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Court: CO Park County District Court 11th JD

Judge: Stephen Groome

File & Serve

Transaction ID: 30623282

Current Date: Apr 16, 2010

Case Number: 2010CV65

Case Name: ELK FALLS PROPERTY OWNERS ASSOCIATION et al vs. DUNWODY, VERA B et al

EFILED Document
CO Park County District Court 11th JD
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/s/ **Judge Stephen Groome**



GRANTED

The moving party is hereby **ORDERED** to provide a copy of this Order to any pro se parties who have entered an appearance in this action within 10 days from the date of this order.

Stephen Groome
District Court Judge

DATE OF ORDER INDICATED ON ATTACHMENT

DISTRICT COURT, PARK COUNTY, COLORADO
300 Fourth Street
Fairplay, Colorado 80440

Plaintiffs: ELK FALLS PROPERTY OWNERS ASSOCIATION, a Colorado nonprofit corporation, KATHRYN WELLS, PAUL VASTOLA, and ROBERT W. PHELPS

v.

Defendants: VERA B. DUNWODY, DRAYTON D. DUNWODY, and FARM CREDIT OF SOUTHERN COLORADO, ACA, an agricultural credit association

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Case Number: 2010CV65

Div: B

ORDER FOR PRELIMINARY INJUNCTION

THE COURT has reviewed its Order for Temporary Restraining Order, the Motion for Preliminary Injunction, the Answer filed by Defendants, and Plaintiffs' Hearing Brief. The Court has heard testimony at a hearing on March 22, 2010, and reviewed the exhibits and arguments of the parties. The Court made findings of fact and conclusions of law from the bench at the conclusion of the hearing, and those findings and conclusions are incorporated into this written Order.

Being fully advised, the Court enters the following findings of fact, conclusions of law and orders:

It is important for the parties to understand that I have only heard a portion of the evidence. This Order will not end the case. Hopefully, the parties will try to resolve the existing and remaining disputes without incurring more damage and expense. The Court recognizes the importance of the disputed issues to both sides.

The Court considers this to be a close call based on the evidence presented to date. Both sides have valid points in multiple issues concerning the access rights of the Plaintiff homeowners and the counter property rights of the Defendant landowners. The Court has reviewed the arguments as to whether the disputed roads are public roads or private access easements, and whether easement rights exist through express grant, implied easement, or by prescription.

The Court applies the legal standards for preliminary injunction set out in *Rathke v. MacFarlane*, 648 P.2d 648 (Colo. 1982). In exercising its discretion, the trial court must find that the moving party has demonstrated the following: (1) a reasonable probability of success on the merits; (2) a danger of real or immediate, and irreparable injury which may be prevented by injunctive relief; (3) that there is no plain, speedy, and adequate remedy at law, (4) that the granting of a preliminary injunction will not disserve the public interest; (5) that the balance of equities favors the injunction, and (6) that the injunction will preserve the status quo pending a trial on the merits. Based on the evidence presented, the motion for preliminary injunction is GRANTED. The Court finds that all six elements of *Rathke* and C.R.C.P. 65 have been met by Plaintiffs, although the evidence on some elements is close or marginal. It is important that the status quo be maintained pending litigation. If there is an express easement in favor of Plaintiffs, Plaintiffs must pay their share of upkeep and maintenance on the roads in question.

The Court finds that the testimony of all witnesses was credible, and that there is evidence to support the granting of preliminary injunction. The Court requests the parties go back, regroup and consider settlement of the issues disputed in this case.

Plaintiffs' injunction bond, which is a cash bond in the amount of \$1,000, shall be continued pending final resolution of the issues in this case.

IT IS HEREBY ORDERED that Defendants Vera B. Dunwody and Drayton D. Dunwody, their officers, agents, contractors, servants, employees, and attorneys, and those persons acting in concert with them who received actual Notice of this Order are restrained and enjoined from placing obstructions in any road or right of way identified in the subdivision plat for Block 1, Block 2 and Block 3 of Elk Falls. This includes all existing roads as constructed and used by the local residents for ingress and egress, including, but not limited to, South Elk Creek Road, Jenson Road, Juniper Road, and/or Park County Road 1184. Defendants are restrained from placing boulders, poles, fences or obstacles of any kind across these roads or in any other way attempt to restrain and impede use of these roads by residents, guests, and invitees of the Elk Falls Subdivision. This preliminary injunction shall remain in effect pursuant to C.R.C.P. 65 until further order of this Court or entry of final judgment in this case.

DONE this ____ day of April, *nunc pro tunc* March 22, 2010.


BY THE COURT:

District Court Judge

APPROVED AS TO FORM, C.R.C.P. 121, § 1-16.

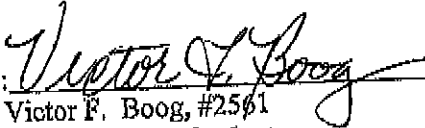
PLAINTIFFS ELK FALLS PROPERTY
OWNERS ASSOCIATION, KATHRYN
WELLS, PAUL VASTOLA AND
ROBERT W. PHELPS

By: _____


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DEFENDANT VERA B. DUNWODY AND
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By: _____


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