

IN THE SUPREME COURT OF OHIO

RICHARD A. WILSON, TRUSTEE,

CASE NO. 13-1923

Plaintiff,

v.

On Appeal From the
Portage County Court of Appeals,
Eleventh Appellate District

WILLIAM BELJON AND
BELJON ONE, LLC,

Appellants,

and

Court of Appeals
Case No. 2012 PA 00055

CITY OF AURORA,

Appellee

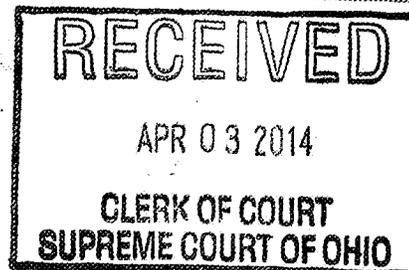
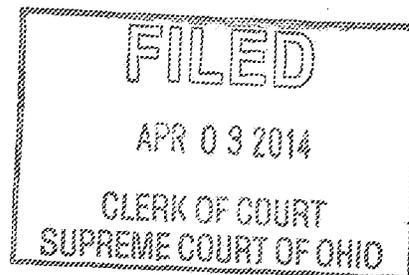
MOTION FOR RECONSIDERATION OF
DENIAL TO ACCEPT JURISDICTION IN APPEAL
OF WILLIAM BELJON AND BELJON ONE, LLC

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Now come Appellants William Beljon and Beljon One, LLC, and respectfully move this Honorable Court pursuant to S. Ct. Prac. R 18.02 to reconsider its declination to accept jurisdiction as to Appellant's request for a discretionary appeal. This Honorable Court's declination was entered by Order dated March 26, 2014.

Appellants assert that their appeal involves broad and sweeping issues of public and great general interest of significance to every municipal corporation of the State and that guidance by this Court is of the utmost importance as the issues entailing consequences relating to legislatively decreed principles of land use and financing.

Very concisely stated the dispute involves the establishment of a public easement/right of way crossing over Appellants' properties a substantial distance from the platted eighty foot right of way known as Pioneer Trail.

The plat establishing the roadway was approved and recorded by county commissioners in 1927 and the boundaries of Appellants' lands were defined by the roadway platted in 1927.

The lower court found the right of way easement outside of the platted roadway based upon a conclusory affidavit submitted by a civil engineer and included in Appellee City of Aurora's motion for summary judgment. No county maps, surveys, monument references, or other indicia of location were presented in the civil engineer's affidavit.

Case law is clear that the making of plat and the fixing of monuments by a governmental authority estops a city, or authority, from denying the street boundaries as shown by the plat and monuments where such boundaries have been relied upon. See Joseph v. City of Akron (1925) 19 Ohio App. 412. Reliance upon the plat as the actual boundary of properties abutting thereto is demonstrated by the historical transfers of title to the sublots over time to and from varied and numerous owners.

R.C. 5553.18 and related statutes specify the methodology to be used in finding the location and centerline of a roadway and surveys, maps, and other specific criteria are essential to making such a determination and those approaches were totally ignored in the present matter in which the lower court relied upon the conclusory affidavit of a civil engineer which may only be considered as constituting hearsay at best, the affidavit not coming close to the standard of clear and convincing evidence required to prove a prescriptive easement.

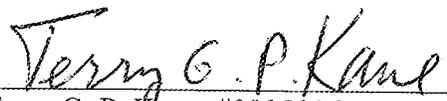
Appellants believe that a review by this Honorable Court would settle and resolve a matter of great interest to municipalities and other governmental units as to their duties and responsibilities in the maintenance and control of streets and highways and for the safety of the traveling public.

As an example of the importance of determining the bona fide location of a public roadway, Appellants would refer to Chapter 5735 of the Revised Code, which contains the formulas upon which governmental units are paid from various taxes and other charges arising out of the use of the public highway system in the State of Ohio. Some of the funds, such as the State and Local Government Highway Fund and the Gasoline Excise Tax Fund, are based as far as cities are concerned by the number of motor vehicles registered in each city. Other funds are based upon the total mileage of streets and roadways contained in a governmental unit, such that a municipality receives some particular funding upon findings as to the total measured lengths of all of its roads. As applied to the present matter before this Honorable Court, since the length of the prescriptive easement is less than that of the platted Pioneer Trail right of way, the Appellee City of Aurora would receive more state funding by recognition of the platted road way as opposed to the shorter prescriptive easement.

In summary the Appellants believe that the present matter offers a major opportunity for this Honorable Court to examine and analyze all of the concepts and facets of public highways and streets and the rights and interests not only of landowners and public authorities but also the safety, convenience, and welfare of the traveling public.

WHEREFORE Appellants respectfully request that this Honorable Court reconsider its denial to accept jurisdiction as to the present appeal and determine that it is appropriate for review by this Honorable Court.

Respectfully Submitted,


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PROOF OF SERVICE

I certify that a copy of this Motion was sent by ordinary U. S. Mail to counsel for Appellee Frank H. Scialdone at 100 Franklins Row 34305 Solon Road, Solon, Ohio 44139 on April 2 2014.


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