

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-008944

10/13/2016

HONORABLE LORI HORN BUSTAMANTE

CLERK OF THE COURT
T. Nosker
Deputy

BOGDAN DABROWSKI, et al.

CHRISTOPHER A COMBS

v.

DAVID C BARTLETT

JOHN T GILBERT

NOEL J HEBETS

MINUTE ENTRY

The court has considered the supplemental briefing requested by the court regarding the value of the private way of necessity granted by the court. The court requested simultaneous briefing and stated that there would be no responses; yet, both sides filed responses. The court will address the various issues brought up in the briefing, the proposed judgment, the responses and the objections noted.

First, the Dabrowskis express concern regarding the proposed judgment language regarding a private way of necessity for Bartlett's "successors or assigns, and all subsequent owners of David Bartlett's Lot 2 property." Certainly, the private way of necessity will apply to any successors, assigns and all subsequent owners of Lot 2; thus, the court will provide the same or similar language in the final judgment.

Second, the court is required to award the "successful party" their *taxable* costs pursuant to A.R.S. § 12-341. As a result of Bartlett prevailing on Count 4 of his Counterclaim, Bartlett is the "successful party" and entitled to his *taxable* costs.

Third, there is a debate regarding when the payment would be made. Certainly, it would not be fair to the Dabrowskis for Bartlett to have an indefinite amount of time to compensate them.

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Accordingly, Bartlett must make his one-time payment either immediately prior to construction over the pathway or June 1, 2017, whichever event is first in time.

Fourth, the Dabrowski's indicate the Slyder easement is "unacceptable" and that they "do not agree" to the Slyder easement. The court appreciates the Dabrowskis concerns but the court has already ruled that Bartlett may choose the location of the easement. Although the court indicated Bartlett needed to ensure the greatest amount of deference to the privacy and concerns of the Dabrowskis, if Bartlett chooses the Slyder easement, the court will not interfere with that choice.

Finally, the main purpose of the briefing was to ascertain the value of the private way of necessity. Bartlett complains that the Dabrowskis provided additional information that was not provided at the trial. The court requested additional information and specifically stated that the testimony provided at the hearing did not provide sufficient information. The proposed value provided by Bartlett at the trial appeared inadequate and the proposed value presented by Dabrowski appeared high. At the beginning of the trial, the court anticipated being able to have sufficient information to resolve all issues presented but as expressed in the ruling granting the private way of necessity, there was insufficient information regarding how much the Dabrowski's should be compensated for Bartlett's private way of necessity.

The court recognizes that Bartlett intends on choosing the Slyder Easement but the court will provide a value for each easement in the event the value of each may have a bearing on Bartlett's ultimate decision. The court will address the diminution in value to the Dabrowskis' property and the diminution of value as it relates to the improvements on the Dabrowskis' property.

The court finds insufficient evidence to award an amount of money for the diminution in value from the improvements as suggested by the Dabrowskis for the Graham #1 and Graham #2 lots. However, as a result of the alignment and close proximity of the Slyder easement to the Dabrowskis' home, guesthouse, and utilities, there is an apparent diminution in value as it relates to the improvements on their property. Thus, if the Slyder easement is chosen, the court finds the diminution in value from the improvements to be \$20,000.00.

The best analysis regarding diminution of value of the property was provided by Jan Sell, a real estate appraiser with over 40 years of experience. The court finds the valuations adopted by Jan Sell to be the most credible and hereby adopts the valuations provided:

- Graham #1 Easement = \$37,200.00
- Graham #2 Easement = \$36,000.00
- Slyder Easement = \$76,250.00

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IT IS ORDERED that Mr. Bartlett must compensate the Dabrowskis for the easement over their property in the following amounts depending upon the easement he chooses:

- Graham #1 Easement = \$37,200.00
- Graham #2 Easement = \$36,000.00
- Slyder Easement = \$76,250.00 + \$20,000.00 = \$96,250.00

IT IS FURTHER ORDERED directing counsel for Bartlett to provide their taxable costs and a proposed judgment on or before October 31, 2016.