPA (or its predecessor, EPI). They each resigned from TPA effective October 1, 2002, to work at Thunderbird Samaritan's emergency room through NVES. Their TPA contracts contained a covenant not to work at Thunderbird Samaritan for a year after leaving TPA. Each agreement contained this provision:

Any and all disputes arising out of ... this Agreement, or the breach or any alleged breach thereof, shall be settled by arbitration in the City of Phoenix, Arizona, before the American Arbitration Association in accordance with its rules then obtaining, and judgment upon the award rendered may be entered in any court having jurisdiction thereof. This provision for arbitration shall be in addition to, but shall not prevent any party from applying for and obtaining injunctive relief by showing that in the absence thereof, the rights of such party under this Agreement cannot be adequately protected by the arbitration award.

NVES, as a separate legal entity, was not a party to any of these agreements.

TPA filed a complaint on August 12, 2002 for damages against NVES and injunctive relief against both NVES and the individual physicians. TPA claimed the defendants engaged in a variety of wrongful acts that constituted a breach of their employment contracts with it, as well as related torts. In February 2003, after NVES had succeeded in getting part of the case dismissed, TPA moved to stay judicial proceedings and to compel arbitration under Arizona Revised Statutes Section (“A.R.S. ’”) 12-1502. NVES argued that the trial court lacked authority to grant the motion because of the express limitation in A.R.S. ’ 12-1517:

This article shall have no application to arbitration agreements between employers and employees or their respective representatives.

The trial court stayed the proceedings pending arbitration, finding that § 12-1517’s limitation applies only to arbitration agreements contained in collective bargaining agreements. It ordered the parties to arbitrate the damage claims. NVES and the individual defendants petitioned the court of appeals for special action, claiming the decision improperly diverted the individual defendants into arbitration, and unnecessarily and prejudicially delayed NVES’s right to a prompt disposition. The court of appeals concluded the Legislature intended § 12-1517 to apply only to collective bargaining agreements, not every employment relationship; arbitration should proceed.

Issue:

Whether A.R.S. ’ 12-1517 specifically exempts arbitration agreements between an employer and its employees from the provisions of the Arizona Arbitration Act, A.R.S. ’ 12-1502 *et seq.*

Definitions:

arbitration means of alternative dispute resolution, not involving trial before a judge or jury. The dispute is heard by an arbitrator, whose decision is generally binding on the parties.

breach of contract breaking of a promise made in an agreement, covenant or contract.

collective bargaining agreement contract between employer and employees represented, typically, by a union.

complaint legal document that formally accuses another party of having acted wrongly. Its filing and formal service on the defendant starts a legal action.

injunctive relief remedy provided by a court that stops the opposing party from acting, or compels the party to act, rather than requiring the party to pay money.

jurisdiction power or authority of a court to hear and to decide a case.

special action extraordinary request to a court to act quickly because the party cannot get a remedy by ordinary appeal fast enough, or without undue harm.

stay stop. A stay pending arbitration halts the court trial proceedings until the arbitration is finished.

tort wrongful act that causes harm to another, for example, negligent driving that causes a collision and damage to another.

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