

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 12-147

Complainant: No. 1443510308A

Judge: No. 1443510308B

ORDER

The complainants alleged that a superior court judge had no basis for reconsidering and then granting a motion for summary judgment that he had previously denied.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

After reviewing the information provided by the complainants and several minute entry orders available online, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. The commission does not have jurisdiction to review the legal sufficiency of the judge's rulings. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: July 25, 2012.

FOR THE COMMISSION

/s/ George Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the judge on July 25, 2012.

This order may not be used as a basis for disqualification of a judge.

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COMPLAINT AGAINST A JUDGE

Your Name:

Judge's Name:

Date: May 12, 2012

The stated purpose of the Commission on Judicial Conduct is to protect the public and maintain high standards for the judiciary and the administration of Justice. We (Plaintiffs in the referenced case) are filing this Complaint against Judge _____ because we believe that his conduct in the referenced case fell far below the expected standards for the judiciary and resulted in grave injustice. Specifically, Judge _____ issued an Order granting summary judgment for the Defendant, with no explanation whatsoever, in a case in which virtually every material fact was in dispute.

Judge _____ denied Defendant's first motion for Summary Judgment. Nothing changed to resolve any disputed facts between that motion and this one.

I. RELEVANT BACKGROUND

- In 2009, Defendant _____ built a 14 foot long and 4 foot tall block wall ("the block wall") over our objections, on what both our surveyor and Defendant's surveyor confirmed was our property, based upon documented property lines.
- When Defendant refused to refrain from building the wall or remove the wall, we reluctantly sought relief through the filing of a Complaint in Arizona Superior Court. Judge _____ was assigned as the Judge.
- Defendant filed a counterclaim against us, alleging that she owned the property due to adverse possession. She thus had the burden of proving that her possession of the property was actual, visible and continuous for at least ten years and that it was under a claim of right, hostile to the claim of others, and exclusive.
- As the Commission reviews the Court documents referenced below, it will be apparent that virtually every material fact in the case was in dispute.
- Notwithstanding that virtually every material fact in this case was in dispute, Judge _____ granted Defendant's Motion for Summary Judgment.

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COMPLAINT AGAINST A JUDGE

Your Name:

Judge's Name:

Date: May 12, 2012

II. REVIEW OF SALIENT FACTS IN DISPUTE

Citations are available for all relevant statements. If not cited in this document, they can be provided upon request.

A. Actual, Visible, Exclusive Possession.

Defendant alleged as follows:

- That her predecessor-in-interest had been in actual possession of the disputed land for more than ten years before we (Plaintiffs) acquired title and that she owns it because she “tacked on” because there was a railroad tie marking a boundary and because she had occupied and maintained the land up to the railroad tie wall, including the laying of asphalt over the _____ property line” (Defendant’s Renewed Motion for Summary Judgment, page 8, lines 7-9).
- That Defendant “tore up the asphalt because of electric wires needed for installation [of the card reader]. Prior to this, the asphalt ran right up the south side of the railroad tie wall” (Defendant’s Renewed Motion for Summary Judgment, page 9, lines 24-26).
- That Defendant maintained the disputed land.

We alleged as follows:

- The legal description of our property and survey of the property (0001) show that property is ours.
- Subsequent surveys (_____ 0002 and 0003) confirm this.
(previous owner of our property) Affidavit clearly states that the

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Your Name:

Judge's Name:

Date: May 12, 2012

railroad ties that he installed in the mid to late 1970's did not constitute the boundary between the properties.

- Defendant did not lay asphalt over our property line.
- Defendant had never occupied or maintained the land. (Affidavit dated September 1, 2010, paragraphs 9, 12 and 13; 001).

The hearing on the Motion for Summary Judgment was not a trial. If it had been, the evidence would clearly have supported our position against that of Defendant. This was simply a Motion for Summary Judgment. **How could Judge _____ have reasonably and fairly concluded there were no material facts in dispute?**

B. Prescriptive Easement.

Defendant alleged as follows:

- She had acquired "the disputed land" (the land under the block wall and south of it to the documented property line) by prescriptive easement (second Motion for Summary Judgment pages 13-14); or, in the alternative,
- She had acquired a prescriptive easement for a four inch by four inch square of land that somehow automatically translated into a prescriptive easement for the entire area of disputed land south of the wall.

We alleged as follows:

- We never allowed Plaintiff to acquire a prescriptive easement for the entire area of disputed land south of the wall.

Judge _____ apparently did not accept this lesser argument of prescriptive easement, because by granting Defendant's Motion for Summary Judgment, he did not recognize or declare the existence of a prescriptive easement. Instead, he allowed Defendant's claim of Adverse Possession to prevail.

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C. Unclean Hands.

Defendant alleged as follows:

- Plaintiffs lacked "clean hands" because of statements made by the neighbors to the west () concerning the boundary lines between us and the

Our position

- The Doctrine of Unclean Hands relates to the parties to a lawsuit, not a third party.
- We had no idea there were any issues related to the property line boundary between us and the prior to reading their Affidavits. (Affidavit dated September 2, 2011).

If Judge ruled against us as a result of the "unclean hands" argument, his Order was improper.

D. Consideration of Misstatements.

were named as potential witnesses in this case. Their depositions were not taken by either side. However, on September 2, 2011, they made a statement in support of that apparently provided the impetus to file the Motion for Summary Judgment that Judge granted.

The Affidavits contained the following erroneous statements that while technically irrelevant to the Motion itself, may have been relied upon by Judge given that they were mentioned by Defendant during oral argument and Judge asked questions about them:

- In paragraph 10 of their Affidavit, the tried to put us in a bad light by saying we applied for a variance to ignore the side setback requirements of the In

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truth, we applied for a Use Permit, not a variance. This is highly significant because a Use Permit was required because we (and Defendant) are on non-conforming lots, are both "land-locked" and set back from the street. Because we are on non-conforming lots, to make any improvements on our lots requires a Use Permit, whether the improvements follow zoning regulations or not. See Attachment A, which shows our approved Use Permit from 2007 (which the Defendant claimed we withdrew). We did not submit this during discovery because it is completely irrelevant to the question at hand. Note: Defendant did not submit a Use Permit for her 1993 remodel; she just proceeded anyway.

- The [redacted] that the [redacted] said we tried to ignore are attached as [redacted] Exhibit A to her second Motion for Summary Judgment. If [redacted] attorney, the [redacted] or Judge [redacted] had bothered to read them, they would have seen that they expired in 1993 (paragraph 15 page 2).

To the extent Judge [redacted] Order was issued in reliance on the [redacted] affidavit, his Order was improper.

III. NEGATIVE IMPACT OF JUDGE [redacted] ACTION.

- Court records indicate that the case was dismissed as a result of a settlement agreement following the entry of Judge [redacted] order.
- Judge [redacted] ruling caused us to have to quit claim the disputed property (the wall and south of the wall) to [redacted]
- As a result of Judge [redacted] erroneous and unfounded ruling, we were compelled to negotiate a payment to the trust account of [redacted] attorney's firm that approximated what the attorney claimed were his fees. All in all, this was a significant amount of money.
- As a result of Judge [redacted] erroneous and unfounded ruling, we were compelled to waive our right to appeal his ruling.

IV. CONCLUSION.

Given the unjust and unwarranted ruling by Judge [redacted] why did we end the fight? Why not ask Judge [redacted] for a clarification on his decision, a reconsideration or an appeal?

CONFIDENTIAL
State of Arizona
Commission on Judicial Conduct
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We did not feel we could pursue this matter further due to the outrageousness of the ruling itself – so apparently ill conceived and ruled with no explanation – that caused us to be concerned that Judge _____ would not have the patience or wherewithal to thoughtfully reexamine the outcome within the confines of Arizona law. At that point, we were emotionally spent and unwilling to put even more money at risk.

We recognize that the Commission dismisses virtually every Complaint that is filed. However, we urge you to take responsible action to spare other citizens from the actions of this Judge.