

Landowner's Positive Efforts to Deter Trespassers Defeated Implied Public Dedication Claim



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Before

1972, when the California legislature effectively abolished implied public dedication of land, a dedication could be implied by law when "the public has used the land for a period of more than five years with full knowledge of the owner, without asking or receiving permission to do so and without objection being made by anyone." Martha had owned 110 acres of undeveloped land in Tiburon for more than 100 years when, in 2017, a community association sued to quiet title in favor of the public to recreational easements over trails on the property. The association argued that, before 1972, the public's use of trails on Martha's property had established a recreational easement under the doctrine of implied dedication. The court of appeal disagreed. Citing the trial court's extensive findings, the court explained that the association failed to demonstrate the alleged public use was sufficient to put the landowner on notice under the doctrine of implied dedication because the users, for the most part, comprised a relatively small group of neighbors, many of whom were children, not the public at large. The court also found that even assuming the association had shown by substantial evidence that the trails were used by a significantly large and diverse group of the public, Martha made adequate bona fide attempts to prevent public use by, among other things installing no trespass signs and fences. The court highlighted "a

running battle between some users, who took down signs and fences", and owners, who repaired them, indicating both that the users did not believe they had a right to use the property and that the owner made bona fide efforts to deter them. In short, the landowner was not indifferent to public use of its property and substantial evidence supported the trial court's finding that Martha's attempts to deter trespassers demonstrated lack of acquiescence to a public dedication.

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