

November 14, 2011

Brad B. Aldrich
Aldrich Legal Services
276 S. Union, Suite 1
Plymouth, MI 48170

Re: Charles Melms Property
5353 Ravenswood Road, Kimball Twp., MI 48074

Dear Mr. Aldrich:

I have reviewed the documents that were forwarded to me by Mr. Fletcher on or about October 26, 2011.

I reviewed the documentation with my client, Mr. Melms. Based on my review of the documents, my client concedes that an easement by prescription exists for ingress and egress along the west property line of the Melms parcel. The easement allows access to Mr. Fletcher's land-lock parcel. However, Mr. Melms objects to the scope of your client's use of said easement.

Fox v Pierce, 50 Mich. 500, 504; 15 NW 880 (1883), contains a statement that was later adopted as the general rule in *Stolte v Krentel*, 271 Mich. 98, 102; 260 NW 127 (1935), which enunciated that it was the "legal yardstick" whereby the issue of an indefinite conveyance of easement rights is to be governed:

"Now a right of way which is too indefinite for a determinate description is too indefinite to be established and protected by the court of chancery. Assuming that the right which is actually in controversy, or rather the right which complainants contemplate, to be capable of such a description, the rule then applies that the complainant must so state his case that if admitted by answer, or proved at the hearing, the court can decree upon it. Has that been done? Are the means given to enable the court to declare in its paper decree exactly what right of passage exists, and of what shape and dimensions the place is, and precisely where it is located with reference to lot lines and permanent erections?"

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As a general rule, one who has an easement by prescription has the privilege to do such acts as are necessary to make effective the enjoyment of the easement, unless the burden upon the servient tenement is thereby unreasonably increased. Restatement of Property § 480. See also *Killips v Mannisto*, 244 Mich. App 256, 261 (2001).

Based upon the above-referenced legal principals, a prescriptive easement along the west boundary of the Melms property for ingress and egress to the land-locked acreage exists for the benefit of Mr. Fletcher. However, use of motor vehicles, which damages Mr. Melms' property, are outside the scope of the easement and are prohibited.

There is and never was an easement for any vehicular traffic. The attached photographs illustrate the damage caused by vehicular traffic to the servient easement.

If you have any questions regarding this matter, please do not hesitate to contact me. Thank you for your continued cooperation.

David E. Oppliger, PLLC



By: David E. Oppliger

DEO/kmb

Enclosures

cc: Client (w/o enclosures)

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