

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 12-0312

PUBLIC LANDS ACCESS ASSOCIATION, INC.,

Petitioner and Appellant,

v.

THE BOARD OF COUNTY COMMISSIONERS OF
MADISON COUNTY, and TED C. COFFMAN,
FRANK G. NELSON, and DAVID SCHULTZ,
constituting members of the Commission; and
ROBERT R. ZENKER, in his capacity as the County
Attorney for Madison County, State of Montana,

Respondents/Appellees,

JAMES C. KENNEDY,

Respondent-Intervenor/
Appellee/Cross-Appellant.

FILED

MAR 03 2014

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

O R D E R

We rendered our Opinion in the above-entitled action on January 15, 2014.

Kennedy has filed a document entitled petition for re-hearing and the Public Lands Access Association has responded. This Court will consider a petition for rehearing presented only upon the following grounds:

- (i) That it overlooked some fact material to the decision;
- (ii) That it overlooked some question presented by counsel that would have proven decisive to the case; or
- (iii) That its decision conflicts with a statute or controlling decision not addressed by the supreme court.

M. R. App. P. 20(1)(a). Kennedy does not explain how his petition satisfies any of these criteria, but rather alleges that the Court has overlooked “the judicial taking it has effected by retroactively changing state prescriptive easement law.” This Court has not retroactively changed state law regarding public prescriptive easements; it has clarified the state of existing law on public road right-of-ways established by prescriptive use in addressing the specific issues raised in this case. *See Public Lands Access Ass’n v. Bd. of Co. Comm’rs*, 2014 MT 10, ¶¶ 24-26, 28-29, 43, 49-50, __ Mont. __, __ P.3d __ (relying on case law to explain the width and scope of use associated with a public prescriptive road right-of-way). Thus, even assuming Kennedy presented this argument below, we have not overlooked it. Rather, we have concluded that it is not decisive to the case, for the reasons set forth in the Opinion.

Kennedy’s request for rehearing is without merit because it fails to demonstrate any of the criteria required by M. R. App. P. 20(1)(a).


IT IS ORDERED that the petition for rehearing is DENIED.

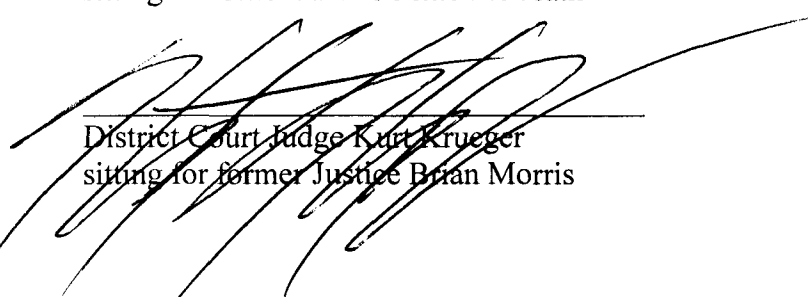
DATED this 3rd day of March, 2014.

Michael E. Wheeler

Patricia Cotter

Justice
Justices


District Court Judge Mike Menahan
sitting for Chief Justice Mike McGrath


District Court Judge Kurt Krueger
sitting for former Justice Brian Morris

Justices Laurie McKinnon and Jim Rice would grant the petition for rehearing.