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FILED
SEP 05 2024
KRISTI CELANDER
CLERK OF DISTRICT COURT
DEPUTY _____

MONTANA SIXTEENTH JUDICIAL DISTRICT COURT
CUSTER COUNTY

<p>DANIEL WELLMAN, Plaintiff, vs. TSCHIDA BROWN, Defendant.</p>	<p>Cause No. DV-9-2024-66 <i>Judge Michael B. Hayworth</i> ORDER DOCKETING HEARING</p>
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Plaintiff Daniel Wellman, proceeding *pro se*, has filed a *Complaint* alleging that Defendant Tschida Brown is preventing him from maintaining his access easement across Brown’s property. Wellman contends that he is being “blocked” by Brown from “repairing the easement” to clear an obstruction, “with obstruction being hazardous conditions.”

Wellman’s request for relief is fairly described as seeking: a preliminary injunction; a finding as to the scope of his easement maintenance rights; and a final injunction preventing Brown’s interference with his easement maintenance rights.

Brown has filed an Answer. She contends that she has neither blocked the road nor blocked Wellman on the road. (Wellman’s *Complaint* states that he is “being blocked with road blocks.”) Brown acknowledges that “[i]f [Wellman] wants his access Rd in better shape then he can do all the dirt work he wants.”

1 The extent of Wellman’s easement right “is determined by the terms of the grant [of the
2 easement] or the nature of the enjoyment by which it was acquired.” Sec. 70-17-106, MCA. Put
3 simply, Wellman is entitled to maintenance rights as specified in the document that created the
4 easement (often a deed) or, if there is no document, maintenance rights such as existed when the
5 easement was otherwise created.

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7 If maintenance rights are not specified as to an access easement, the law implies a
8 secondary easement for maintenance. However, secondary easement rights “must be exercised
9 ‘in such a reasonable manner as not to needlessly increase the burden upon’ or do ‘unnecessary
10 injury to’ the servient estate.” *Musselshell Ranch Co. v. Seidel-Joukova*, 2011 MT 217, ¶18
11 (citations omitted).

12
13 Thus, as the Court understands the *Complaint*, Wellman is asking the Court to determine
14 the scope of his easement maintenance rights and enforce those rights by issuing a Court order to
15 permanently enjoin Brown from blocking his maintenance activities.

16 17 2. Availability of Preliminary Injunction

18 Wellman’s attendant request for a preliminary injunction pending final determination
19 seeks a provisional remedy that, if granted, will be terminated and superseded by the final
20 judgment on the merits of the underlying claim.

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22 Section 27-19-201(2), MCA, sets forth the two circumstances where a district court may
23 grant an injunction order. One circumstance plainly does not apply here because it is based on
24 allegations related to stalking or assault. The other circumstance is as follows:

- 25
26 (2) An injunction order may be granted ... between persons, not including a person being
27 sued in that person’s official capacity:

1 (a) when it appears that the adverse party, while the action is pending, threatens or
2 is about to remove or dispose of the adverse party's property with the intent to
3 defraud the applicant, in which case an injunction order may be granted to restrain
4 the removal or disposition[.]

5 From the allegations in the *Complaint*, this provision also appears inapplicable because
6 there is no assertion that Brown threatens to remove or dispose of Wellman's property with the
7 intent to defraud him.²

8
9 3. Temporary Restraining Order

10 As the foregoing demonstrates, preliminary injunctive relief is available in limited
11 circumstances, neither of which appear to apply here. Accordingly, given that Wellman is *pro se*
12 and is perhaps unfamiliar with available remedies, the Court considers Wellman's request for a
13 preliminary injunction to be a request for a temporary restraining order ("TRO").
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15 A TRO is another type of interim order to prevent immediate or irreparable injury before
16 a full hearing on a final injunction. Section 27-19-314, MCA, provides:

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18 Where an application for an injunction is made upon notice or an order to show cause, ...
19 the court or judge may enjoin the adverse party, until the hearing and decision of the
20 application, by an order which is called a temporary restraining order.
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2 If there are circumstances indicating that a preliminary injunction might be granted, Section 27-19-201(1)(a)-(d),
25 MCA, sets forth the test to determine whether one should issue: (1) the applicant is likely to succeed on the merits;
26 (2) the applicant is likely to suffer irreparable injury in the absence of preliminary relief; (3) the balance of equities
27 tips in the applicant's favor; and (4) the order is in the public interest. As to items (1) and (2), the applicant must
28 prove that it is probable that the applicant will prevail in the action and probable that, without preliminary relief, it
will suffer irreparable harm. *Planned Parenthood of Montana v. State*, 2022 MT 157. The movant has the burden of
demonstrating qualifying circumstances and proving the four required elements. Sec. 27-19-201(3), MCA.
Preliminary injunctive relief is "an extraordinary remedy not available as a matter of right" that is "highly
discretionary and critically dependent on the particular facts, circumstances, and equities of each case." *Netzer Law
Office, P.C. v. State*, 2022 MT 234, ¶17 (citations omitted).

1 In determining the need for a TRO, the Court weighs the relative harm to the moving
2 party if the TRO is denied, against the relative harm to the opposing party if the TRO is granted.

3 The *Compliant* does not make clear that this is an urgent situation requiring relief prior to
4 hearing. More specifically, while recognizing the concern for fire equipment access, Wellman
5 does not allege that he cannot access his property now, but rather says it is hazardous “6 plus
6 months a year” (presumably wintertime).³ In short, Wellman has not demonstrated that he will
7 suffer immediate or irreparable harm in the interim between now and the final determination
8 without a TRO. Thus, the Court declines to issue a TRO prior to a hearing.
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11 The Court further observes that Wellman has not described how he intends to abate the
12 allegedly hazardous condition of the access road. To some extent, his request for a TRO seems to
13 be a request that the Court order that he be allowed to conduct maintenance activities *as he sees*
14 *fit* without Brown’s interference. If, as Brown’s Answer suggests, Wellman means to widen the
15 access road, then a TRO effectively allowing that activity is not appropriate.
16

17 4. Other Issues

18 By way of guidance and not as an order of the Court, Wellman is cautioned to carefully
19 consider the provable extent of his maintenance rights when conducting maintenance activities
20 prior to the Court’s determination of the scope of his rights. Brown is likewise cautioned that if
21 Wellman’s activities appear to her to exceed the scope of his rights, she has recourse within this
22 proceeding and should not resort to self-help, i.e., trying to block his efforts.
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3 It does not appear that the “road blocks” Wellman refers to are ongoing or prevent him from accessing his
property. (He claims that “officials” were “called on me when defendant couldn’t stop me.”

1 The Court understands that Brown denies that she has ever “blocked” Wellman but she
2 does acknowledge that she once “stopped” him and there was an altercation. It is in the best
3 interest of both parties to avoid further confrontation and allow the Court process to resolve the
4 dispute over the maintenance issue.

5
6 That being said, the parties are advised that, based on the pleadings so far, the Court’s
7 task is to determine the scope of Wellman’s maintenance rights and issue a final injunction order
8 if appropriate. Other issues are not being considered by the Court, such as Wellman’s claim that
9 he is “being verbally assaulted” and Brown’s claims of assault, trespass, and ‘theft’ of dirt from
10 her land. (This advisement does not prohibit either party from taking additional legal action if
11 resolution of other issues between the parties requires additional legal proceedings.)
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13 5. Summary

14 The Court understands Wellman’s *Complaint* as making an application for the
15 determination of his maintenance rights and the issuance of a final injunction to secure and
16 protect those rights. Accordingly, a show cause hearing on the request for final injunction will be
17 held at which Wellman has the burden to establish: (1) his maintenance rights (by
18 documentation, e.g., a deed or otherwise); and (2) the requirements of Section 27-19-102, MCA.
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21 As stated above, the *Complaint* does not state a basis in law for the grant of a preliminary
22 injunction. Accordingly, the Court declines to set a show cause hearing for a preliminary
23 injunction. The Court has considered Wellman’s request for an injunction under the lesser
24 standard required for the issuance of a TRO. On the facts alleged, a TRO issued prior to hearing
25 is not warranted.
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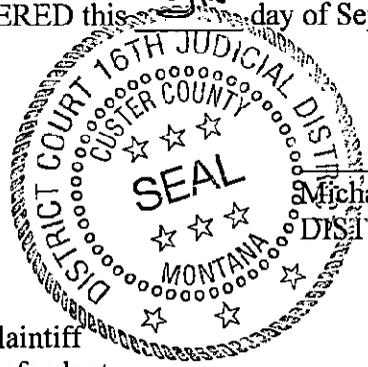
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IT IS ORDERED that a HEARING on DANIEL WELLMAN'S application for relief and final injunction is docketed for September 29, 2024, at 9:00 o'clock 4 .m., for 2 hours. Hearing is docketed for the Custer County Courtroom, Miles City, Montana.

Both parties must appear to be heard as to the final relief sought by the Petitioner.

The Clerk of Court shall provide a copy of this Order as noted below.

ORDERED this 5th day of September, 2024.



[Handwritten signature of Michael B. Hayworth]

Michael B. Hayworth
DISTRICT JUDGE

Cc: Plaintiff
Defendant

CERTIFICATE OF SERVICE

The foregoing was duly served by U.S. Mail or Email scan upon the parties or their attorneys of record at their last known address on September 5, 2024.

By *[Handwritten signature of Kersti Colander]*