



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**ROBERTSON, *et al.*, v. ALLING, *et al.*
CV-14-0246-PR**

PARTIES:

Petitioners/Plaintiffs: Don C. Robertson, *et al.*

Respondents/Defendants: Robert E. Alling and Jacqueline R. Alling, *et al.*

FACTS:

This is a dispute between two groups of property owners, referred to here as the Allings and the Robertsons. In 2011, the Robertsons sued the Allings, a group of approximately twenty-seven individuals and entities, to quiet title, for a prescriptive easement, and for a permanent injunction regarding the Allings' real property through which a diversion ditch and water pipe drew water from Bonita Creek to the Robertsons' properties. After more than a year of pretrial litigation, the parties attended a settlement conference. The Robertsons expressly conditioned attending the settlement conference on all of the Allings' presence, and all of the Allings or their representatives with settlement authority were present. Although the parties did not reach a settlement agreement at the conference, the Allings and their counsel agreed, through the mediator, to leave their last conveyed settlement offer open for an additional forty-eight hours. The offer expired on January 31 without an acceptance from the Robertsons.

The Allings' counsel sent an e-mail to the Allings on February 2 recommending that, although their offer had expired, they leave the offer open until he had a further opportunity to speak with opposing counsel. Five married couples within the group e-mailed their counsel to say that they no longer wished to settle on the terms of the last offer. The Allings' counsel received the e-mail and "may have seen it" but "did not read it." On February 6, when the Robertsons' counsel asked over the telephone if the offer was still open, the Allings' counsel responded that it was still open. The Robertsons' counsel sent an e-mail to the Allings' counsel to confirm that the offer was open; the e-mail also set out the terms of the offer. The Allings' counsel responded, "Confirmed." On February 8, the Robertsons' counsel filed a notice of case resolution with the trial court, which was distributed to counsel for all parties, and the court vacated the April trial date.

The Robertsons' counsel prepared a written settlement agreement, which was provided to the Allings' counsel on March 4, 2013. There was no immediate reply, but three weeks later, on March 27, 2013, the Allings' counsel sent a new settlement proposal to the Robertsons' counsel, explaining that "some" of his clients disputed his authority to extend the offer the Robertsons had accepted on February 8.

The Robertsons filed a motion to enforce the settlement. The trial court held oral

argument, but not an evidentiary hearing. The trial court ruled that the February 6 e-mail exchange between counsel constituted a reoffering of the first offer from the Allings, and granted the motion to the extent necessary to enforce the settlement described in that exchange. In its conclusions of law, the trial court found that the attempted revocation of authority was ineffective, and therefore the Allings' counsel had both the actual and apparent authority of his clients to settle the matter. Thus, the court concluded the settlement was enforceable against the Allings and the Allings were estopped to claim otherwise. It also concluded Civil Procedure Rule 80(d), which provides that "[n]o agreement or consent between parties or attorneys in any matter is binding if disputed, unless it is in writing, or made orally in open court, and entered in the minutes[.]" did not apply or was satisfied by the e-mail exchange between counsel on February 6 and 8.

The court of appeals reversed the trial court's ruling, finding that an issue of fact existed as to the Allings' attorney's apparent authority at the time he extended the acceptance date of the earlier settlement offer. The court of appeals also concluded that, because of this dispute, Rule 80(d) applied, and the settlement agreement was unenforceable because there was not a writing signed by all parties, as opposed to just their counsel.

ISSUES:

1. Did the court of appeals err in holding that Rule 80(d) requires a client's written assent to the terms of a settlement whenever a client raises questions of fact concerning the lawyer's authority?
2. Did the Court of Appeals erroneously conclude that the trial court abused its discretion when it found that the Allings were estopped from contending, months after acceptance, that their lawyer lacked authority to extend the deadline for the Robertsons to accept the settlement offer?

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