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## *Letica Land Company, LLC v. Anaconda-Deer Lodge County: An Uphill Road to Defeat the Standard of Review*

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**RECAP; *Letica Land Company, LLC v. Anaconda-Deer Lodge County*: An Uphill Road to Defeat the Standard of Review**

**Brian Geer**

No. DA 14-0780

Montana Supreme Court

Oral Argument: Wednesday, September 16th, 2015, at 9:30 AM in the Courtroom of the Montana Supreme Court, located in the Joseph P. Mazurek Justice Building, Helena, Montana.

I. MARTIN KING FOR APPELLANT LETICA LAND COMPANY

Mr. King opened his argument by characterizing this case as an unconstitutional taking of private property rather than a public access case. Mr. King set out a clear, confident layout of his argument and identified issues which he could quickly dismiss. He wanted the Court to know the background of the “roads” (a term he used loosely) at issue. He stated the lower branch is an underused, unkempt road which was never the sole or even primary access to the above lakes, and the upper road is a simple mountain trail, neither of which have ever been formally called “Modesty Creek” roads.

Getting into the bulk of his argument, Mr. King addressed the 1889 petition, which declared the lower branch a road, as well as the petition’s dependence on the road-creation statute requiring county action in furtherance of the road. When questioned, Mr. King seemingly conceded that the County had done maintenance on the road, but clarified that the maintenance was minimal, ceased completely after 1965, and was always done at the request of a landowner which, he argued, did not fulfil the statutory condition.

The Justices then quickly moved on and asked questions regarding the payment for the road and which party bore the burden of proving whether or not the road was paid for. Mr. King argued the statute required that the expenses of the road be paid by the county because the Commissioners deliberately referenced said statute in the petition. Further, Mr. King stated the County did not produce any records showing that the road was paid for. Justice Cotter asked whether the County was required to provide proof of payment, referring to *Powell County v. 5 Rockin’ MS Angus Ranch*.<sup>1</sup> Mr. King distinguished his argument from the holding in *5 Rockin’* because the parties in that case stipulated it was a public road. Absent such a stipulation, he argued that the County is required to show at least some documentation confirming it

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<sup>1</sup> *Powell County v. Rockin’ MS Angus Ranch*, 102 P.3d 1210 (Mont. 2004).

paid for the road pursuant to the statute. Mr. King argued that affirming the district court's order would force the landowner to prove a negative when this burden should rest with the party arguing the existence of the road.

The questions regarding the upper branch focused on whether or not there was evidence of adverse use. Mr. King pointed out that the landowners had erected three gates, no trespassing signs, a berm, and had put out a newspaper article alerting the public that the road was private. Mr. King further argued that the statute allows reverse prescription by contrary action or nonuse by the public, and that both were met.<sup>2</sup>

## II. MARK STERMITZ FOR APPELLANT DON MCGEE

Mr. Stermitz dedicated his argument to the upper branch and the district court's confused and misinterpreted analysis of the prescriptive easement. He argued that the district court's ruling, if upheld, would create bad precedent for future cases because it would allow future courts to make disingenuous and expansive interpretations of the record taken as a whole. According to Mr. Stermitz, the district court relied on indiscriminate evidence in proving the elements of an easement and inconsistently relied on maps to prove what it wanted to prove. He seemed concerned that courts and also title companies would be able to use an incomplete record to make its decisions, which would severely disadvantage landowners. The Justices seized upon this, stating that all easement cases are fact-based and that previous case law looked at a variety of sources to determine the record as a whole. Ultimately, the Court looked to Mr. Stermitz to define what he thought should be the standard should be.

## III. CYNTHIA WALKER FOR APPELLEE ANACONDA-DEER LODGE COUNTY

Ms. Walker's straightforward and brief argument also began by addressing the 1889 petition and stated the road was unconditionally declared a road and that the expenses would be borne by the owners, not the County. Furthermore, she argued there was no evidence that the County didn't pay for it, nor was there evidence that the road required any expense since it already existed.

While the district court did consider the 1913 map in its decision, Ms. Walker pointed out that the other maps which Mr. King and Mr. Stermitz refer to were not introduced into evidence and therefore were not considered in the record as a whole. She also argued that the portion of the 1896 map which Mr. King argued showed the terminus of the

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<sup>2</sup> Mont. Code Ann. § 70-17-111 (2013).

lower branch was unsurveyed and not to scale. It would therefore be inappropriate for the district court to have extrapolated beyond the surveyed portion of the map and was justified in its use of other evidence, including testimony, to determine where the lower branch ended.

Ms. Walker added that Appellants had not met the “clearly erroneous” standard of review for a district court’s Findings of Fact. While the appellants argued that the district court had misinterpreted or ignored much of the record, she pointed out that the district court not only wrote a 74-page order but also conducted a site visit to the property. Moving on to the upper branch, Ms. Walker challenged whether the use of the land was actually restricted by Appellants. Before 1980, Ms. Walker stated that the public frequently used the land to access lakes, both for water rights and recreation, and that the Forest Service frequented the roads as well. Furthermore, Ms. Walker asserted the appellants failed to prove that their actions interrupted the public use by clear and convincing evidence. She contended that the gates were locked for one to two years at the most, that the locked gates were on the lower branch, and that both Appellant McGee and the non-party owner Launderville testified that people were cutting the fences to access the land.

Finally, Ms. Walker returned to the issue of the 1889 petition meeting and addressed questions regarding how this decision aligns with precedent. Ms. Walker affirmed that this petition met the same standards as *5 Rockin’* and should similarly be upheld. Additionally, case law supports her position that it is nearly impossible for the County to produce all evidence relating to a petition from over one hundred years ago.<sup>3</sup> Thus, it would be unfair to force the County to produce these records when it argues the minutes of the petition clearly state that the County declared it a road and the other party cannot produce contrary evidence.

#### IV. MARTIN KING’S REBUTTAL

During his brief rebuttal, Mr. King swiftly moved through his last few arguments. Notably, he wanted to touch on the County’s one hundred years of non-recognition of the lower branch as well as his dispute as to its terminus. He also challenged Ms. Walker’s argument regarding the upper branch by stating that the County did not contest the elements of reverse prescription.

Although he mentioned it in his opening statement, Mr. King again stated the district court ignored the fact that the 1913 county map and every subsequent map did not depict the lower branch. Additionally,

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<sup>3</sup> Reid v. Park County, 627 P.2d 1210 (Mont. 1981).

the maps that did recognize the road depicted it ending on the eastern edge of Section 23 and not Section 22 as the County claimed. Mr. King argued the district court relied on hearsay and anecdotal evidence to extend the road another mile to Section 22 just so the County could connect the lower branch to the upper branch.

Finally, Mr. King brought up that nowhere in the County's argument did it state that the elements of a reverse prescription were not met, but that the County instead argued Appellant Leticia illegally blocked the road. Mr. King contended, however, that the statute simply holds the use be continually interrupted for over five years to eliminate the easement. The Court noted that Leticia had purchased the land nine years after the gates were locked and seemed hesitant to allow a person to rely on reverse prescription, however, when it was someone else's action which interrupted the use.

#### V. PREDICTIONS

This case centers on the conflict between landowner's right to private use and the public policy regarding effective use of land. As evidenced by the district court's lengthy order as well as each party's extensive briefing, this case is fact-intensive and it will be difficult to determine which way the Court will side. It is also possible that the Court will rule on the lower branch and upper branch separately. Ultimately, the Court will likely uphold the ruling of the district court because the standard of review weighs heavily against the appellants.

With respect to the lower branch, the central issue the Court addressed was the relevance of the statute and whether or not the County was required to show that it funded the road. The Court was not concerned with the district court's interpretation of the record taken as a whole, even though it was a significant part of Appellants' argument. Appellants argued that the district court improperly considered the record but did not state what they felt the record as a whole should be. Furthermore, while Appellants argued that the County could not produce evidence that they had paid for the road, several Justices challenged whether or not the appellants had any evidence that the County did not pay for the road. One Justice suggested that the Commissioners of the 1889 meeting may have even waived this requirement in the petition. Regardless, the Court seemed troubled with the idea of forcing a County to come up with the entirety of the record to prove the existence of a road which already has a history of maintenance by the County and use by the public.

As for the upper branch, the Court seemed to believe there was a prescriptive easement and was mostly concerned with the issue of reverse prescription. Here the appellants may have a more favorable argument. Conclusions of Law are reviewed for correctness, and Mr.

King's rebuttal focused heavily on the statutory definition of reverse prescription which he argued exterminated prescription. When questioned, Ms. Walker said that the appellants did not actually prevent the use for statutory time, but this factual argument may not convince the Court. Because the standard of review is more lenient to Conclusions of Law, it is possible, but not probable, that the Court may reverse or remand the district court's holding on the upper branch.

As Ms. Walker frequently pointed out, the standard of review rests heavily against the appellants. During the week-long trial, the district court heard many witnesses, conducted a site view, and issued a lengthy final opinion. All these facts favor the County and give the Court little room to find for the appellants. The Court seemed unconvinced that Appellants' arguments overcame the standard of review and will likely affirm the district court's imperfect but thorough review of the record.