

Transcript of Trial Proceedings

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT

ERIC LANSER,  
Plaintiff,  
vs.  
ROBERT RIDDLE,  
Defendant.

Case No. 4FA-11-03117 CI  
Supreme Court No. S-15780

VOLUME I  
TRANSCRIPT OF TRIAL PROCEEDINGS  
July 9, 2013 - Pages 1 through 267

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TRANSCRIPT OF TRIAL PROCEEDINGS  
BEFORE THE HONORABLE BETHANY S. HARBISON  
Superior Court Judge

Fairbanks, Alaska  
July 9, 2013  
8:33 A.M.

APPEARANCES:

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FOR THE DEFENDANT:                   WILLIAM R. SATTERBERG, JR.  
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# Transcript of Trial Proceedings

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1 P R O C E E D I N G S

2 [CourtSmart]

3 08:33:15 A.M.

4 (On record.)

5 THE CLERK: On record.

6 THE COURT: We're on record in Lanser versus Riddle;  
7 4FA-11-3117. The parties are here with counsel. And this  
8 is the time set for trial.

9 We were going to take up a few things in the  
10 first half hour and then start with witnesses at 9:00.

11 I've received the motions for reconsideration.  
12 I learned another lesson about being more specific. These  
13 rolled in, I guess, around 10:30 or 11:00 yesterday from  
14 each side. And for some reason, I was under the delusion  
15 that when I indicated I had the morning, that I would  
16 normally be in trial, that I would somehow get these  
17 earlier in the morning. But in any event, counsel kindly  
18 did give me a couple hours to look at them and I did.

19 And both motions for reconsideration are  
20 denied.

21 By way of explanation, I really would have  
22 liked to have written something for you, but perhaps the  
23 simplest manner -- the way to kind of handle this is just  
24 for me, at this point, to go through and orally explain  
25 why I'm denying reconsiderations from both you.

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1           And I'm not really trying to engage in a  
2 conversation, counsel, just so you know. I'll -- I'll  
3 give you a sense of why these motions for reconsideration  
4 are being denied, and then we'll go forward with the  
5 trial.

6           And if I'm able, I'll follow up with something  
7 in writing, but at least you'll have some sort of a record  
8 as to why these motions for reconsideration are being  
9 denied.

10           With regard to the motion for reconsideration  
11 filed by Mr. Riddle, the -- one of the main concerns that  
12 Mr. Riddle has is with regard to the way the Court  
13 interprets the Right to Farm Act, and particularly --  
14 essentially -- well, there were two issues, I think,  
15 really, that concerned Mr. Riddle that were raised here  
16 that the Court wants to respond to.

17           One is that the -- Mr. Riddle identified that  
18 the Court read the decision document to support a finding  
19 that the application materials made representations about  
20 odor control, and complained that the permit application  
21 itself is not part of the record.

22           And in any event -- and there seemed to be  
23 some concern that this was raised sua sponte by the Court.  
24 In fact, Mr. Lanser's pleadings raised this issue and  
25 pointed to the decision document as evidence of what was

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1 in Mr. Riddle's application.

2 And the Court agrees that that decision  
3 document, as well as the testimony of Mr. Riddle, both  
4 reflect that his application materials referred to odor  
5 control.

6 Now, if, in fact, there's an issue of fact  
7 about that, it's true that there -- that there's nothing  
8 in the record, other than the decision document and  
9 Mr. Riddle's testimony, both of which indicate that odor  
10 control was part of the application materials.

11 If someone wanted to create an issue of fact  
12 by putting the actual permit application materials into  
13 the record, that wasn't done. In the record that the  
14 Court had, and has before it, was what -- what Mr. Lanser  
15 pointed to, which was the testimony of Mr. Riddle and the  
16 decision document, both of which indicate odor control  
17 being contemplated by Mr. Riddle's application.

18 So when the permit incorporated, by reference,  
19 the application materials, the Court found that odor  
20 control was then part of what was being incorporated. And  
21 I don't think the record had any issue of fact with regard  
22 to that.

23 It is true that the record didn't include  
24 permit application materials. Both sides, for whatever  
25 reason, I guess, didn't do that. But certainly the

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1 decision document and the testimony of Mr. Riddle were  
2 reflective of what was in those application materials.

3 Then the other concern raised by Mr. Riddle is  
4 the Right to Farm law. And Mr. Riddle feels that the  
5 Court has essentially taken the borough permitting -- the  
6 borough permit and kind of grafted that onto the Right to  
7 Farm law.

8 And that -- that's not what the Court was  
9 doing. The Right to Farm law talks about protecting a --  
10 an operation that is --

11 MR. SATTERBERG: Your Honor, we have the  
12 exclusionary rules invoked by the defendant or plaintiff.

13 THE COURT: Okay.

14 MR. SATTERBERG: And I understand there's a witness  
15 in the courtroom.

16 THE COURT: All right. Anyone who's a witness here  
17 needs to leave, please. We're going to bring in witnesses  
18 as we need you. But --

19 So the question is whether the land is used or  
20 intend to use -- intend for use for the commercial  
21 production of crops and livestock. And -- and if so, the  
22 Right to Farm law would -- would be triggered.

23 The statute, interestingly enough, doesn't  
24 indicate it. It doesn't indicate what happens when land  
25 is used for different purposes. And there's -- the

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1 statute seems to contemplate one purpose for land use  
2 only. And if there's -- if the land is used for this one  
3 purpose -- the commercial production of crops and  
4 livestock and activities along those lines -- it falls  
5 within the Right to Farm law.

6 Certainly the legislature must have been aware  
7 that land can -- could be used for different purposes.  
8 And, in fact, many people use their land for various  
9 purposes. And -- but it didn't tell -- tell readers what  
10 to do when land is being used for more than one purpose.

11 So whether a purpose of -- a use of the land  
12 is commercial production of crops and livestock, if that  
13 then protects that land forever under the Right to Farm  
14 Act when, perhaps, another purpose has become the primary  
15 use, is a reasonable potential read.

16 And the way Mr. -- I think -- Riddle wants me  
17 to read it is as long as any of the land is used for -- at  
18 all for a commercial production of crops or livestock or  
19 the agricultural-type activities, in his mind, it is then  
20 protected under the Right to Farm Act.

21 And, you know, you could also read it that if  
22 it's used for anything else at all, it's not protected. I  
23 view what was intended by -- and if you look at the  
24 statute in its entirety and in it's whole, the intention  
25 was to continue to protect farms as long as they're still

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1 primarily farms.

2           The intention was not to allow someone, for  
3 example, to continue to sell a dozen eggs and actually use  
4 their land for a nuclear power plant or something like  
5 that. They would not then be protected simply because  
6 they continued to sell a dozen eggs a year.

7           The question really is if it's still a farm,  
8 even if it grows and it becomes stinky, or it becomes loud  
9 or things like that, as long as it's still a farm and  
10 still being used for the agricultural purpose and  
11 commercial production of crops and livestock, it is  
12 protected.

13           And so given that, if Mr. Riddle's still  
14 primarily using his land for agricultural purposes, the  
15 fact that he may have something that's smelly or offensive  
16 to people around him that's still part of an agricultural  
17 purpose is really just too bad.

18           On the -- the flip side of that is if he's now  
19 no longer primarily using his land for the commercial  
20 production of crops and livestock and the other  
21 agricultural activities, then the fact that he may  
22 continue on the side to -- to do some farming is -- is  
23 really -- doesn't keep him protected by the Right to Farm  
24 Act.

25           And that's just looking at the statutory

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1 language in its -- and the statutory purpose in its  
2 entirety.

3 So for those reasons, I deny Mr. Riddle's  
4 motion for reconsideration.

5 With regard to Mr. Lanser's, Mr. Lanser's  
6 document focuses on the issue of negligence and his  
7 concern that the Court took that away from this trial and  
8 granted summary judgment on that issue. And Mr. Lanser  
9 feels the Court overlooked the common law applicable to a  
10 duty and complained that the Court didn't go through an  
11 analysis of the foreseeability of harm test.

12 And I think it's true that the Court could  
13 have spent more time going through that analysis. But at  
14 the end of the day, once you -- once the Court concluded  
15 that Mr. Lanser -- that the harm that Mr. Lanser's  
16 alleging from odor -- odors is this issue of having it  
17 difficult to sell homes, and -- and then he decided, for  
18 whatever reason, not to quantify that in an economic term,  
19 it really doesn't matter because at this point he's not  
20 pursuing that harm.

21 That harm is the type of harm that has  
22 economic damage. And if you choose not to calculate the  
23 damage that's and pursue that, then I really think we're  
24 done.

25 And so at this point, Mr. Lanser has decided

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT

ERIC LANSER,  
Plaintiff,

vs.

ROBERT RIDDLE,  
Defendant.

---

Case No. 4FA-11-03117 CI  
Supreme Court No. S-15780

VOLUME VIII  
TRANSCRIPT OF TRIAL PROCEEDINGS  
July 18, 2013 - Pages 1647 through 1872

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1 Q. What would be the value of that?

2 A. A couple thousand dollars.

3 Q. Okay.

4 MR. SATTERBERG: Move the admission, Your Honor, of  
5 CS, CQ, CP.

6 THE COURT: CS, CQ, CP. Any objection?

7 MS. ORAVEC: I -- I do object. I think these should  
8 have been brought on cross. But if I -- if Mr. Riddle  
9 would just confirm they were actually paid, I have no  
10 objection.

11 THE WITNESS: Two were paid and one wasn't.

12 BY MR. SATTERBERG:

13 Q. One was a donation?

14 A. One was a donation.

15 MS. ORAVEC: Okay. No objection.

16 THE COURT: Admitted.

17 (Exhibits CS, CQ, and CP admitted.)

18 MR. SATTERBERG: Judge, it's 1:29. Mr. Zimmerman's  
19 here. So I think --

20 THE COURT: Let's stop.

21 MR. SATTERBERG: It's time to quit.

22 THE COURT: Tomorrow morning at 8:30. We'll be done  
23 tomorrow, yes? Or else we'll go into, like, September.

24 MR. SATTERBERG: I think we're going to -- I don't  
25 know yet, Judge. I'm -- I've released one witness. We'll

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT

ERIC LANSER,  
Plaintiff,

vs.

ROBERT RIDDLE,  
Defendant.

Case No. 4FA-11-03117 CI  
Supreme Court No. S-15780

VOLUME XI  
TRANSCRIPT OF TRIAL PROCEEDINGS  
September 13, 2013 - Pages 2316 through 2578

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TRANSCRIPT OF TRIAL PROCEEDINGS  
BEFORE THE HONORABLE BETHANY S. HARBISON  
Superior Court Judge

Fairbanks, Alaska  
September 13, 2013  
8:36 A.M.

APPEARANCES:

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1 in fact, I think Mr. MacInnis said it's a pretty good  
2 process he's got going on. In fact, he complimented  
3 Mr. Riddle on the quality of his operation, that this is  
4 how it works.

5 I mean, he actually -- Mr. Riddle actually  
6 received compliments from the director back then on the  
7 quality of the operation that was going on out there, as  
8 far as how he was handling the septage.

9 You have another question. I can tell.

10 THE COURT: I do. So I'm just -- I'm struggling  
11 with how to interpret that the practice here, having  
12 lagoons, whether or not it's incident to or in conjunction  
13 with farming activities.

14 And if I believe that certainly some  
15 legitimate agricultural activity may involve spreading  
16 human septage -- there's testimony --

17 MR. SATTERBERG: Sure, Judge.

18 THE COURT: -- in the record about that.

19 MR. SATTERBERG: No problem.

20 THE COURT: Let's suppose I also conclude that, in  
21 this instance, the septage isn't being stored -- only some  
22 of it may be being used for farming, and much of it is  
23 being stored as part of a septage business, when -- when  
24 is it incident to or in conjunction with activities?

25 Does all of the practice have to be incident

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1 to or in conjunction with activities?

2 MR. SATTERBERG: I don't -- I don't think all of it  
3 does, Judge.

4 THE COURT: Or -- in other words, like, suppose that  
5 it was a farm and they needed, like, fuel? So they had  
6 their own little -- a lot of farms do. I've seen this.  
7 You know, like, they've got gas and they can pump their  
8 own fuel or something.

9 And what if it turns into a great big  
10 humongous gas station and the farm shrinks down to, like,  
11 your thousand -- I mean, Mrs. Gardener with her little  
12 acre could generate \$1,000 worth of stuff. And --

13 MR. SATTERBERG: Your Honor, technically --

14 THE COURT: When is the -- when is the activity  
15 incident to or in conjunction with the agriculture? And  
16 when does the other activity take over?

17 MR. SATTERBERG: The concept of principle use is  
18 something that the plaintiff has read into the law in this  
19 case, and perhaps is leading the Court down a path on  
20 this. That's not what the -- the Right to Farm Act talks  
21 about, that the principle use of the property must be for  
22 a farm. Now --

23 THE COURT: It's not in the statute. And I think I  
24 was the one who wrote it in --

25 MR. SATTERBERG: Okay.

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1 THE COURT: -- in summary judgment. It's not in the  
2 statute. But when I was writing summary judgment, I  
3 couldn't find a way to reconcile -- and I'm really  
4 interested in both of you, because you're both very  
5 learned -- how to reconcile this statute, because clearly  
6 it wasn't the legislative intent to allow the other  
7 activity to be the primary activity, and farming to be an  
8 acre of land that happens to generate the \$1,000 that  
9 we've heard from about 5 or 10 witnesses.

10 MR. SATTERBERG: I think there's two answers.

11 THE COURT: And that's what I'm -- that's where this  
12 Court -- and I'm not hiding the ball from either of you.  
13 This is where I'm struggling.

14 MR. SATTERBERG: Two answers. Number one, if you  
15 recall, Charlie Knight told us that "if you want the  
16 protections of the Right to Farm Act" -- he told  
17 Mr. Riddle this. "If you want it, you've got to have a  
18 farm plan, and it's got to be approved by the Division of  
19 Agriculture."

20 They make the decision, "Are you a farm? Do  
21 you fall within that? If you want the protections of this  
22 Act, you'd better be approved. You better have a farm  
23 plan, and you better be approved," which Mr. Riddle is.

24 THE COURT: Or you better be an agricultural  
25 facility, or a --

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