IN THE COURT OF APPEALS
STATE OF NEW MEXICO



ROBERT CIOLLI
and MARY LOU CIOLLI

Plaintiffs-Appellees

vs.

Docket No.32,241

McFARLAND LAND & CATTLE CO. INC.

Defendant/Appellant

# APPELLANT'S REPLY BRIEF

**Appeal taken from County of Quay, Tenth Judicial District Court. Honorable Albert J. Mitchell, Jr., District Judge.**

**Filed by:**

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## TABLE OF CONTENTS



## TABLE OF AUTHORITIES

**New Mexico Cases:**



**New Mexico Statutes**

## RECORDED TRANSCRIPT

The recorded transcript was taken by For The Record equipment and softwear. References to the recorded transcript are by clock time.

## STATEMENT OF COMPLIANCE

This brief was prepared using a proportionally space type style or type face, Times New Roman, and the body of the brief contains 969 words as indicated by WordPerfect, version X5.

## REPLY TO APPELLEES' SUMMARY OF FACTS RELEVANT TO THE APPEAL AND ARGUMENT

### PRESCRIPTIVE EASEMENT

a.) Failure to Attack Specific Finding/ Compliance with SCRA 12-213 When the Challenged Point Relates to the Legal Conclusion

Appellees contend that Appellant has failed to comply with Rule 12-213 SCRA because they have failed to set out the substance of the facts bearing on the proposition of a challenged finding of fact. While that argument may be correct in an appeal involve substantial evidence, that is not the case here. The district court did not make any findings of fact nor enter a conclusion of law thereon supporting their claim of easement by prescription. The court found :

> 3. Throughout the quiet title action, and continuing through the present, at no time did McFarland Land and Cattle Co. deny the Appellees nor the Appellees predecessor's access to their property. The statements of Mr. McFarland, (also known as Shine McFarland) are valid statements, binding upon the corporation, as they were made in his role as president of the corporation. The corporation was present during trial, and testified through its current president, Kelly McFarland.(RP 101).

The oral pronouncements of the Court, while not controlling, do not conflict with the written Findings, do not support Appellees' statement that the Court orally announced findings consistent with a prescriptive easement (Appellees' Response

pg 13), and in fact further actually emphasize the Court's feeling that Appellees were given permission because that's "the way everybody does it" and "everybody getting along" and "can go where you need to go" ( TR 2:48:50-2:50:21).

Appellee's testimony was consistent with the courts written and oral findings as when Appellee requested a written easement in 2003 or 2004, he testified that Appellant would not give them a written easement but that Appellee could come on to Appellant's property because that was the way everybody did it. (TR 11:21:07- 11:23:04).

Thus, the challenge is not to the sufficiency of the evidence but rather to the court's conclusion that the statements of McFarland (Appellant) somehow were converted in on a legally enforceable right.

**QUIET TITLE**

While argument is made that the "Right for any reason" should be replied upon by the Court, the issue to be considered is the effect of the quiet title decree upon the implied easement question. While the facts concerning the alleged implied easement are disputed and the court made no findings of fact in regard to the implied easement, the overriding issue is whether the alleged implied easement survived the quiet title action in any event.

It is not disputed that a quiet title decree was entered and the court found

that:

> 2. Appellant filed a quiet title suit in Cause No. D-101O-CV-1980-0028. This quieted title to the Appellant's land as against the Appellees predecessors in title.
> (RP-102)

Appellees reliance on *Trigg* v. *Allemand*, 95 NM 128 (Ct. App. 1980) does not avoid the effect of the quiet title action as, first, the existence of an implied easement or easement by necessity arose at the time Appellant acquired the property which predated the quiet title action. Secondly, while Appellees did acquire their interests after the quiet title action, there was no finding of an prescriptive easement by the court. (RP-101-105).

In an effort to avoid the effect of the prior quiet title action, Appellees attempt to argue that the court should consider the prior quiet title action in the context of the doctrine of collateral estoppel. Relying on *Blea v. Sandoval*, 107 N.M. 554,558 (Ct. App. 1988), "In New Mexico, we recognize that default judgments do not have collateral estoppel effect in future litigation, although they may have res judicata effect.", Appellees argue that collateral estoppel should not apply in this case to their claim of easement.

Appellees are wrong however in their interpretation of the effect of the prior quiet title decree. " We adopt the well-settled rule of law expressed in other

jurisdictions which states that a prior default judgment bars a subsequent suit on issues which were, or could have been, determined in the earlier action." *First State Bank* v. *Muzio*, 100 N.M. 98, 101, 666 P.2d 777 (1983).

A quiet title decree by statute establishes the plaintiff's estate against all adverse claims and that all known and unknown claimants are "barred and forever estopped from having or claiming any lien upon or any right or title to the premises, adverse to the plaintiff, and that plaintiff's title thereto be forever quieted and set at rest. . ." 42-6-2 NMSA, 1978, as amended. As the court found, the predecessors of Appellees' title were bound by the decree, Appellees' claim herein is a claim adverse to the right and title of Appellant, and thus the doctrine of res judicata would apply against Appellees claim.

**CONCLUSION**

Appellant respectfully requests that this Court reverse the conclusion of law made by the district court that an unwritten easement existed which could be enforced by order of the district court. Appellant further requests that this Court uphold the conclusion of law made by the district court that the quiet title action brought by Appellant quieted title against the claims or interests of Appellee or their predecessors which included any claim or right based upon an easement by necessity or implication.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief in Chief was mailed and/or hand delivered to the following parties and counsel this 14th day of March, 2013:

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