

## SUMMARY OF SODERBERG V. WEISEL

455 Pa.Super. 158, 687 A.2d 839 (1996)

by

Knud E. Hermansen

Knud is a licensed professional land surveyor, professional engineer, and attorney at law. He teaches at the University of Maine in the surveying engineering technology program and has a consulting practice specializing in boundary disputes, title, land development, liability, and easements. <http://www.umaine.edu/set/svt/articles/>

Note: The principles discussed may not apply to all states. The reader is encouraged to research the law in their own state.

Owners of servient estate brought action against owners of dominant estate, seeking to quiet title or relocate easement. The parties agree that an easement by prescription exists consisting of an access lane on property owned by Soderberg. The Weisels use the easement for ingress and egress of farm equipment. The Weisels' farm is located adjacent to the Soderbergs' residence. The easement passes directly next to the Soderbergs' home. Because large farm equipment was operated so close to their home and because they had young children, the Soderbergs became concerned that an accident might occur. Consequently, the Soderbergs proposed a relocation of the easement to the north of their home so as to reduce the risk of an accident. The Weisels rejected the Soderbergs' proposed relocation of the easement. The Soderbergs brought this action to quiet title, or in the alternative, to relocate the easement. The court found that the Weisels possessed and enjoyed prescriptive easement rights over the Soderbergs' land, the Soderbergs were entitled to relocate the easement, and the Weisels were required to pay one half the relocation costs.

Several findings of the court may be of interest to surveyors:

1. The court reviewed the creation of a prescriptive easement by stating that a prescriptive easement is a right to use another's property which is not inconsistent with the owner's rights and which is acquired by a use that is open, notorious, and uninterrupted for a period of twenty-one years. A prescriptive easement, once acquired, may not be restricted unreasonably by the possessor of the land that is subject to the easement.

2. It is generally true that easements may not be modified, changed, altered, or relocated without the consent of both the dominant and servient estates. However, there is no absolute prohibition against a landowner relocating a prescriptive easement unless such action completely denies the easement holder the intended use of the original easement. In such cases the courts employ the test of whether the relocation will unreasonably interfere with the easement holder's use and enjoyment of his right of way. What constitutes unreasonable interference on the part of the servient owner depends upon the owner and his desired use, as well as the disadvantage to the owner of the easement. Therefore, Pennsylvania law permits a minor, safe relocation of prescriptive easements that does not unreasonably interfere with an easement holder's use and enjoyment. However, where the minor

movement is unilateral, the party seeking the movement must pay the cost for the movement. Unilateral movement of an easement is not the rule and will be permitted only under strict circumstances.