

## COA Opinion: Michigan Recognizes Common Law Easement by Private Dedication

22. July 2011 By Michael Azzi

In *Redmond v Van Buren County*, No. 297349, the Court of Appeals reversed a lower court order dismissing the plaintiffs' claim of an easement by prescription or private dedication, holding that both the plaintiffs and defendants were entitled to access the disputed land under a common law rule recognizing private dedication.

The plaintiffs were property owners in a subdivision on Lake Michigan. The subdivision was broken up into multiple blocks, with each block divided into lots. The only access to the entire subdivision was through a locked gate located on four lots at the south end of the subdivision (the "Gate Lots"). The plaintiffs' property was located within the subdivision and required the plaintiffs to travel through the Gated Lots to access their property. In 1956, the Gated Lots were conveyed to the Sand Haven Voluntary Association ("Association"). Only Association members had a key to the gate, and thus membership in the Association was required in order to access any of the properties in the subdivision. A property owner could become a member of the Association by purchasing property from an Association member, or by paying an initiation fee. When the plaintiffs purchased their property, they were given a key to the gate, but were never asked to become Association members and never paid any Association dues. Eventually an electronic gate was installed, but plaintiffs did not receive the code or a remote to open it.

Plaintiffs sued, claiming an easement by prescription through the gate located on the Gated lots, or alternatively that the original dedication created a private or public dedication, and thus an easement. After a bench trial, the trial court found that the defendants could claim a private dedication from the original grant of Gated Lots that included the gate, but the plaintiffs could not. The trial court found it notable that the defendants used the lots for more than 15 years, but the plaintiffs did not, and that the original deed to the Association implied that the grantors had acquiesced to the defendants' use of the lots. The plaintiffs appealed.

The Court of Appeals agreed with the trial court that the original grant of the Gated Lots created an irrevocable easement by virtue of a private dedication. The Court noted that there were no Michigan cases addressing the type of common law private dedication at issue in the case, but that the requirements for a common law public dedication were analogous, and thus that a private dedication had been established. The Court then disagreed with the trial court's conclusion regarding what parties were to be included in the private dedication. The Court reasoned that the grantor's intent controls the scope of a dedication, and that the facts and circumstances indicated that the original grantors intended for the Gated Lots to be used by all of the subdivision lot owners and not just those that were part of a "suspect" membership Association. Accordingly, as property owners in the subdivision, the plaintiffs retained an easement to use the gate and access their property.