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MARIE ELLEN DUNLAP  
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7 PCC No.: 35932  
8 ASB NO.: 6253

9 *Attorney for Plaintiffs*

10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

11 IN AND FOR THE COUNTY OF COCHISE

12 DANNY R. HATCH, JR. and DENICE R.  
13 HATCH, husband and wife,

14 Plaintiffs,

15 vs.

16 RONALD J. KLUMP and JANE DOE  
17 KLUMP, husband and wife, ROY J. KLUMP  
18 and JANE DOE KLUMP, husband and wife,  
19 and DAYLA HEAP and JOHN DOE HEAP,  
20 wife and husband,

21 Defendants

NO. CV 201400128

REPLY TO DEFENDANT'S  
RESPONSE TO MOTION  
FOR NEW TRIAL

Assigned: Hon. John Kelliher

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JUL 15 2015

22 NOW COME the Plaintiffs DANNY R. Hatch, Jr. and DENICE R. HATCH, by and  
23 through their Attorney Carl D. Macpherson and for their reply to Defendant's response filed  
24 June 23, 2015, respectfully submit the following:

25 Plaintiff's aver the trial Court, in Ruling in favor of Defendant's Motion for Summary  
26 Judgment, incorrectly relied upon Hunt v. Richardson, 216 Ariz. 144, 163 P.3d 1064, 1067  
27 (Az.App. 2007) in finding that dedication is presumed unless it can be proven that the  
28 dedicator's intent was otherwise. This holding is in complete contradiction to the applicable  
law stated in Kadlec v. Dorcey, 224 Ariz. 551, 233P.3d 1130 (Ariz. 2010). Plaintiff's argue  
that pursuant to ARCP Rule 59 (a) (8), the Judgment of the Court is contrary to law.

Defendants are correct in their assertion that an effective dedication of private land  
to a public use has two general components (an offer by the owner of land to dedicate and  
acceptance by the general public). Pleak v. Entrada, 207 Ariz. 418, 87 P.3d 831, 837 (Ariz.

1 2004). Defendants however incorrectly assert that there was an offer to create a public  
2 right of way easement by Continental Service Corporation, recorded December 8, 1976.  
3 The clear intent of Continental Service Corporation in creating the right of way easement,  
4 by excluding the word "and" between utilities, an easement" limits the grant to an  
5 easement to construct, operate and maintain...and nothing more. Application of the  
6 principle of ejusdem generis would likewise limit the right of way easement to construct,  
7 operate and maintain utilities... only.

8 Defendants in their Motion for Summary Judgment and their response rely solely  
9 on the language on the right of way easement to justify their position. They suggest  
10 Continental Service Corporation granted both a public ingress and egress easement and  
11 for public utilities without any extrinsic evidence. Defendants have ignored, however, the  
12 law defined in Kadlec v. Dorsey, 224 Ariz. 551, 233 P.3d 1130 (Ariz. 2010), wherein it is  
13 expressly held that dedication to the public is not presumed. The Court held that  
14 "dedication of private land to public use is not accomplished by particular words or forms  
15 of conveyance but does require full demonstration of the intent of the donor to dedicate".  
16 Finally, and most directly on point, Kadlec, supra, held that a party claiming a public  
17 dedication has the burden of proving a public dedication by clear, satisfactory and  
18 unequivocal evidence.

19 The facts in the case at bar reveal that Defendants rely solely on the language of  
20 the easement to meet their burden of proof that said right of way easement created a  
21 public dedication of a roadway. Defendants have provided no evidence to the Court of  
22 grantor's (Continental Service Corporation) intent beyond the granting instrument, nor  
23 other exhibits, affidavits, or testimony on this issue.

24 Defendants claim that Kadles, supra, is factually distinguishable and misplaced is  
25 without merit. Again, Kadlec, supra, affirmed the tenet that there is no presumption of the  
26 donor's intent to dedicate unless clearly shown by the donor's acts and declarations.

27 Consequently, Plaintiff's aver Defendant's have failed to sustain their burden of  
28 proof by clear, satisfactory and unequivocal evidence of a dedication of a right of way

1 easement to the public. By lack of Defendants' sustaining their burden of proof, the Court  
2 must grant a new trial in this cause on the grounds that the judgment is contrary to law.

3 WHEREFORE, Plaintiffs pray this Honorable Court:

4 A. Grant a new trial in the above cause; or, in the alternative,

5 B. Enter Summary Judgment in favor of the Plaintiffs and against Defendants; and

6 C. Award Plaintiffs their costs and Attorney's fees pursuant to ARS 12-341.01 and  
7 12-349.

8 RESPECTFULLY SUBMITTED this 1 day of July, 2015.

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14 Copy of the foregoing to:

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16 2107 B Paseo San Luis, Suite C  
17 Sierra Vista, AZ 85635

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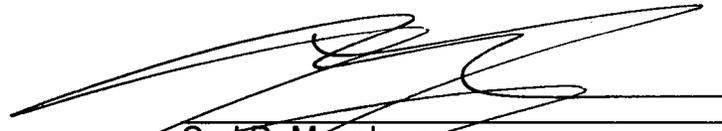
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Carl D. Macpherson  
Attorney for Plaintiffs