

SUPREME COURT OF VIRGINIA



SUPREME COURT BUILDING
100 NORTH NINTH STREET
RICHMOND, VIRGINIA 23219
(804) 786-2259

Granted Appeal Summary

Case

KEVIN J. HORN, ET AL. v. JAMES WEBB, ET AL.
(Record Number 220230)

From

The Circuit Court of Fairfax County; M. Devine, Judge.

Counsel

Pro se appellants.

J. Chapman Petersen & Federico J. Zablach (Chap Petersen & Associates, PLC) for appellee.

Assignments of Error

1. The Court erred by adopting a position on behalf of the Webbs – that the “Sixth Recital” contained within the 1966 Easement granted permission for the docking of a pontoon boat by the Horns on the Webbs’ Property – that the Webbs were judicially estopped from raising on their own behalf, further improperly shifting the Webbs’ burden of proving permission as a defense to a burden upon the Horns to prove the non-existence of permission.
2. The Court abused its discretion, or erred as a matter of law, by emphasizing the “Sixth Recital” as dispositive when it was immaterial and irrelevant.
3. The Court abused its discretion, or erred as a matter of law, by ignoring the *Rustgi* interpretation of the 1966 Easement, as this interpretation was direct legal precedent, adopted by both parties, and central to both parties’ litigation and trial strategies.
4. The Court erred as a matter of law by interpreting “retaining wall” to unambiguously mean a place designed for the docking and powering of a boat.
5. The Court erred as a matter of law by interpreting the Sixth Recital as a permission for the permanent docking and powering of a pontoon boat.
6. The Court erred as a matter of law by interpreting the Sixth Recital as a separate side agreement of permission, rather than as an integrated portion of the 1966 Easement, which would nonetheless have been merged into and extinguished by the 1966 Easement, and thus non-revocable by the Webbs.

7. The Court erred as a matter of law by finding that the alleged Sixth Recital “permission” granted by the Fidels in 1966 was not severed upon the Fidels’ sale of Lot 612 in 1970.
8. The Court erred as a matter of law in holding that the Chappells’ purchase and permanent docking of a pontoon boat on the Lot 612 bulkhead in 1976 was not a sufficient change in circumstance to put the Lot 612 owners on notice of the Chappells’ adverse use of Lot 612.
9. The Court erred as a matter of law by ruling against the Horns when they established a *prima facie* prescriptive easement to dock and power their pontoon boat and to store their personal watercraft on the Webbs’ Property when the Webbs did not rebut the Horns’ presumption of prescription. As such, the Court further improperly shifted the Webbs’ burden of proving permission as a defense to a burden upon the Horns to prove the non-existence of permission.
10. The Court erred by awarding punitive damages against the Horns based on a ruling in the *Rustgi* Litigation in which the Horns were neither parties nor privies, thereby punishing them for seeking to preserve their unadjudicated property rights and to have their day in Court.
11. The Court erred by awarding punitive damages against the Horns by holding that the Horns’ multiple prescriptive easement claims were “identical” to the prescriptive claim advanced in the *Rustgi* Litigation.
12. The Court erred by awarding punitive damages to reimburse attorney fees in contravention of established Virginia law on punitive damages.