

D.C. Court of Appeals Affirms Establishment of a Public Easement by Prescription Against a Tax Sale Purchaser Who Tried to Close Off an Alleyway

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In *Zere v. District of Columbia*, the D.C. Court of Appeals restated the elements for a prescriptive easement in the District, with a particular focus on the element of adversity, by affirming a grant of summary judgment. Mr. Zere, an experienced tax sale purchaser, separately acquired five of six lots that formed a private alley. Mr. Zere then attempted to combine his five lots, erect a fence, and block the alley. However, the DC Office of Planning's Historic Preservation Review Board denied his request. The District, being aware of Mr. Zere's attempt to block the alley, filed a complaint seeking, *inter alia*, a declaration that public easement by prescription existed across the alley.

When the District moved for summary judgment, Mr. Zere, acting *pro se*, made two critical errors. First, Mr. Zere did not retain counsel. Second, Mr. Zere did not file a Rule 12-I(k) statement of disputed material facts with his opposition to the District's motion for summary judgment. In failing to do so, Mr. Zere gave himself little opportunity to oppose the District's motion successfully.

The trial court determined and the appellate court affirmed that the District had indeed established a public prescriptive easement over the private alley. The District's motion attached declaration testimony from longtime residents adjacent to the alley, including one resident who had lived there continuously for 36 years. All residents stated that they used the alley on a nearly daily basis and regularly observed other public use of the alley. While Mr. Zere argued that the public's use was not adverse, the appellate court noted that [a]dversity may be presumed from proof of open and continuous use for the statutory period absent contrary evidence. *Chaconas v. Meyers*, 465 A.2d 379, 382 (D.C. 1983). Without a statement of disputed material facts, Mr. Zere had little contrary evidence beyond his own denials. Mr. Zere's legal arguments that tax sales extinguish preexisting easements and that the District took his property without just compensation were unconvincing. Under D.C. Code sec. 47-1382(a)(3), tax sales *do not* extinguish easements of record or those that are readily observable upon an inspection of the property, and Mr. Zere forfeited his takings claim by failing to raise it as a compulsory counterclaim in his answer.

This summary is not intended to contain legal advice or to be an exhaustive review. If you have any questions regarding this particular Washington, D.C. case, please contact [Jeremy Camacho](#) at Jackson & Campbell, P.C.

TAGGED: [Zere v. District of Columbia](#), [Public Easement](#), [D.C. Code sec. 47-1382\(a\)\(3\)](#)