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SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF PEND OREILLE

*****, a married man
dealing with his separate property,

Plaintiff,

vs.

*****, a single person,

Defendant.

NO. 12-2-**-093-6

**MOTION FOR SUMMARY
JUDGMENT**

MOTION

In accordance with CR 56, plaintiff respectfully moves this court for summary judgment granting (1) a declaratory order under RCW 7.24.020 confirming that he has the legal right to use the easement for ingress and egress and said easement prevents defendant from parking or in any way blocking the easement; and (2) permanently enjoining defendant from interfering with plaintiff’s reasonable use of the easement and requiring defendant to remove all vehicles and other objects trespassing on the easement.

This motion is based on the following Memorandum in Support.

MEMORANDUM IN SUPPORT OF THE MOTION

I. INTRODUCTION

This case concerns a dispute over the use of an easement on plaintiff’s property which allows defendant ingress and egress and specifically requires that obstacles must

1 remain cleared from the right of way for roadway purposes. The subject easement was
2 signed and recorded on June 13, 1995.

3 Despite the express terms of the easement, defendant uses that portion of the
4 easement that is on plaintiff's property for parking purposes, thus preventing him from
5 using the easement for ingress and egress purposes.

6 Defendant has failed to defeat the easement in any manner. Instead she has brought
7 wild accusations against the plaintiff, such as claiming that he used an herbicide on the
8 easement which she claimed was on her property, and requested a restraining order.

9 Originally the restraining order was not granted and the action dismissed. A
10 second restraining order hearing was docketed under the same cause number. Upon advice
11 of previous counsel, plaintiff did not attend that hearing and a restraining order against the
12 plaintiff was granted, which prevented him from going to his property or using the
13 easement. The issuance of the restraining order was based upon defendant's allegation that
14 the easement was on her property and any actions taken by the plaintiff on the easement
15 were wrongful.

16 Shortly after the restraining order was issued, plaintiff's wife and a friend visited
17 the property for purposes of winterizing it. Defendant called the sheriff and reported that
18 the restraining order was being violated. A police officer came to the property and
19 ascertained that plaintiff was not at the property.

20 Defendant's harassing of the plaintiff and his guests significantly interferes with his
21 use of the easement for maintenance and ingress and egress purposes.

22 **II. EVIDENCE RELIED UPON**

23 The motion is based on the pleadings on file with this court.

24 **III. ISSUES PRESENTED**

25 In deciding this motion, the Court is presented with two issues:

- 26 1. Whether the recorded easement, and defendant's admission thereof, requires this
27 court order declaratory relief in favor of the plaintiff?

1
2 2. Whether the defendant’s violation of the terms of the easement should result in
3 an order requiring defendant to use the easement for ingress and egress purposes
4 only and is permanently enjoined from further harassment of the plaintiff and his
5 use of the easement?

6 **IV. ARGUMENT**

7 **A. Standard of review**

8 Summary judgment is appropriate where there are no genuine issues of material
9 fact and the moving party is entitle to judgment as a matter of law. CR56(c);
10 *Vallandigham v. Cover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005).
11 All facts and reasonable inferences are considered in the light most favorable to the
12 nonmoving party, and summary judgment is appropriate only if, from all the evidence,
13 reasonable persons could reach but one conclusion. *Vallandigham*, 154 Wn.2d at 26. The
14 moving party has the burden to show there is not genuine issue as to any material fact. If
15 that burden is satisfied, the nonmoving party must present evidence demonstrating that
16 material facts are in dispute. *Vallandigham*, 154 Wn.2d at 26. If it fails to do so, entry of
17 summary judgment is property. *Id.*

18 **B. The express terms of the easement requires a declaratory order**

19 On June 13, 1995 the subject easement was signed and recorded. The easement is
20 an ingress/egress easement in favor of defendant.

21 It is unknown why defendant swore under oath at various hearings that the
22 easement was on her property and that the plaintiff should be restrained from using the
23 easement for any purpose. But what we do know is that when answering the complaint
24 under this cause number, she admitted that her property was not the servient property and
25 the easement is only for ingress and egress.

26 An easement is a property right separate from ownership that allows the use of
27 another’s land without compensation. *M.K.K.I., Inc. v. Krueger*, 135 Wn.App. 647, 145
28 P.3d 411 (2006). As a general rule, the servient owner has the right to use their land for
any purpose so long as it does not unreasonably interfere with the use of the easement by
the dominant estate. *Cole v. Laverty*, 112 Wn.App. 180, 184-185, 49 P.3d 924 (2002).

1 Therefore, plaintiff requests this court enter a declaratory order that the easement is
2 located on his property and that defendant must keep said easement clear of all obstacles
3 and she may only use said easement for ingress and egress.

4 **C. Defendant should be enjoined from 1) further interfering with use of the**
5 **easement; and 2) harassing plaintiff.**

6 The trial court is vested with broad discretionary power to shape and fashion
7 injunctive relief to fit the particular facts, circumstances, and equities of the case before it.
8 *Washington Fed'n of State Employees v. State*, 99 Wn.2d 878, 665 P.2d 1337 (1983); *Port*
9 *of Seattle v. International Longshoremen's Union*, 52 Wn.2d 317, 324 P. 2d 1099 (1958).
10 A plaintiff seeking a permanent injunction must satisfy a three-factor test before a court
11 may grant such relief. A plaintiff must demonstrate (1) that he has a clear legal or
12 equitable right, (2) that he has a well-grounded fear of invasion of that right, and (3) that
13 the acts complained of are either resulting in or will result in actual and substantial injury.
14 *Tyler Pipe Industries v. Department of Revenue*, 96 Wn.2d 785, 792, 638 P.2d 1213
(1982).

15 As discussed above, each element is met. Plaintiff has a clear legal right to be able
16 to use the easement for his own use. Defendant is interfering with that right by harassing
17 plaintiff and his guests, and attempting to block access by parking on the easement.
18 Further harassment occurs when plaintiff continuously files restraining orders against the
19 plaintiff claiming that the easement area is her own fee title property. This harassment has
20 damaged plaintiff's right to peaceful enjoyment of his property.

21 **VI. CONCLUSION**

22 For the foregoing reasons, the court should grant summary judgment. The court
23 should declare that plaintiff has the legal right to use the entire easement so long as it does
24 not interfere with defendant's ingress and egress rights. This includes declaring that
25 defendant is not to place any vehicle or other object on the easement at any time.

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The court should also permanently enjoin the defendant from harassing the plaintiff or this guests or invitees for using the easement, so long as they do not block the easement for ingress and egress purposes

DATED this _____ day of September, 2012.

TRUNKENBOLZ | ROHR PLLC

PAMELA H. ROHR, WSBA #19584
Attorney for Plaintiff

CERTIFICATE OF MAILING

The undersigned certifies that on September 20, 2012, I mailed a copy of this document and the Notice of Hearing to:

Mailing made first class via the USPS.

PAMELA H. ROHR